

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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March 7, 2024

111927 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JAYMARLON HAYES

Affirmed in part; modified in part; and remanded.

Anita Laster Mays, P.J., Eileen A. Gallagher, J., concur; Eileen T. Gallagher, J., concurs in judgment only (with separate opinion attached).

KEY WORDS: *R.C. 2929.14; consecutive sentences; aggregate sentence; modification; R.C. 2953.08(G)(2)(a).*

Appellant's challenge to the trial court's imposition of consecutive sentences is sustained. This court does not hold a firm conviction and belief that the evidence supports the imposition of the aggregate sentence imposed, and the sentence is modified pursuant to this opinion.

112339 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v FRANCISCO QUINONES-TORRES

Affirmed.

Emanuella D. Groves, J., Eileen T. Gallagher, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Ineffective assistance of counsel; sufficiency of the evidence; manifest weight of the evidence.*

Appellant's claim of ineffective assistance of counsel is overruled where he failed to cite to caselaw or statutes in support of his argument that trial counsel erred when he failed to "bifurcate" the having weapons while under disability charges.

Appellant's conviction for abduction was supported by sufficient evidence where after appellant shot the victim, he and his mother prevented her from leaving the residence and calling a family member, appellant held a gun all or a majority of the time, and he did not take the victim to the hospital for 20-30 minutes while she bled profusely.

Appellant's convictions were supported by the manifest weight of the evidence. Victim's inconsistencies on minor matters did not make her testimony regarding the shooting less credible. The possibility that the victim was using drugs was speculative because none of the items found at the defendant's home were ever tested for drugs and the victim denied they were hers. Other evidence challenging the investigation and the lack of certain evidence did not detract from the victim's testimony and her injuries.

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112514 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v MARIO R. ANDERSON

Affirmed in part, reversed in part, and remanded.

Kathleen Ann Keough, A.J., Lisa B. Forbes, J., and Anita Laster Mays, J., concur.

KEY WORDS: *Gross sexual imposition; rape; sexual battery; soliciting; telephone harassment; Crim.R. 16; R.C. 2945.12; Crim.R. 43(A); parental-status; jury instruction; force; effective assistance of counsel; strategy; consecutive sentences; disproportionality finding.*

The trial court did not abuse its discretion by denying defendant's motion to exclude the victim's cell phone records as a sanction for the state's inadvertent violation of Crim.R. 16. The court's determination that the defendant's absence from trial was due to the defendant's own actions was supported by competent and credible evidence and thus, the court did not err in proceeding with trial in the defendant's absence. Defendant's convictions for sexually related offenses were upheld when the evidence demonstrated that the defendant used his parental status to force, compel, and manipulate the victim to engage in sexual activity and conduct. Based on the evidence, the trial court properly provided the parental-force jury instruction. Counsel was not ineffective in their strategic decision to acknowledge defendant's conduct as immoral and disgusting, but focus on the lack of evidence corroborating the elements of the offenses. Case remanded for resentencing on consecutive sentences when the trial court did not engage in a full consecutive-sentence analysis when it failed to make the full disproportionality finding.

112519 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JUSTIN LUCAS

Affirmed.

Eileen T. Gallagher, P.J., Michael John Ryan, J., and Anita Laster Mays, J., concur.

KEY WORDS: *Confrontation; domestic violence; endangering children; trespass; firearm; nontestimonial; excited utterance; hearsay; exception; sufficiency; manifest weight.*

Defendant's confrontation rights were not violated by the trial court's admission of the victim's nontestimonial statements. The trial court did not abuse its discretion by admitting the victim's out-of-court statements pursuant to the excited utterance exception to the prohibition against hearsay. Defendant's convictions were supported by sufficient evidence and were not against the manifest weight of the evidence.

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112742 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ERIC L. COOK

Affirmed.

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

KEY WORDS: *Ineffective assistance of counsel; guilty plea; consecutive sentences; mandatory fine.*

Appellant failed to establish that he received ineffective assistance of counsel with regard to a guilty plea where the record does not reflect that counsel gave improper advice and counsel negotiated the dismissal of multiple charges in exchange for the plea.

The trial court's imposition of consecutive sentences was not clearly and convincingly unsupported by the record; accordingly, the trial court's imposition of consecutive sentences must stand. Additionally, the trial court appropriately addressed the minimum and maximum sentence.

Finally, the trial court properly imposed a mandatory fine. In order to waive the fine, an affidavit averring the appellant is indigent and unable to pay the fine must be filed. As that requirement was not met, the trial court was required to impose the mandatory fine.

112779 COMMON PLEAS COURT A Criminal C.P.
CONTEMPT OF: ROBERT O. DONEGAN

112797 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JACOB HERNANDEZ

Reversed.

Emanuella D. Groves, J.; Lisa B. Forbes, P.J., concurs and concurs with the separate concurring opinion; Sean C. Gallagher, J., concurs (with separate opinion).

KEY WORDS: *Contempt; procedural due process; Sixth Amendment; R.C. 2705.03.*

Trial court erred when it held appellant-attorney in contempt of court for late arrival to the second day of trial where the court never advised parties when to appear on that date, the jury was ordered to return at 12:45 p.m., and counsel arrived at 1:30 p.m., the same time the parties were set to arrive on the first day of trial.

Trial court erred when it summarily punished the attorney in contempt when late arrival is an indirect contempt entitling the recipient to the procedural safeguards set out in R.C. 2705.03.

Trial court violated defendant-appellant's Sixth Amendment right to

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counsel when it removed his retained counsel due to perceived issues of competence that were not supported by the record and without giving defendant-appellant notice and an opportunity to be heard.

112781 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JAMES STUBBS

Affirmed in part, reversed in part, and remanded.

Michelle J. Sheehan, J., Eileen A. Gallagher, P.J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: *Vandalism; serious physical harm; drug possession; possession of criminal tools; sufficiency of the evidence; manifest weight of the evidence; forfeiture; jury instructions; admission of firearm evidence; allied offenses; merger of drug trafficking and possession.*

The state presented sufficient evidence for a reasonable factfinder to find Stubbs guilty of drug possession, possession of criminal tools, and vandalism. Stubbs's convictions were also not against the manifest weight of the evidence. Although the trial court erred when instructing the jury that the state's burden when proving forfeiture was preponderance of the evidence, the error was harmless because the state proved by clear and convincing evidence that the elements of forfeiture were met. Stubbs was not prejudiced by the admission of firearm evidence, and even if he was, the error was harmless because evidence of Stubbs's guilt was overwhelming. The trial court erred when it did not merge drug possession with drug trafficking because the two offenses are allied offenses of similar import. However, the trial court did not err when it did not merge drug trafficking under R.C. 2925.03(A)(1) (sell or offer to sell) and 2925.03(A)(2) (prepare for shipment or distribution) because they are not allied offenses of similar import. The case was remanded for merger and resentencing.

112800 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v TORIANO WILLIAMS

Affirmed.

Mary J. Boyle, J., Eileen T. Gallagher, P.J., and Frank Daniel Celebrezze III, J., concur.

KEY WORDS: *Present-sense impression; Evid.R. 803(1); hearsay; Evid.R. 801; inconsistent testimony; credibility; abuse of discretion; manifest weight; sufficiency; force; aggravated burglary; R.C. 2911.11; R.C. 2901.01(A)(1).*

The trial court did not abuse its discretion when it admitted the

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victim's statements because they were admissible as a present-sense impression. Further, the trial court did not abuse its discretion when it excluded Gocan's statements because they were inadmissible hearsay and not relevant. In addition, there was sufficient evidence of "force" to sustain a conviction for aggravated burglary. Finally, we cannot say that the jury clearly lost its way; thus, appellant's convictions are not against the manifest weight of the evidence.

112812 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ERIC TORRES

Affirmed.

Sean C. Gallagher, J., Lisa B. Forbes, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Involuntary manslaughter; aggravated assault; reserve prosecution; preclusion; res judicata.*

Affirmed. *Defendant conceded that the death of the victim directly resulted from the conduct underlying his conviction for aggravated assault, to which a claim of self-defense cannot be raised, and therefore, the conviction for involuntary manslaughter is not in error.*

112831 DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate
C.L.A. v D.P.M.

Dismissed in part, reversed in part, and remanded.

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

KEY WORDS: *Final, appealable order; sua sponte; Office of Child Support Services Recommendation; R.C. 3119.60; R.C. 3119.63; arrearage motion; motion to modify support; refile motion to modify; postdecree motion; continuing jurisdiction; lack of service; Civ.R. 75; personal jurisdiction; Civ. R. 4; service of process; presumptive service; no rebuttal evidence.*

The trial court's order was a final, appealable order even though the court did not adopt an Office of Child Support Services Recommendation. The trial court rendered a final, appealable order when it dismissed Husband's motion for judicial review under R.C. 3119.63 since Husband would be foreclosed from presenting his arguments on the recommendation outside this appeal. The trial court's dismissal of Husband's support modification motion was a final, appealable order because while Husband could refile a motion to modify support, he would be entitled to a support reduction retroactive only to the date of the new filing. The trial court's

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dismissal of Husband's arrearages motion was not a final, appealable order since Husband could refile the motion and obtain appropriate relief in the future.

The trial court erred when it found Husband's motion for judicial review filed pursuant to R.C. 3119.63 was subject to Civ.R. 75(J) and the related service requirements. The trial court erred when it dismissed Husband's motion for support modification for lack of service when husband served the motion in accordance with Civ.R. 75(J) and Civ.R. 4 to 4.6 and demonstrated good cause for why the motion was not filed within six months after its initial filing.

112865 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ENOCH HALL

Affirmed.

Sean C. Gallagher, J., Lisa B. Forbes, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: Trafficking; R.C. 2925.03(A)(2); drug possession; R.C. 2925.11(A); possession of criminal tools; R.C. 2923.24(A); forfeiture specifications; motion to suppress; search; vehicle; odor; suspected marijuana; cocaine; sufficiency; manifest weight.

Affirmed appellant's convictions for trafficking, drug possession, and possession of criminal tools, as well as the forfeiture specifications on each count. The trial court did not err in denying a motion to suppress where the officers had probable cause to search appellant's motor vehicle after smelling the odor of raw marijuana. The appellant's convictions were supported by sufficient evidence and were not against the manifest weight of the evidence.

112885 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v TRAVIS HONEY

Affirmed.

Michelle J. Sheehan, J., Eileen A. Gallagher, P.J., and Frank Daniel Celebrezze, III, concur.

KEY WORDS: R.C. 2929.11; R.C. 2929.12; felony sentencing; sentence contrary to law.

Appellant, a repeat felon, pled guilty to robbery, a felony of the third degree, for committing a bank robbery in which he handed the teller a note that he said he had a gun. The trial court stated that it considered all required factors and principles of felony sentencing according to the Revised Code, noted the nature of the crime, the effect of robbery on victims, and recited Honey's criminal history in

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imposing a 36-month sentence.

Appellant argued the sentence was contrary to law. He stated that the trial court's questioning of why the charges were reduced and its statements regarding the effect of the robbery on victims were impermissible considerations under R.C. 2929.11 and 2929.12.

A sentence is contrary to law where (1) the sentence falls outside the statutory range for the particular degree of offense, or (2) the trial court failed to consider the statutory purposes and principles of felony sentencing set forth in R.C. 2929.11 and 2929.12.

The trial court imposed a 36-month sentence for robbery a term of imprisonment authorized by law, and the record reflects the trial court considered the purposes and principles and applicable factors of felony sentencing. The sentence imposed was not contrary to law.

112925	COMMON PLEAS COURT	E	Civil C.P.-Not Juv,Dom Or Prob
MICHAEL CLAY v DANIEL A. GALITA, ET AL.			

Affirmed in part; reversed in part; and remanded.

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

KEY WORDS: *Coroner; deputy coroner; R.C. 313.19; declaratory judgment; amend; death certificate; coroner's verdict; judgment on the pleadings.*

Trial court properly granted judgment on the pleadings and dismissed deputy coroner where complaint failed to state a claim against the deputy coroner on which relief could be granted. Trial court erroneously granted judgment on the pleadings and dismissed coroner where there was an issue of fact in the pleadings as to whether the named coroner was the proper party on which relief could be granted.

112927	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v GEONTAE HANNAH			

Affirmed.

Emanuella D. Groves, J., and Lisa B. Forbes, P.J., concur; Sean C. Gallagher, J., concurs in judgment only (with separate opinion).

KEY WORDS: *Sentencing; R.C. 2929.11 and 2929.12.*

Trial court did not clearly and convincingly err in sentencing appellant to prison where appellant pleaded guilty to charges that

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carried a presumption of prison and there was insufficient evidence to overcome the presumption of prison. The trial court further was not required to place findings on the record. The trial court's journal entry noting that it had considered all of the required factors was sufficient.

112930 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
CONTEMPT OF: CHERESSA HARDEN

Vacated and Remanded.

Anita Laster Mays, J., Eileen T. Gallagher, P.J., and Michael John Ryan, J., concur.

KEY WORDS: Contempt.

The trial court erred in adopting the magistrate's decision finding the appellant in contempt.

112988 SHAKER HTS. MUNI. C Criminal Muni. & City
CITY OF SHAKER HEIGHTS v ISSAC JONES

Affirmed.

Lisa B. Forbes, J., Kathleen Ann Keough, A.J., and Anita Laster Mays, J., concur.

KEY WORDS: Accelerated appeal; operating a vehicle under the influence; OVI; administrative license suspension; Bureau of Motor Vehicles; BMV; appeal; timeliness.

Affirmed the municipal court's order dismissing an appeal of a Bureau of Motor Vehicles administrative license suspension imposed when a driver refused a chemical test after being arrested for operating a vehicle while under the influence of alcohol. The driver failed to comply with the statutory deadline for filing an appeal from the suspension. While the driver alleged that the arresting officer and the BMV were dilatory in instituting and informing him of the suspension, the driver still waited three months to file his appeal even after receiving notice of the suspension. That delay long exceeds the statutory deadline for this kind of appeal.

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113002 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
DEUTSCHE BANK NATIONAL TRUST COMPANY v KATHLEEN TALLIERE

Affirmed.

Kathleen Ann Keough, A.J., Eileen T. Gallagher, J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Civ.R. 60(B)(5); standing; res judicata.*

Trial court's decision denying appellant's Civ.R. 60(B)(5) motion without conducting a hearing upheld where the grounds challenging the plaintiff's standing to foreclosure on appellant's property were raised and rejected in her prior appeal. Res judicata bars appellant's attempt to relitigate the issues previously raised or issues that she could have previously raised during summary judgment and on appeal.

113006 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
TERI BIELAWSKI v FIFTH THIRD BANCORP, NA, ET AL.

Affirmed.

Mary Eileen Kilbane, J., Eileen A. Gallagher, P.J., and Mary J. Boyle, J., concur.

KEY WORDS: *Breach of contract; Civ.R. 56; motion for summary judgment; genuine issue of material fact.*

The trial court properly granted summary judgment for defendants on a breach-of-contract claim where the plaintiff's claims were not based on a valid contract between the parties.

113127 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE T.S.

Affirmed.

Mary Eileen Kilbane, J., Michelle J. Sheehan, P.J., and Mary J. Boyle, J., concur.

KEY WORDS: *Parental rights; permanent custody; R.C. 2151.414(B)(1); child could not or should not be placed with either parent within a reasonable time; R.C. 2151.414(E) factors; best interest of the child; R.C. 2151.414(D)(1); reasonable efforts; due process rights.*

The record contains clear and convincing evidence to support the juvenile court's finding that at least one of the conditions set forth in R.C. 2151.414(B)(1)(a) through (e) applied and that it was in the

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best interest of the child to grant permanent custody to the agency. The agency made reasonable efforts to refer Mother for services and effectuate reunification with her child. Mother's due process rights were not violated when the trial court granted permanent custody to the agency.