

CASE DECISION LIST

June 20, 2024

112224 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v TEMARCUS CHURCH

113042 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v TEMARCUS CHURCH

Affirmed in part, modified in part and remanded.

Anita Laster Mays, P.J., Kathleen Ann Keough, A.J., and Michael John Ryan, J., concur.

KEY WORDS: *Hearsay; confrontation rights; sufficiency of the evidence; Reagan Tokes; indefinite sentencing; having weapons while under disability; carrying concealed weapons; attempted murder; felonious assault; merger; allied offenses; conceded error.*

This consolidated appeal raised challenges to multiple convictions across two criminal cases.

The defendant's sufficiency-of-the-evidence argument was disregarded where the argument only went to an offense that had been merged into another offense at sentencing.

The admission of police testimony and body-camera recordings that included statements made by a nontestifying victim did not violate the Confrontation Clause or the evidence rules because the statements were nontestimonial; they were excited utterances made to secure police assistance to an ongoing emergency. The victim was flagging down police officers to report that the occupants of another car - which was still on the roadway near her - had been chasing her and shooting at her in another part of the city.

The prosecutor improperly vouched for the credibility of a state witness during closing argument, but the comment was isolated and did not affect the fairness of the defendant's trial. Another comment during closing argument was not prejudicial when viewed in context. Defense counsel was not ineffective for failing to object to the latter comment.

The defendant's convictions for complicity in various offenses were supported by sufficient evidence and were not against the manifest weight of the evidence.

The state conceded that the trial court committed plain error when it failed to merge the offenses of felonious assault and attempted murder. Based on the state's request, those convictions were vacated and the case remanded for a limited resentencing.

The other case was remanded with instructions for the trial court to correct, nunc pro tunc, certain clerical errors in the sentencing journal entry.

Constitutional arguments regarding indefinite sentencing and the Reagan Tokes Law were overruled pursuant to State v. Hacker, 2023-Ohio-2535.

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112813 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v CHAZ A. BELTON

Affirmed in part, vacated in part, and remanded.

Mary Eileen Kilbane, P.J., and Lisa B. Forbes, J., concur; Anita Laster Mays, J., dissents (with separate opinion).

KEY WORDS: *Motion to suppress; warrantless search; investigative stop; Terry stop; “automobile exception” to a warrantless search; motion to strike juror for cause; peremptory challenge; fair and impartial juror; ineffective assistance of counsel; joinder of indictments; Crim.R. 8(A); waiver of appealable error; Crim.R. 29 motion for acquittal; insufficiency of the evidence; manifest weight of the evidence; jury instructions; merger of allied offenses of similar import.*

The trial court did not abuse its discretion when it denied appellant’s motion to suppress where the collective facts support a finding that the officer’s had a reasonable suspicion to conduct an investigative stop and the officers had probable cause to believe the appellant’s vehicle contained contraband.

Where a juror’s comments did not demonstrate bias or impartiality, the trial court did not abuse its discretion when it denied appellant’s challenge to the juror for cause. Further, appellant’s counsel was not ineffective when he chose not to utilize a peremptory challenge on a juror who demonstrated his ability to act as a fair and impartial factfinder.

The appellant waived his right to challenge a motion for relief from joinder when he entered a guilty plea on the indictment.

The trial court did not err when it denied appellant’s Crim.R. 29 motion for acquittal where there was sufficient evidence to support his convictions.

The jury’s verdict was not against the manifest weight of the evidence where ample evidence was introduced to support the convictions.

Where evidence was introduced that, if believed, could establish complicity and constructive possession, the trial court did not abuse its discretion when it provided jury instructions on those issues.

The trial court committed plain error when it failed to merge the convictions of allied offenses of similar import.

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112882	COMMON PLEAS COURT STATE OF OHIO v BRITTANY SMITH	A	Criminal C.P.
112908	COMMON PLEAS COURT STATE OF OHIO v HAKEEM-ALI SHOMO	A	Criminal C.P.
112910	COMMON PLEAS COURT STATE OF OHIO v ANTHONY BRYANT	A	Criminal C.P.

Affirmed.

Anita Laster Mays, J., and Eileen A. Gallagher, P.J., concur; Lisa B. Forbes, J., concurs (with separate opinion).

KEY WORDS: *Double jeopardy; mistrial; motion to dismiss; motion to quash subpoenas.*

The trial court did not err in denying the appellants' motion to dismiss for double jeopardy because they have not demonstrated that the trial court intended to provoke a mistrial. The trial court did not err in granting the State's motion to quash subpoenas because the record was clear as to the intentions of the trial court in engaging in ex parte communications with the State.

112919	COMMON PLEAS COURT NI'JAH LONG v KELTANBW, INC.	E	Civil C.P.-Not Juv,Dom Or Prob
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Affirmed.

Emanuella D. Groves, J., Mary Eileen Kilbane, P.J., and Michael John Ryan, J., concur.

KEY WORDS: *R.C. 4112.02; summary judgment; material; transitory; minor; disabled; regarded as disabled; record of disability; impairments; major life activities; prima facie case; disability discrimination; pretext; workers' compensation.*

Summary judgment was proper because appellant failed to demonstrate a prima facie case of disability discrimination. Prior to her workplace injury, appellant could not establish that she was a disabled individual under R.C. 4112.02. Appellant failed to offer evidence that she could safely and substantially perform the job's essential functions after the workplace injury, with or without accommodations.

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112969 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v MONTEZ LOGAN

Affirmed.

Frank Daniel Celebrezze, III, J., and Kathleen Ann Keough, A.J., concur; Mary Eileen Kilbane, J., dissents (with separate opinion).

KEY WORDS: *Motion for leave to file a motion for new trial; evidentiary hearing; clear and convincing evidence; unavoidably prevented; Brady material; suppression of evidence; newly discovered evidence.*

Judgment affirmed. *The trial court did not err in denying defendant Logan's motion for leave to file a motion for new trial because Logan did not clearly and convincingly demonstrate that he was "unavoidably prevented" from discovering the information within the motion to leave for motion to file a motion for new trial, either by demonstrating previous unawareness of the existence of the new evidence or by demonstrating that the prosecution suppressed the evidence pursuant to Brady v. Maryland, 373 U.S. 83 (1963).*

113226 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DANTE JORDAN

Reversed and remanded.

Kathleen Ann Keough, A.J., Eileen A. Gallagher, J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Burglary; theft; day-of-trial plea; deviation; agreed, recommended sentence; reasonable expectation.*

Appellant's day-of-trial plea reversed because the trial court deviated from the agreed, recommended sentence without giving the appellant, who had a reasonable expectation of receiving the agreed, recommended sentence, an opportunity to withdraw his plea after the trial court determined to deviate.

113244 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v BERNARD SPARKS

Affirmed.

Eileen A. Gallagher, P.J., Michelle J. Sheehan, J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *R.C. 2929.14(C)(4); consecutive-sentence findings; clearly and convincingly unsupported by the record.*

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(Case 113244 continued)

The record did not clearly and convincingly fail to support the trial court's findings in support of the imposition of consecutive sentences.

113252 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ANDREW GROSSMAN

Affirmed.

Mary Eileen Kilbane, J., Eileen A. Gallagher, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Substitution of a party; App.R. 29(A); Crim.R. 11(C); knowingly, intelligently, and voluntarily entered a plea; nature of the charges; mandatory sentence; prejudice.*

A review of the record demonstrated the trial court's advisements complied with Crim.R. 11(C). Even assuming arguendo the trial court did not fully comply with the Crim.R. 11(C) advisements, the defendant failed to argue prejudice and, therefore, defendant entered his guilty pleas knowingly, intelligently, and voluntarily.

113260 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DAVID LYKES, JR.

Affirmed.

Michelle J. Sheehan, J., Eileen A. Gallagher, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *R.C. 2945.37, competency hearing, sufficiency of evidence, evidence of motive, manifest weight of evidence, consecutive sentences, firearm specifications.*

Defendant was convicted of two counts of murder, two counts of felonious assault each with 3-year firearm specifications, and one count of having weapons while under disability. After merging offenses, the trial court sentenced defendant to 15 years to life on one count of murder and to a consecutive 36-month sentence for having weapons while under disability. The trial court then imposed sentence on 3 of the 4 firearm specifications that defendant was found guilty of for an aggregate sentence of 27 years to life.

Before trial, defendant was examined and found competent to stand trial. At trial he interrupted the proceedings and testified. His interruptions and manner of testifying did not reveal indicia of incompetence, and the trial court did not abuse its discretion by not holding a hearing on competency.

The evidence presented at trial was that defendant had a gun, was at the scene of the murder, called 911 to report a shooting after the

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(Case 113260 continued)

murder, turned himself in to the police, handed over the firearm used to commit the murder, and told the police he had shot someone. The evidence, including circumstantial evidence, was sufficient to sustain the convictions despite no eyewitness to the shooting. Although there was no evidence of motive presented, proof of motive is not necessary for a conviction. The evidence at trial was not against the manifest weight.

The trial court made the consecutive-sentence findings in imposing consecutive sentences for murder and having weapons while under disability, and upon review, the appellate court did not find that the record did not clearly and convincingly support consecutive sentences. Further, the trial court did not abuse its discretion by imposing three of the four firearm specifications defendant was found guilty of.

113312 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DARRELL BLACK

Affirmed in part, modified in part, and remanded.

Kathleen Ann Keough, A.J., Michelle J. Sheehan, J., and Michael John Ryan, J., concur.

KEY WORDS: *Sentencing; irrelevant, prejudicial, and untrue statements; consecutive sentences; no-contact order.*

Defendant presented nothing to demonstrate that the trial court relied on improper, prejudicial, and untrue statements when sentencing him; because no consecutive sentences were imposed in this case and the defendant did not appeal from the case in which the consecutive sentence was imposed, the propriety of the consecutive sentence imposed in the other case was not for the court to decide in this case; sentence modified to delete no-contact order because the trial court improperly imposed both a prison sentence and a no-contact order.

113372 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
GEORGE PETERS v VILLAGE OF HIGHLAND HILLS

Affirmed.

Michael John Ryan, J., Kathleen Ann Keough, A.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Age discrimination; promotion; summary judgment.*

Judgment affirmed. The three-step burden shifting analysis set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) applies to an age-discrimination claim. Under the analysis, the employee must first establish a prima facie case of age discrimination. If the employee establishes a prima facie case, the

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burden of production shifts to the employer to state some legitimate non-discriminatory reasons for its action. Finally, the burden shifts back to the employee to show that the employer's stated reasons were a pretext for age discrimination.

The plaintiff established a prima facie case. However, the employer provided legitimate nondiscriminatory reasons for its action. The employee failed to show that the employer's reasons were pretext for age discrimination.

Summary judgment in favor of the employer was properly granted.