

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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May 9, 2024

112730 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DEJUAN LEWIS

Affirmed.

Emanuella D. Groves, J., Mary Eileen Kilbane, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Sufficiency; manifest weight of the evidence; imposition of sentence on firearm specification; S.B. 201 constitutionality.*

Sufficient evidence was presented regarding the identity of the perpetrator where a witness who knew appellant identified him from surveillance footage of the incident and other witnesses and DNA evidence connected appellant to the additional crime of leaving the scene of an accident.

Additionally, the convictions were supported by the manifest weight of the evidence where the primary witness on identification knew appellant and maintained that identification throughout the case. Although the witness received a favorable plea deal on her charges for testifying in court, the witness identified appellant prior to receiving that deal, there was no evidence of a prior statement that she changed after receiving the deal, or evidence that the witness held animosity towards appellant due to relationship issues.

The trial court did not err in sentencing appellant to a firearm specification that was attached to a count that merged based on State v. Bollar, 171 Ohio St.3d 678, 2022-Ohio-4370, 220 N.E.3d 690.

Finally, appellant's sentence under S.B. 201 was not unconstitutional based on State v. Hacker, 173 Ohio St.3d 219, 2023-Ohio-2535, 229 N.E.3d 38.

112770 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
XUDONG SONG, ET AL. v DAVOR ROM, ET AL.

Affirmed.

Emanuella D. Groves, J., Frank Daniel Celebrezze, III, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Res judicata; claim preclusion; summary judgment; judgment on the pleadings.*

Appellants' third lawsuit was barred by res judicata where their original lawsuit was tried to resolution and subsequent litigation attempted to reach the parties involved in the original lawsuit as well as parties in privity with the original parties where the claims

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(Case 112770 continued)

arose out of the same transactions that were the basis of the original lawsuit and the claims in the current case could have or should have been raised in the original lawsuit.

112778 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
CHARLES PARNELL v JEFFREY ZIELINSKI, ET AL.

Affirmed.

Mary Eileen Kilbane, P.J., Lisa B. Forbes, J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: Manifest weight of the evidence; expert witness; stipulated negligence.

The defense verdict rendered by the jury was not against the manifest weight of the evidence where the verdict was supported by credible and competent evidence that goes to all the essential elements of the case.

112841 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
LISA BERNER, AS GUARDIAN OF EHREN JACKSON, ET AL. v
NEW LEAF RESIDENTIAL SERVICES, INC., ET AL.

Affirmed.

Frank Daniel Celebrezze, III, J., Kathleen Ann Keough, A.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: Motion to dismiss; Civ.R. 12(B)(6); political subdivision immunity; R.C. Chapter 2744; de novo review; four corners of the complaint; exception to immunity; physical defect of building; notice pleading; sufficient operative facts.

The trial court did not err in denying CCBDD's motion to dismiss pursuant to Civ.R. 12(B)(6) because both the amended complaint and the crossclaim alleged sufficient facts under which they might plausibly demonstrate that the R.C. 2744.02(B)(4) exception to immunity was applicable.

112872 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v AAREN A. WASHINGTON

Affirmed.

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

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(Case 112872 continued)

KEY WORDS: Presentence motion to withdraw guilty plea; Crim.R. 32.1; abuse of discretion.

Summary: The trial court did not abuse its discretion when it denied Washington's presentence motion to withdraw guilty plea. Washington was not coerced into pleading and a mere change of heart is not sufficient reason to withdraw a guilty plea.

113041	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v TARA MOORE			

Affirmed.

Sean C. Gallagher, J., Michelle J. Sheehan, P.J., and Michael John Ryan, J., concur.

KEY WORDS: *Complicity; felonious assault; ineffective assistance of counsel; joinder; Crim.R. 14; severance; Batson; sufficiency of the evidence; manifest weight of the evidence.*

Affirmed. *The appellant's four assignments of error claiming that error occurred are without merit. Appellant's trial counsel was not ineffective for failing to file a motion to sever under Crim.R. 14; the state's use of a peremptory challenge did not rise to a constitutional violation, as defined under federal law, based on the prospective juror's combined race and gender; and the conviction was based on sufficient, credible evidence.*

113084	CLEVELAND MUNI.	C	Criminal Muni. & City
CITY OF CLEVELAND v ARLIN BROWN			

Dismissed.

Frank Daniel Celebrezze, III, J., Eileen T. Gallagher, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Modification of community-control sanctions; final appealable order. Appeal dismissed.*

The trial court's judgment removing a portion of Brown's community-control sanctions was not a final, appealable order that is reviewable by this court.

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113103 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v VICTOR WALKER

Affirmed.

Mary Eileen Kilbane, J., Kathleen Ann Keough, A.J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: *Sentencing; consecutive sentencing; R.C. 2929.14(C)(4).*

The trial court complied with the mandates of R.C. 2929.14(C)(4) and made the findings necessary to impose consecutive sentences, and those findings are not clearly and convincingly unsupported by the record.

113123 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
CHRISTINA MCDERMOTT, TRUSTEE v
BOARD OF ZONING APPEALS CITY OF CLEVELAND, ET AL.

Affirmed.

Mary J. Boyle, J., Lisa B. Forbes, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Zoning, R.C. 713.15, use variance, R.C. Chapter 2505, R.C. Chapter 2506, administrative appeal, questions of law, "grandfather clause," C.C.O. 359.01, C.C.O. 329, unnecessary hardship, abuse of discretion.*

BZA denied a variance to a property owner who built a structure without a permit. The trial court affirmed. After a thorough review of all the evidence in the record, we cannot say as a matter of law that the BZA's denial of appellant's requested variance is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by a preponderance of the evidence on the whole record. As such, the trial court did not err in coming to the same conclusion.

113134 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v CHRISTIAN KENDRICKS

Affirmed.

Anita Laster Mays, J., Mary Eileen Kilbane, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Crim.R. 32.1, presentence guilty plea withdrawal.*

The trial court's denial of appellant's presentence motion to

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(Case 113134 continued)

withdraw guilty plea was not an abuse of discretion.

113160 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v K.W.

Reversed and remanded.

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

KEY WORDS: *R.C. 2953.32; application to seal record of conviction; competing interests; abuse of discretion; rehabilitation.*

The trial court abused its discretion in denying an application to seal a record of conviction where it conflated expungement with sealing a record and therefore improperly weighed the competing interests at play.

113168 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v K. L.

Reversed and remanded.

Lisa B. Forbes, P.J., Michael John Ryan, J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: *Motion to seal record of conviction; R.C. 2953.32; hearing.*

Ohio precedent that courts need not hold a hearing for ineligible offenders who have filed a motion to seal their record under R.C. 2953.32 is no longer applicable after the April 2023 amendment of the statute.