

CASE DECISION LIST

November 7, 2024

113158 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v LEANDER BISSELL

Reversed and remanded.

Emanuella D. Groves, P.J., and Anita Laster Mays, J., concur; Frank Daniel Celebrezze, III, J., dissents (with separate opinion).

KEY WORDS: *R.C. 2903.02(B); merger; knowledge; sufficiency; weight of the evidence; R.C. 2945.79(D).*

Insufficient evidence was presented to establish guilt for predicate offense of felonious assault supporting R.C. 2903.02(B) conviction where evidence failed to establish appellant acted knowingly. Appellant, with knowledge of the surrounding circumstances, acted in a way that created a substantial and unjustifiable risk of harm. Having knowledge of the surrounding circumstances and acting anyway, disregarding a substantial risk is a hallmark of reckless conduct.

Insufficient evidence was presented to establish conviction for failure to comply with the order or signal of a police officer where no officer testified as to an order or direction and no officer testified that the officers conducting traffic control were authorized to direct traffic as required to convict under R.C. 2921.331(A).

If a court finds that there was insufficient evidence to support a conviction it may find the defendant guilty of a lesser included offense if the facts warrant it without ordering a new trial under R.C. 2945.79(D). The evidence in this case supported a finding that appellant was guilty of the lesser included offense of involuntary manslaughter with reckless assault as a predicate offense. Having found the appellant guilty of the lesser included offense, the case is remanded for resentencing.

113504 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
MICHAEL PIVONKA, ET AL. v MAUREEN CORCORAN, DIR. OF OHIO DEPT. OF MEDICAID

Dismissed.

Lisa B. Forbes, P.J., Eileen T. Gallagher, J., and Michael J. Ryan, J., concur.

KEY WORDS: *Class-action certification; unjust enrichment; reimbursement to Medicaid for personal-injury awards; subrogation under R.C. 5101.58; subject-matter jurisdiction in common pleas court or Court of Claims; legal relief; equitable relief.*

In this class action against the State, particularly the Ohio Department of Medicaid, if the allegations in the complaint are seen

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as legal claims then subject-matter jurisdiction lies in the Court of Claims. However, if the allegations in the complaint are seen as equitable claims, the common pleas court has subject-matter jurisdiction.

Here, the allegations in the complaint concern wrongfully collected reimbursement funds paid back to the Ohio Department of Medicaid by Medicaid participants. The remedy concerns return of the funds to the participants. The issue: is this action claiming reimbursement a civil suit for money damages or an action in equity brought to correct unjust enrichment? The answer lies in whether the plaintiffs are seeking to recover from the defendant's general assets or specifically identified funds.

Case dismissed and remanded to the trial court to develop the record with the jurisdictional facts needed for the court to determine whether this is a legal or equitable claim.

113532	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v ROBERT TATE			

Affirmed.

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

KEY WORDS: *One-year firearm specification; three-year firearm specification; rape; kidnapping; aggravated robbery; multiplicity; inconsistent verdict; double jeopardy; ineffective assistance of counsel; plain error; insufficient evidence; manifest weight of the evidence.*

Judgment affirmed. Appellant's convictions on the three-year firearm specifications and acquittals on the one-year firearm specifications did not result in an inconsistent verdict. Ohio appellate courts have repeatedly held that an acquittal on a one-year firearm specification and a finding of guilt on a three-year firearm specification do not result in an inconsistent verdict requiring the vacation of the three-year specification. The jury could have rendered these seemingly inconsistent verdicts for any number of reasons. The State presented evidence sufficient that the appellant had a firearm on or about his person or under his control while raping and robbing the victim. Therefore, the seemingly inconsistent verdicts were likely a product of compromise and leniency. Multiplicity occurs when a single crime has been arbitrarily divided or separated into two or more separate counts. Defense counsel was not ineffective for failing to seek dismissal of the indictment and failing to request jury instructions requiring the jury to make specific factual findings as to the firearm specifications because (1) sentence enhancements, such as firearm specifications, are not criminal offenses; it follows that the inclusion of multiple sentence enhancements in an indictment does not render the indictment multiplicitous or violate double jeopardy principles and (2) the use of jury interrogatories in criminal cases is questionable and the appellant does not cite to any statute

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mandating special verdicts in the instant case. There is sufficient evidence in the record to sustain appellant's convictions and the convictions were not against the manifest weight of the evidence. The victim testified that appellant threatened the victim and raped and robbed her by gunpoint while in a dark garage. Appellant then threatened the victim to remain in the garage before he left.

113541 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v CHRIS ELMO COLEMAN

Affirmed.

Mary J. Boyle, J., Lisa B. Forbes, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Felonious assault; knowingly; sufficient evidence; manifest weight; complicity; bench trial; video evidence.*

Judgment affirmed. *While there was no eyewitness testimony to the shooting, the video evidence and testimony of the investigating officers and forensic experts, when viewed in a light most favorable to the State, is sufficient evidence to prove that the defendant knowingly caused serious physical harm to victim and caused or attempted to cause physical harm to the victim when the defendant Coleman fired his gun at the victim. Additionally, the trial court could have found that the defendant supported, assisted, encouraged, cooperated with, advised, or incited the unknown shooter who can be observed on video shooting at the victim. In a bench trial, the trial court is entitled to the presumption of regularity, that is, the trial court is presumed to know and follow the law in arriving at its judgment unless it affirmatively appears to the contrary. Moreover, defendant's convictions are not against the manifest weight of the evidence.*

113645 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JOSEPH MILES

Affirmed.

Anita Laster Mays, J., Emanuella D. Groves, P.J., and Michael John Ryan, J., concur.

KEY WORDS: *Self-defense; manifest weight of the evidence.*

Judgment affirmed. *The trial court's judgment finding appellant guilty of aggravated assault and criminal damaging or endangering was not against the manifest weight of the evidence. The State disproved at least one of the elements of appellant's self-defense claim.*

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113666 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
JONATHAN FULLER, ET AL. v EVERGREEN TITLE SERVICES, LLC, ET AL.

Reversed.

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

KEY WORDS: *Relief from judgment; Civ.R. 60(B); meritorious defense; fraud.*

The trial court abused its discretion in granting relief from judgment under Civ.R. 60(B) where the movant failed to establish a meritorious claim or defense and failed to satisfy any the grounds for relief listed in the rule.

113684 ROCKY RIVER MUNI. C Criminal Muni. & City
CITY OF FAIRVIEW PARK v AMBER L. WERLING

113686 ROCKY RIVER MUNI. C Criminal Muni. & City
CITY OF FAIRVIEW PARK v AMBER L. WERLING

113687 ROCKY RIVER MUNI. C Criminal Muni. & City
CITY OF FAIRVIEW PARK v AMBER L. WERLING

Affirmed.

Sean C. Gallagher, J., Eileen A. Gallagher, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Menacing; ethnic intimidation; R.C. 2903.22(A); R.C. 2927.12(A); misdemeanor; Crim.R. 29; sufficiency; manifest weight; race; color; racial slurs; racially abusive language; predicate offense; underlying offense; motivating factor; totality of the circumstances; infer; venue; R.C. 2901.12(H); course of conduct.*

Affirmed appellant's convictions for menacing under R.C. 2903.22(A) and ethnic intimidation under R.C. 2927.12(A). The convictions were supported by sufficient evidence and were not against the manifest weight of the evidence. Following a disagreement over a shoe return, there were multiple interactions with the employees of the store in which appellant engaged in menacing conduct and repeatedly directed racial slurs at one of the victims. Although words alone are generally not enough to establish ethnic intimidation, in this matter the appellant engaged in actions and ongoing behavior from which it could be reasonably inferred that she committed the predicate offense of menacing, at least in part, by reason of race, color, religion, or national origin. Appellant failed to demonstrate plain error in regard to her venue challenge, and venue was proper pursuant to R.C. 2901.12(H)(1) and (3).

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113692 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ERIC COLEMAN

Affirmed.

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

KEY WORDS: *Consecutive sentences; R.C. 2929.14(C)(4); clearly and convincingly.*

Consecutive sentences affirmed where appellate court did not have a firm conviction or belief that the trial court's R.C. 2929.14(C)(4) findings were not clearly and convincingly supported by the record.

113750 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v MAHSOULL ALI

Affirmed.

Mary J. Boyle, J., Michelle J. Sheehan, P.J., and Michael John Ryan, J., concur.

KEY WORDS: *Bollar, R.C. 2941.25(A); allied offenses; R.C. 2929.14(B)(1)(b) and (g); firearm specifications; sentencing; felonious assault; R.C. 2903.11(A); merger; double jeopardy; coercion; right to trial.*

Judgment affirmed. Appellant's sentence was not contrary to law when the trial court followed the Ohio Supreme Court's decision in State v. Bollar, 2022-Ohio-4370, and ordered the three year firearm specifications to be run consecutively on the merged counts. The Bollar Court held that a firearm specification survives merger under the plain language of R.C. 2929.14(B)(1)(g). Furthermore, there is no violation of double jeopardy when a trial court complies with the statute in imposing a separate sentence on such a specification. Finally, appellant was not coerced into taking a plea to avoid consecutive sentences. Appellant exercised his right to trial.

113764 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v CLARK MILLER

Affirmed.

Eileen T. Gallagher, J., and Kathleen Ann Keough, A.J., concur; Eileen A. Gallagher, J., concurs (with separate opinion).

KEY WORDS: *Community control; violation; reserve; consecutive; prison; sentence; due process; waiver; plain error; notice.*

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(Case 113764 continued)

The trial court's imposition of consecutive prison terms for the defendant's violation of his community-control sanctions was not contrary to law. The record does not reflect a violation of the defendant's due process rights.

113768 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
RNE ENTERPRISES, LLC v IMPERIAL KITCHEN CABINET FACTORY, LLC, ET AL.

Affirmed.

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

KEY WORDS: *Stay; satisfaction; res judicata; law-of-the-case doctrine; garnishment.*

Res judicata and the law-of-the-case doctrine precludes appellant's arguments that attempt to relitigate issues that were disposed of in prior appeals. Appellant's failure to obtain a valid stay pending appeal permitted the appellee to execute successful garnishments that satisfied the judgments rendered in favor of the appellee.

113820 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE M.W., ET AL.

Reversed.

Emanuella D. Groves, J., and Anita Laster Mays, J., concur; Michelle J. Sheehan, P.J., dissents (with separate opinion).

KEY WORDS: *Permanent custody; legal custody; best interest of the child.*

Neither permanent custody nor legal custody was supported by the manifest weight of the evidence. Mother had five children removed from the home because of educational neglect and housing issues. Three of the children were placed in the same foster home. One of the children was placed with a family member, and the fifth child was placed in a foster home on his own. Mother obtained housing and completed case plan objectives such that the agency returned the three oldest children to her care. Additionally, she gave birth to two additional children during the pendency of the case, and the agency did not establish grounds to intervene in Mother's custody. Nevertheless, the agency sought legal custody to a family member for one of the remaining children and permanent custody to the agency for the other, in part due to Mother's failure to consistently visit those two children. However, the record reflected that Mother had visited with both children, though not consistently. There was insufficient evidence to support the findings for permanent and legal custody.

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113856 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: A.C.

Affirmed.

Michael John Ryan, J., Michelle J. Sheehan, P.J., and Mary J. Boyle, J., concur.

KEY WORDS: *Custody action; R.C. 2151.23(A)(2); genetic testing; R.C. 3111.09; parentage action; final and appealable order.*

Judgment affirmed. *The juvenile court's denial of the appellant's request for court-ordered genetic testing was a final, appealable order because it affected a substantial right in the action, determined the issue of genetic testing, and prevented a judgment for appellant.*

The trial court did not err by denying appellant's request for court-ordered genetic testing. *Genetic testing is provided for under R.C. 3111.09 in parentage actions, not custody actions. Appellant initiated this case as a custody action under R.C. 2151.23(A)(2).*