

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 8

September 12, 2024

112955 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v D.T.

Reversed, vacated, remanded.

Eileen A. Gallagher, P.J., and Emanuella D. Groves, J., concur; Eileen T. Gallagher, J., dissents (with separate opinion).

KEY WORDS: *Competency; R.C. 2152.58; discretionary transfer; R.C. 2152.12; waiver of appealable errors by guilty plea; amenable to care or rehabilitation in the juvenile justice system; abuse of discretion; meaningful review.*

Juvenile court erred in failing to hold a competency hearing and to issue a written determination regarding juvenile's competency as required under R.C. 2152.58.

There was insufficient information in the record regarding the juvenile court's reasoning when ordering juvenile to be bound over to adult court for appellate court to determine whether the juvenile court abused its discretion in determining that juvenile was not amenable to care or rehabilitation in the juvenile justice system. Because the juvenile court (1) did not identify all of the factors it considered, (2) did not identify or discuss the factual or evidentiary basis for its determination that particular factors did or did not apply, and (3) did not explain its weighing of those factors, appellate court could not determine to what extent juvenile court's decision may have been based on erroneous facts and could not properly assess whether the juvenile court's decision was the product of a sound reasoning process or an unreasonable, arbitrary or unconscionable one.

112999 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: A.I.H.

113000 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: A.I.H.

113110 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE A.I.H.

Affirmed in part and reversed in part.

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

KEY WORDS: *Denial of continuance; abuse of discretion; Unger factors; expert witness testimony; qualifications; Evid.R. 702; modification of custody; R.C. 3109.04; change in circumstances; writ of habeas corpus; R.C. 2151.23; unlawfully detained; superior*

CASE DECISION LIST

(Case 113110 continued)

right to custody; adequate remedy at law; GAL fees; jurisdiction during pending appeal. The trial court's order modifying custody based on a change in circumstances was affirmed where the trial court (1) did not abuse its discretion in denying a motion to continue, (2) did not err in allowing the expert witness testimony and admission of an expert report, (3) did not err in granting a motion to modify custody based on a change in circumstances established by the evidence presented at trial, and (4) did not err in awarding GAL fees while an appeal was pending. However, the trial court erred in granting a writ of habeas corpus where an adequate remedy at law existed.

113205 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DACEE FISHER

Affirmed.

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

KEY WORDS: *Aggravated murder; R.C. 2903.01(A); murder; R.C. 2903.02(A); felonious assault; R.C. 2903.11(A)(2); improperly discharging into habitation; R.C. 2923.161(A)(1); improperly handling firearms in a motor vehicle; R.C. 2923.16(A); involuntary manslaughter; R.C. 2903.04(A); having weapons while under disability; R.C. 2923.13(A)(2); sufficiency of the evidence; manifest weight; double jeopardy; allied offenses; merger; firearm specifications; rule of lenity; R.C. 2901.04(A).*

The defendant's convictions for aggravated murder, murder, felonious assault, improperly discharging into habitation and having weapons while under disability were supported by sufficient evidence and were not against the manifest weight of the evidence. A coconspirator testified that the defendant shot the victim to death after growing concerned that the victim, who had planned a robbery with the conspirators, was trying to "set them up." While there was no forensic evidence directly tying the defendant to the murder or to a drive-by shooting that occurred immediately after the murder, the coconspirator's testimony was largely corroborated through cellphone location data and the testimony of a second coconspirator. Considering the complicity statute, the convictions stemming from the drive-by shooting were also not against the manifest weight of the evidence where the defendant's actions before, during and after the shooting suggest that he was not a mere bystander but rather complicit in those offenses.

It does not violate double jeopardy to impose a prison term for a firearm specification consecutive to a prison term on the underlying offense. The offenses of felonious assault (for the drive-by shooting) and having weapons while under disability were not allied offenses of similar import with any of the other offenses in the matter. The rule of lenity does not allow this court to overrule binding Supreme Court precedent on the interpretation of R.C. 2929.14(B)(1)(g); under that precedent, firearm specifications survive merger under the specific circumstances enumerated in that statute.

CASE DECISION LIST

113228 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
JASON WOOD v MAK INVESTMENT PROPERTIES, LLC, ET AL.

Affirmed.

Mary J. Boyle, P.J., Sean C. Gallagher, J., and Anita Laster Mays, J., concur.

KEY WORDS: *Summary judgment; Civ.R. 56(C); negligence; duty; workmanlike manner; contract; tort; privity.*

Judgment affirmed. Appellants' negligence cause of action fails because the evidence shows that appellee's duty arose from a contract, not from the common-law duty of workmanlike manner. When the duty allegedly breached by a defendant arises out of contract, the cause of action is one of contract, not tort. Further, that duty did not extend to the appellants because there is no privity of contract. Therefore, we find that there is no genuine issue of material fact and appellees were entitled to judgment as a matter of law.

113280 DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate
TODD HALSEY NELSON v MEGAN ELIZABETH TESTA

Affirmed.

Lisa B. Forbes, P.J., Eileen T. Gallagher, J., and Mary J. Boyle, J., concur.

KEY WORDS: *Divorce; stipulation to submit disputed issues to court on briefs; magistrate's decision; objections to magistrate's decision; failure to file transcript or affidavit of evidence; Civ.R. 53(D)(3)(b)(iii); App.R. 9(B).*

In this divorce case, the parties agreed to submit contested issues to the court via briefs. The magistrate issued a decision, and both parties filed objections. The parties failed to comply with Civ.R. 53 and Cuyahoga C.P., D.R.Div., Loc.R. 27, which requires a party filing objections to a magistrate's decision to also file a transcript of the proceedings before the magistrate or, if the transcript is unavailable, an affidavit of evidence. The domestic relations court adopted the magistrate's decision in its entirety. Husband appealed and failed to comply with App.R. 9, which requires a party appealing to file a transcript of the proceedings at issue or, if the transcript is unavailable, an affidavit of evidence. This court is unable to conduct a meaningful review of the trial court's factual findings without a transcript or an affidavit of the evidence. Judgment affirmed.

CASE DECISION LIST

113341 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DAVID B. GOLDWIN

Affirmed.

Mary J. Boyle, J., Eileen A. Gallagher, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Crim.R. 11; guilty plea; voluntarily made; Dangler; coercion; mental health; ineffective assistance of counsel.*

Judgment affirmed. Defendant contends that his plea was not voluntary because he was “tricked” or “persuaded” into pleading guilty. Crim.R. 11 does not contain an explicit requirement that the trial court determine that a plea was voluntary. Here, while the trial court did not explicitly ask the defendant at his second plea hearing whether any threats or promises had been made in exchange for his plea did amount to a violation of Crim.R. 11, the questions in the Dangler analysis illustrate that the defendant’s plea was voluntary because the trial court did not completely fail to comply with the rule so as to excuse him from demonstrating prejudice. Moreover, common sense dictates that when reviewing the first guilty plea hearing in conjunction with the second hearing, the defendant was not “tricked” or “persuaded” into pleading guilty. Indeed, there is nothing in the record indicating that the defendant would not have entered his plea had the trial court explicitly asked whether any threats or promises had been made. We decline to find defense counsel ineffective because defendant’s assertion that he was “tricked” and “coerced” into pleading guilty are speculative and are not substantiated in the record.

113468 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v EDILBERTO COLON, III

Affirmed.

Eileen T. Gallagher, J., Lisa B. Forbes, P.J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: *Manifest weight; GSI; sexual contact; ineffective assistance of counsel; deficient performance; prejudice.*

Defendant’s GSI convictions were not against the manifest weight of the evidence even though the victim confused the exact date of the assaults because her testimony was otherwise credible.

Defendant failed to establish that the exclusion of a Facebook post from evidence at trial resulting from counsel’s failure to properly introduce the evidence for impeachment purposes prejudiced the defense where the information contained in the post was otherwise provided through witness testimony.

CASE DECISION LIST

113519 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: G.T.

Affirmed.

Kathleen Ann Keough, A.J., Emanuella D. Groves, J., and Mary J. Boyle, J., concur.

KEY WORDS: *App.R. 12(A)(2) and 16(A)(7); failure to argue each assignment of error separately.*

Juvenile court's judgment granting Appellee-Mother's motion for custody of the parties' minor child and denying Appellant-Father's motion for immediate return of the child summarily affirmed where Father's brief failed to comply with the Ohio Rules of Appellate Procedure because it did not argue each assignment of error separately as required by App.R. 16(A)(7).

113520 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v MANUELLE L. WILLIAMS

Affirmed.

Michael John Ryan, J., Mary Eileen Kilbane, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Crim.R. 29; sufficient evidence; direct; indirect and circumstantial evidence.*

The State showed sufficient evidence through witness testimony and surveillance video that appellant committed the crimes with which he was charged. Appellant, who wore an all-red outfit, was identified in the store surveillance video by a detective and his parole officer, who provided a previous picture of appellant wearing the same all-red outfit and standing in front of the same make, model, and color of car the shooter in the robbery fled in.

Testimony about appellant's prior conviction was proper. The certified journal entry of conviction was admitted through the detective's testimony, and appellant chose to have the having weapons while under disability charge tried to the jury, rather than the bench.

113546 CLEVELAND MUNI. C Criminal Muni. & City
CITY OF CLEVELAND v LAMARCO CLARK

Affirmed.

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

CASE DECISION LIST

(Case 113546 continued)

KEY WORDS: Crim.R. 29 motion for acquittal; sufficiency of the evidence; manifest weight of the evidence; suppression hearing; driving while under the influence; OVI; failure to stop at a stop sign.

The trial court did not err in denying defendant-appellant's motion to suppress where, in viewing the totality of the circumstances, the plaintiff-appellee presented competent, credible evidence at the motion to suppress hearing showing probable cause existed to arrest the defendant-appellant for driving under the influence. Viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the crimes proven beyond a reasonable doubt and, therefore, the defendant-appellant's convictions were based upon sufficient evidence. Further, weighing all the evidence, we cannot say this is a rare case where the trier of fact lost its way; the defendant-appellant's convictions were not against the manifest weight of the evidence.

113559 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DAVID SPIVEY

Affirmed.

Michael John Ryan, P.J., and Frank Daniel Celebrezze, III, J., concur; Sean C. Gallagher, J., concurs (with separate opinion).

KEY WORDS: *Mistrial; juror misconduct; deadlocked; double jeopardy; manifest necessity; racial bias; motion to dismiss.*

The trial court did not abuse its discretion in denying the appellant's motion to dismiss the indictment based on double jeopardy grounds. Contrary to appellant's claim, the jury had not reached a verdict as to Counts 1-4, 7, and 8. The jury took a preliminary vote on the ten counts but did not sign verdict forms.

The trial court's decision to declare a mistrial due to manifest necessity was not an abuse of discretion based on the totality of the circumstances because the court had already excused three jurors and a fourth juror had asked to be excused; the jury twice told the court it was deadlocked, and two jurors felt that the jury was impermissibly influenced by another juror's alleged racial bias.

113580 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v CLIFFORD CHRISTIAN

Affirmed.

Emanuella D. Groves, J., Kathleen Ann Keough, A.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Public Records Act; R.C. 149.43; justiciable claim;*

CASE DECISION LIST

(Case 113580 continued)

abuse of discretion; parole hearing.

The trial court did not abuse its discretion in denying an inmate's public records request pursuant to R.C. 149.43 where the inmate had not established that the records were necessary to support a justiciable claim.

113677 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: S.N.A-K.

Affirmed.

Emanuella D. Groves, J., Kathleen Ann Keough, A.J., and Michael John Ryan, J., concur.

KEY WORDS: Modification of legal custody; R.C. 3109.04; best interest of the child; App.R. 16(A)(7).

Appellant-Mother failed to establish a change in circumstances that would warrant granting a modification of legal custody. Additionally, appellant, acting pro se, failed to construct an argument in support of her contention that the GAL violated his duties. The court of appeals will not construct an appellant's arguments for them.

113775 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE S.H.

113776 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: N.H.

113849 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: S.H., ET AL.

Affirmed.

Frank Daniel Celebrezze, III, J., Michelle J. Sheehan, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: Termination of parental rights; manifest weight of the evidence; R.C. 2151.413; R.C. 2151.414; R.C. 2151.353; best interests of the child; clear and convincing evidence; hearsay: Evid.R. 801; Evid.R. 803; statements for medical treatment and diagnosis; due process.

Judgment affirmed. The juvenile court's findings regarding the best interests of the children were supported by clear and convincing evidence in the record. The record demonstrates that the agency made "reasonable efforts" to return the children to the parents. The trial court did not err in permitting alleged hearsay evidence because the evidence fit into either an exclusion to hearsay or was duplicative of admissible evidence during trial. We also summarily

CASE DECISION LIST

(Case 113849 continued)

overrule the parents constitutional due process challenges that were not raised in the trial court.

113861	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v FRANK LUCAS, SR.			

Vacated; reversed and remanded.

Frank Daniel Celebrezze, III, J., Kathleen Ann Keough, A.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: Conceded error; Loc.App.R. 16(B); Crim.R. 11; plea colloquy; knowing, intelligent, and voluntary; repeat violent offender specification; R.C. 2929.14; R.C. 2941.149(A); abuse of discretion; maximum potential penalty.

Appellant's plea is vacated where the trial court's failure to advise of the maximum potential penalty appellant faced was a complete failure to comply with Crim.R. 11(C)(2)(a) and therefore not knowingly, intelligently, and voluntarily entered.