

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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October 10, 2024

112928 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v PIERRE GRIFFIN

Affirmed.

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

KEY WORDS: *Murder; felonious assault; firearm specifications; prosecutorial misconduct; destruction of evidence; manifest weight of the evidence; self-defense; mistrial.*

While this court does not condone the pretrial destruction of a motor vehicle bearing bullet defects from the shooting at issue in this case, the vehicle was destroyed pursuant to departmental policy. Where the motor vehicle was potentially useful and there was no evidence of bad faith, the negligent destruction of the vehicle was not a basis to dismiss this aggravated-murder indictment. The defense was able to cross-examine detectives about the vehicle's destruction.

The defendant's convictions for murder and felonious assault were not against the manifest weight of the evidence, even considering the affirmative defense of self-defense. Multiple witnesses corroborated the State's theory of the case, which was that the defendant brought a firearm to confront a previous romantic partner's new boyfriend and threatened him with the firearm, starting the affray that led to the shooting. The defendant's self-defense theory largely ignored the evidence that he started the affray and his assertion that must have been fired upon first was contradicted by forensic evidence.

Any error in the State's description of the burden of proof on self-defense during closing argument was promptly corrected and the trial court gave the jury a correct instruction on the law prior to deliberations. Therefore, the trial court did not abuse its discretion by denying the defendant's motion for a mistrial.

113130 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JOHN KARR

Affirmed and remanded.

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

KEY WORDS: *Drug trafficking; drug possession; manifest weight of the evidence; ineffective assistance of counsel; affidavit of indigency; fines.*

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(Case 113130 continued)

Defendant's convictions for drug trafficking and drug possession are supported by the manifest weight of the evidence in the record. Counsel was not ineffective for failing to file an affidavit of indigency when the court imposed fines against defendant as part of his sentence for drug-related offenses. The court erred by finding defendant indigent, determining that he was unable to pay the fine and then imposing the fine.

113150 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JAVIER RIVERA

Affirmed.

Eileen A. Gallagher, P.J., and Anita Laster Mays, J., concur; Frank Daniel Celebrezze, III, J., concurs (with separate opinion).

KEY WORDS: Gross sexual imposition; R.C. 2907.05(A)(4); hearsay; Evid.R. 803(4); medical diagnosis and treatment; sexual assault; social worker; expert; lay testimony; Evid.R. 701; Evid.R. 702; manifest weight of the evidence.

The defendant's convictions for gross sexual imposition were affirmed. Where the victim completed a forensic interview with a social worker for the purpose of developing a treatment plan, the social worker could relate what the victim said about the nature and perpetrator of the assaults without violating the hearsay rule. Moreover, any admission of hearsay would have been harmless because the case was tried to the bench and the victim herself testified at trial about the assaults. The social worker's testimony about her experience and perceptions over years of conducting such interviews - about victims' demeanor, normal reasons for delayed disclosure, what could be considered grooming conduct and other similar topics - was not expert testimony.

There was no requirement that the victim - witness's testimony about the assaults be corroborated with other evidence to be believed.

113366 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v SIRTRUCE BENDER-ADAMS

Affirmed.

Eileen A. Gallagher, P.J., and Emanuella D. Groves, J., concur; Sean C. Gallagher, J., concurs in part and in concurs in judgment only in part (with separate opinion).

KEY WORDS: Aggravated murder; R.C. 2903.01(A); self-representation; standby counsel; plain error; other-acts evidence; Evid.R. 404(B); harmless error; scope of cross-examination; abuse of discretion; sufficiency of the evidence;

(Case 113366 continued)

manifest weight of the evidence; ineffective assistance of counsel.

Trial court did not violate defendant's right to self-representation when it limited the role of standby counsel. Even if trial court had unduly limited the role of standby counsel during suppression hearing, defendant made no showing that he was prejudiced as a result where he did not challenge the trial court's denial of his motions to suppress on appeal.

Trial court improperly admitted other-acts evidence under Evid.R. 404(B) where the evidence was not shown to be relevant to a legitimate nonpropensity purpose, going to a material issue that was actually in dispute between the parties; however, the error was harmless where the evidence had no impact on the verdict, there was no reasonable possibility that the improperly admitted evidence contributed to the defendant's convictions and excising the improperly admitted evidence, the remaining evidence admitted at trial established defendant's guilt beyond a reasonable doubt.

Trial court did not abuse its discretion in limiting cross-examination of codefendant, prohibiting defense counsel from questioning codefendant about the specific sentence he had faced prior to plea deal where to inform the jury of the specific penalties the witness faced before his guilty pleas would also inform the jury of the penalties the defendant faced.

Defendant's convictions for aggravated murder and related offenses were supported by sufficient evidence and were not against the manifest weight of the evidence.

Defendant was not denied the effective assistance of trial counsel based on trial counsel's alleged failure to conduct a thorough investigation or obtain expert services. Defendant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced by any alleged errors on the part of trial counsel.

113397 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob

L.W. v A.B.

Affirmed.

Anita Laster Mays, J., Sean C. 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: Motion to seal; supplemental journal entry.

The trial court retained jurisdiction to vacate its original order granting the appellant's motion to seal because it stated that a supplemental journal entry was to follow, and an appeal had not been filed.

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113404 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v T.S.

Reversed, vacated and remanded.

Eileen A. Gallagher, P.J., and Mary J. Boyle, J., concur; Michelle J. Sheehan, J., dissents (with separate opinion).

KEY WORDS: *Discretionary transfer; R.C. 2152.12(B); waiver of appealable errors by guilty plea; amenable to care or rehabilitation in the juvenile justice system; preponderance of the evidence; abuse of discretion; meaningful review.*

Juvenile court erred and abused its discretion in transferring case to the general division for criminal prosecution where it did not make the findings required R.C. 2152.12(B)(3) and the record lacked sufficient evidence to support a finding, by a preponderance of the evidence, that juvenile offender was not amenable to care or rehabilitation within the juvenile system.

113417 CLEVELAND MUNI. C Criminal Muni. & City
CITY OF CLEVELAND v TERRENCE GREENE

Reversed and remanded.

Sean C. Gallagher, J., and Eileen A. Gallagher, P.J., concur; Mary J. Boyle, J., concurs in judgment only.

KEY WORDS: *Crim.R. 11; Crim.R. 11(E); Crim.R. 11(B)(1); misdemeanor; petty offense; guilty plea; effect; complete failure; inform; dialogue; understood; presumption; refuted; remanded; vacate; restitution; R.C. 2929.28; R.C. 2929.281; moot.*

Reversed the judgment of conviction and remanded the case to the trial court for further proceedings. Because the trial court completely failed to advise appellant of the effect of a guilty plea as required by Crim.R. 11(E) for a misdemeanor petty offense, appellant's plea was required to be vacated. Although the trial court engaged in a brief colloquy with appellant, confusion was expressed during the exchange, appellant initially entered a plea of no contest, there was no dialogue that would reflect appellant understood the effect of his plea, and the presumption that appellant understood his plea was a complete admission of guilt was refuted by the record. Although appellant's restitution challenge had some merit, the restitution order was rendered moot.

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113453 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v STEVE COTTRELL

Affirmed.

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

KEY WORDS: *Motion for new trial; motion for leave to file a motion for new trial; Crim.R. 33; unavoidably prevented; res judicata; ineffective assistance of counsel.*

Ineffective assistance of counsel - due to defense counsel's failure to communicate a plea offer to defendant-appellant - was the basis of a motion for leave to file a motion for new trial. Defendant-appellant provided only a self-serving affidavit in support of the motion, arguing that he was unavoidably prevented from filing his motion because he was not present when the offer was made in court and he did not learn of the alleged offer until he received a private investigator's report almost 20 years later. A review of the record demonstrates the alleged plea offer was contained in the appellate record at the time of defendant-appellant's direct appeal. Defendant-appellant was not unavoidably prevented from obtaining the information about the alleged plea offer that was part of the trial transcript, and res judicata precluded defendant-appellant from arguing ineffective assistance of counsel that could have been raised during the direct appeal. For the foregoing reasons, the trial court did not abuse its discretion in denying defendant-appellant's motion for leave to file a motion for new trial or opting not to conduct a hearing on the motion.

113471 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DANIEL MOBLEY

Affirmed.

William A. Klatt, J.,* Sean C. Gallagher, P.J., and Anita Laster Mays, J., concur.

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

KEY WORDS: *Disproportionate sentences; waiver; failure to object; proportionality; consecutive sentences; moot; error of law; contrary to law.*

Defendant failed to object to any proportionality issues and thereby waived the issue on appeal. Even assuming he did not waive the issue, the defendant's sentence was not disproportionate to his codefendant's sentence and was not outside the mainstream of local judicial practice and was therefore not contrary to law. Further, the court made no findings or orders in its journal entry in the case at issue for the counts in this case to run consecutively. The journal entry at issue explicitly runs all the counts concurrently.

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(Case 113471 continued)

No error of law occurred in this case regarding sentencing.

113498 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
CLEVELAND MUNICIPAL SCHOOL DIST. BD. OF EDUCATION v
CUYAHOGA COUNTY BOARD OF REVISION, ET AL.

113499 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
CLEVELAND MUNICIPAL SCHOOL DIST. BD. OF EDUCATION v
CUYAHOGA COUNTY BOARD OF REVISION, ET AL.

Affirmed.

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

KEY WORDS: *Administrative appeal; board of revision; R.C. 5717.01; school board; appeal to common pleas court; R.C. 5717.05; R.C. Ch. 2506; standing.*

The trial court did not err in dismissing the school board's administrative appeal. The school board did not have standing under R.C. 2506.01 to appeal a decision of a board of revision to the common pleas court.

113502 DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate
ANNIE Z. MCGRADY v AMADOU CAMARA

Affirmed.

Emanuella D. Groves, J., Kathleen Ann Keough, A.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Contempt; divorce decree; division of property order; reconciliation.*

Trial court did not abuse its discretion when it found Husband in contempt of court for failing to assist in preparation and submission of division of property order. Parties were initially divorced in 2006 at which point the trial court gave Husband the marital home and Wife 50 percent of Husband's pension. Husband and Wife remarried a few months after the divorce was finalized and filed for divorce again 7 years later with an agreed separation agreement. The parties' reconciliation did not void the prior divorce decree's property divisions. Further, the later separation agreement that included language claiming to settle all claims and release the parties of the interest in the property of the other did not change the terms of the 2006 divorce decree where the 2015 agreement did not mention the pension or expressly indicate that both parties consented or agreed to change the earlier division of property.

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113514 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
JANA ORAC, EXECUTOR OF THE ESTATE OF THOMAS H. ORAC v
THE MONTEFIORE FOUNDATION, 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: *Summary judgment; statute of limitations; respondeat superior; agency; employee; medical claim; malpractice; negligence; expert; affidavit; report; standard of care; breach; proximate cause; wrongful death; hospital.*

The trial court erred by granting summary judgment in favor of the nursing home defendants. The court, however, properly granted summary judgment in favor of the certified nurse practitioner based on plaintiff's failure to submit expert testimony establishing a prima facie case of negligence.

113589 GARFIELD HTS. MUNI. C Criminal Muni. & City
CITY OF INDEPENDENCE v SEAN MUSCATELLO

Affirmed.

Michelle J. Sheehan, J., Eileen A. Gallagher, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Community-control sanctions; R.C. 2929.25(A)(1)(a); R.C. 2929.25(B); right to free speech; social-media restriction.*

The trial court did not abuse its discretion when it modified the defendant's community-control sanctions to prohibit him from posting anything about or referring to the victim on social media because the trial court had the authority to do so under R.C. 2929.25(B), the condition was rationally related to the goals of community control and not overbroad, and the condition did not violate the defendant's constitutional right to free speech.

113602 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v PHILLIP RAFFERTY

Affirmed in part, vacated in part and remanded.

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

KEY WORDS: *Extradition costs; indigent defendant; conceded error; R.C. 2929.14(C)(4); consecutive-sentence findings; clearly and convincingly unsupported by the record; allied offenses of similar import; R.C. 2941.25; plain error.*

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(Case 113602 continued)

Conceded error; trial court erred in ordering indigent defendant to pay the costs of his extradition from New Jersey.

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

Based on the limited facts in the record, defendant did not show that the burglary and attempted felonious assault offenses of which he was convicted were similar in import and significance, were committed with the same conduct and were committed with the same animus. Accordingly, the trial court did not commit plain error in sentencing defendant on both offenses.

113609 EUCLID MUNI. G Civil Muni. & City
SPCG PROPERTIES, LTD. v TASHA M. MOORE

Affirmed.

Mary J. Boyle, J., Michelle J. Sheehan, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: Summary judgment; final order; appeal; motion to vacate judgment; Civ.R. 60(B); substitute; timely appeal.

Judgment affirmed. By appealing the January 5, 2024 journal entry denying appellant's motion to vacate judgment, appellant is attempting to use a Civ.R. 60(B) motion for relief from judgment as a substitute for a timely appeal. The utilization of a Civ.R. 60(B) motion in this instance is improper.

113633 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
WELLS FARGO BANK, N.A. v SANDRA ALLEN COIL, ET AL.

Affirmed.

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

KEY WORDS: Civ.R. 24 motion to intervene; foreclosure; purported contract to purchase subject property; abuse of discretion.

Judgment affirmed. For the following reasons, the trial court did not abuse its discretion by denying the motion to intervene: (1) the motion, which was filed over three and one-half years after the trial court issued its foreclosure judgment and days before the foreclosure sale, was untimely; (2) the proposed intervenor did not have a recorded interest in the property; (3) the proposed intervenor's interest in the property was subject to the doctrine of *lis pendens*, and (4) intervention was not the only way the proposed intervenor could have protected his interest - he could have

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(Case 113633 continued)

performed under his purported contract, under which the seller (the defendant homeowner) would have been deemed sufficiently aligned with the proposed intervenor so as to protect his interest.

There was no requirement that the trial court automatically hold a hearing on the motion to intervene or that it issue findings of fact and conclusions of law.

113638 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v DWIGHT WHATLEY

113653 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v DWIGHT WHATLEY

Affirmed.

Sean C. Gallagher, P.J., Anita Laster Mays, J., and William A. Klatt, J.,* concur.

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

KEY WORDS: *Petition for postconviction relief; R.C. 2953.23; motion for leave to file motion for new trial; Crim.R. 33; Brady violation; newly discovered evidence.*

Affirmed. The defendant failed to proffer evidence or an argument beyond his own self-serving claims that he was unaware of information contained in the recently obtained investigative file, and therefore, the trial court did not err in denying his belated petition for postconviction relief and his motion for leave to file a motion for new trial.

113683 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v CALVIN D. NETTLES

Affirmed.

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

KEY WORDS: *Right to confrontation; motion to withdraw as counsel; motion to proceed pro se; abuse of discretion; delay tactics; self-representation; right to counsel of choice.*

The trial court did not abuse its discretion in denying defense counsel's motion to withdraw and denying appellant's request to proceed pro se. The motions were made just a few days prior to trial, and the request to proceed pro se was made as a delay tactic. The case had already been pending for close to 500 days, trial had been continued three times at the appellant's request, and the appellant did not show that he knowingly, voluntarily, and intelligently waived his right to counsel.

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(Case 113683 continued)

The trial court erred in allowing a vacationing witness to testify via remote video feed, but the error was harmless given the overwhelming evidence of appellant's guilt.

113691 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
ANTONARDO ROSS v CAR PARTS WAREHOUSE INC., ET AL.

Affirmed.

Mary J. Boyle, J., Michelle J. Sheehan, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: Summary judgment; Civ.R. 56(C); open and obvious; invitees; duty of care; negligence.

Plaintiff-appellant appealed the trial court's grant of summary judgment in favor of defendant-appellee finding that the puddle of oil in the parking lot was an open-and-obvious danger. We find that no genuine issue of material fact exists because the large green or rainbow-colored oily puddle in the parking lot was an open-and-obvious condition, which eliminated defendant-appellee's duty to warn a business invitee, such as plaintiff-appellant.

113717 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DAVID ARMSTRONG, JR.

Affirmed.

Sean C. Gallagher, P.J., Anita Laster Mays, J., and William A. Klatt, J.,* concur.

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

KEY WORDS: Grand theft; R.C. 2913.02(A)(1); vehicle; unauthorized use of a vehicle; R.C. 2913.03(A); sufficiency; manifest weight.

Affirmed appellant's conviction. Sufficient evidence was presented from which any rational trier of fact could have found the essential elements of the crimes charged for grand theft and unauthorized use of a vehicle were proven beyond a reasonable doubt, and the conviction was not against the manifest weight of the evidence.