

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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November 27, 2024

113540 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v KRISTON PRICE

Affirmed.

Emanuella D. Groves, J., Michelle J. Sheehan, P.J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: *Jury instruction; voluntary manslaughter; self-defense; manifest weight of the evidence; abuse of discretion; Evid.R. 701; lay witness opinion testimony.*

Judgment affirmed. *The trial court did not abuse its discretion by giving a jury instruction on voluntary manslaughter considering the unique facts of this case. Nor did the trial court abuse its discretion when it permitted a detective to testify that bullets were fired at a downward angle. Finally, the jury's rejection of Price's self-defense claim was not against the manifest weight of the evidence.*

113635 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
MICHAEL SMITH v PAUL REZUTEK, ET AL.

Affirmed.

Emanuella D. Groves, P.J., Sean C. Gallagher, J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: *Arbitration agreement; contract; meeting of the minds.*

Judgment affirmed. *Appellees must have expressly agreed to the terms of arbitration to be compelled to relinquish the dispute to arbitration. The placement of the conditions on a tablet with a copy posted on the back of the passenger seat does not establish the critical meeting of the minds in contract formation. Accordingly, the trial court did not err in denying the appellant's motion to compel arbitration.*

113782 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v RALIEGH ABRAHAM

Affirmed.

Eileen A. Gallagher, J., Kathleen Ann Keough, A.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Substantial impairment rape; voluntary intoxication; manifest weight of the evidence; remote testimony via Zoom;*

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(Case 113782 continued)

Confrontation Clause.

Defendant's convictions for substantial impairment rape are affirmed. Evidence in the record showed that the victim was unable to consent to sexual activity because she was voluntarily intoxicated to the point of being substantial impairment. Evidence in the record also showed that the defendant knew or should have known this because he was with her and saw her stumbling, unable to stand on her own, vomiting, and passing out or falling asleep.

113791 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DEVONTAE SULLIVAN

Affirmed.

Michael John Ryan, J., Eileen T. Gallagher, P.J., and William A. Klatt, J.,* concur.

(*Sitting by assignment: William A. Klatt, J., retired, of the Tenth District Court of Appeals.)

KEY WORDS: Sufficiency of evidence; arson; identity; amount of damage; intentionally set fire.

Judgment affirmed. The State presented sufficient evidence to prove (1) defendant-appellant's identity as the person who set the fire; (2) the amount of damage to the burned vehicle, which was totaled, was \$1,000 or more, and (3) that defendant-appellant intentionally set the fire.

113810 CLEVELAND HTS. MUNI. G Civil Muni. & City
ANDREW TABAK v SELECT HOME WARRANTY

Reversed and remanded.

Sean C. Gallagher, P.J., and Anita Laster Mays, J., concur; William A. Klatt, J., dissents (with separate opinion).

(*Sitting by assignment: William A. Klatt, J., retired, of the Tenth District Court of Appeals.)

KEY WORDS: Breach of contract; small claims; evidence; magistrate's decision; objections; damages; failure to appear; Civ.R. 8(D); Civ.R. 10(D)(1); Evid.R. 101(D)(8); Civ.R. 53(D)(4)(d); Civ.R. 53(D)(3)(a)(ii); factual findings; legal conclusion; remand; hearing.

Reversed the decision of the lower court that adopted a magistrate's decision ruling in favor of the defendant in a small claims action for breach of contract where the defendant never appeared in the action, the plaintiff provided testimony and evidence to prove his claim, and the lower court's legal conclusion was erroneous. The case was remanded to the lower court for a hearing on damages.

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113814 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v KEITH HARRIS

Affirmed.

Emanuella D. Groves, J., Michelle J. Sheehan, P.J., and William A. Klatt, J.,* concur.

(*Sitting by assignment: William A. Klatt, J., retired, of the Tenth District Court of Appeals.)

KEY WORDS: *Manifest weight; bench trial; actual and constructive possession.*

Weight of the evidence involves the inclination of the greater amount of credible evidence. The reviewing court must consider all the evidence in the record, the reasonable inferences, and the credibility of the witnesses to determine whether in resolving conflicts in the evidence, the factfinder clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. In a bench trial court, the trial court is presumed to know and apply the law correctly.

It is well settled that possession may be either constructive or actual. Both constructive knowledge and possession may be established solely through circumstantial evidence.

114040 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: Y.F.

Reversed.

Michael John Ryan, J., Eileen A. Gallagher, P.J., and Eileen T. Gallagher, J., concur.

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

Judgment reversed. The trial court erred in denying the agency's motion for permanent custody and granting Father's motion for legal custody to his parents. The manifest weight of the evidence supports a determination of permanent custody to the agency. The agency proved by clear and convincing evidence that the child cannot or should not be placed with either parent within a reasonable period of time. The agency further proved by clear and convincing evidence that granting permanent custody to the agency would be in the best interest of the child.

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114140 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: Y.F., ET AL.

Affirmed in part; reversed in part; and remanded.

Eileen T. Gallagher, J., Eileen A. Gallagher, P.J., and Michael John Ryan, J., concur.

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

The trial court erred in granting Father's motion for legal custody to his parents. The manifest weight of the evidence supports a determination of permanent custody of both children to the agency. The agency proved by clear and convincing evidence that the children cannot or should not be placed with either parent within a reasonable period of time. The agency further proved by clear and convincing evidence that granting permanent custody to the agency would be in the best interest of the children.