

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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January 30, 2025

113618 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v VON HARRIS

Affirmed.

William A. Klatt, J.,* Eileen T. Gallagher, P.J., and Mary J. Boyle, J., concur.

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

KEY WORDS: *Entrapment; affirmative defense; jury instruction; predisposition; cell phone records; cell phone site location information (“CSLI”); plain error; Crim.R. 30; subpoena; effective assistance of counsel; Strickland test; sufficiency of the evidence; bribery, R.C. 2921.02(A); R.C. 2921.02(B); forgery; R.C. 2913.31(A)(1); R.C. 2913.31(A)(2); insurance fraud; R.C. 2913.47(B)(2); manifest weight of the evidence.*

The State introduced sufficient evidence at trial to support the convictions of bribery, forgery, and insurance fraud. Weighing all of the evidence, we cannot say this is one of the rare cases in which the trier of fact lost its way and, thus, the bribery, forgery, and insurance fraud convictions were not against the manifest weight of the evidence.

The trial court did not abuse its discretion when it declined to instruct the jury on the affirmative defense of entrapment where the evidence demonstrated the defendant’s predisposition to commit the charged offenses. Because the defendant held no privacy right in his mobile phone records, the trial court did not commit plain error when it admitted the records at trial. Defendant’s claim of ineffective assistance of counsel failed where he was unable to show his counsel’s performance was deficient or that the alleged deficient performance prejudiced him so as to deprive him of a fair trial.

113642 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
DANIEL FAVORITE v THE CLEVELAND CLINIC FOUNDATION

113821 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
DANIEL FAVORITE v THE CLEVELAND CLINIC FOUNDATION

Reversed and remanded.

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

KEY WORDS: *Civ.R. 60(B); meritorious claim; excusable neglect.*

Reversed and remanded. After the plaintiff’s counsel made a calendaring mistake, his brief in opposition to the defendant’s

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(Case 113821 continued)

motion for summary judgment was filed one business day late and prior to the trial court's granting of summary judgment. The trial court did not consider the facts or arguments set forth in Favorite's untimely brief when it granted summary judgment, noting that the defendant's motion was "unopposed." After reviewing the record in this matter, we find that the plaintiff established all three requirements to be entitled to relief from judgment and the trial court abused its discretion in denying his Civ.R. 60(B) motion. Under this set of facts, the trial court should have considered the plaintiff's untimely brief in opposition and determined whether summary judgment was appropriate based on the arguments presented by both parties.

113689	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v ERIC BARHAMS, JR.			

Affirmed.

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

KEY WORDS: *Murder charges; juvenile delinquent; discretionary transfer; bindover, R.C. 2152.12(B), (D) and (E); plea was not knowingly, voluntarily and intelligently entered; violation of Crim.R. 11(C)(2)(a); postrelease control sanctions; probable cause waived; abuse of discretion; amenability hearing; the Reagan Tokes Law.*

Juvenile delinquent pled guilty to murder charges. On appeal juvenile argues that his plea was not knowingly, voluntarily and intelligently entered, because the trial court did not fully comply with Crim.R.11 (C)(2)(a) regarding the mandatory postrelease control sanctions he was pleading guilty too. The record indicates however, that the trial court did fully discuss the sanctions and made the juvenile aware that he was going to subject to mandatory postrelease control, the duration of the sanctions and what would happen if he violated them. As such we find no error here and his first assignment of error is properly overruled.

For his second assignment of error the juvenile then argues the trial court abused its discretion by finding that he was not amenable to rehabilitation within the juvenile justice system. Our review of the record demonstrates that the trial court did properly consider the factors for and against transfer before finding the juvenile was not amenable and ordering the transfer. The court did not abuse its discretion and juvenile's assignment of error is properly overruled.

For his third assignment of error juvenile alleges his sentence pursuant to Reagan Tokes is unconstitutional violating the juvenile's constitutional right to trial by a jury and his right to due process. Juvenile also argues the law violates the separation of powers clause. Based on this court's precedent this assignment of error is overruled.

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113706 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
KAREN MICHAEL v CODY MILLER, ET AL.

Affirmed.

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

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

KEY WORDS: *Civ.R. 56; motion for summary judgment; tortious interference with a contract; fraud; collusion; conspiracy; motion to strike; motion to disqualify; abuse of discretion.*

The trial court properly entered summary judgment for all defendants where there were no genuine issues of material fact and defendants were entitled to judgment as a matter of law. The trial court did not abuse its discretion in striking a motion to disqualify counsel from the record.

113742 PROBATE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
ANITA ROEFER v MICHELLE RILEY

Affirmed in part, reversed in part, and remanded.

Eileen A. Gallagher, A.J., Eileen T. Gallagher, J., and Mary J. Boyle, J., concur.

KEY WORDS: *Concealment of estate assets; R.C. 2109.50; objections to the magistrate's decision; timeliness of filing; plain error; partial transcript; failure to comply with App.R. 12 and 16.*

Sisters filed claims/cross-claims against each other for concealment of their mother's estate assets in probate court. The court found in favor of each sister in part. One sister filed an untimely objection to the magistrate's decision, therefore we review for plain error.

We affirm in part and reverse in part. The evidence in the record supports the court's findings on all but one of the concealment of "estate assets." One of the sisters paid off the balance of her mother's car and took her mother to have title of the car transferred to this sister. The probate court found that this was a concealment of estate assets. The evidence in the record does not support the finding that this car was an estate asset due to the timing of the title transfer. The record also does not support the probate court's finding regarding the value of the car because there was no evidence in the partial transcript that was part of the record on appeal about the value of the car.

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113783 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v CAMERON HOWARD

Affirmed and remanded.

Eileen T. Gallagher, J., Eileen A. Gallagher, A.J., and Mary J. Boyle, J., concur.

KEY WORDS: *Not guilty by reason of insanity plea; ineffective assistance of counsel; failure to file written plea; plain error; Crim.R. 11; R.C. 2943.03; manifest weight of the evidence; affirmative defense; preponderance of the evidence; R.C. 2901.01; conflicting expert witness testimony; credibility; sentencing; Reagan Tokes Law; indefinite sentence; mandatory sentence; attempted aggravated murder of a peace officer; R.C. 2903.01(E)(2); R.C. 2923.02; required statutory advisements; R.C. 2929.19(B)(2)(c).*

Appellant failed to demonstrate that his counsel was ineffective for failing to file a written plea of not guilty by reason of insanity, and the court did not commit plain error by considering his not guilty by reason of insanity defense. Appellant's convictions were not against the manifest weight of the evidence, and the court properly imposed an indefinite sentence under the Reagan Tokes Law. However, the court failed to provide the required statutory advisements regarding the indefinite sentence, and the matter is remanded for stating the proper notifications.

113818 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v TONY BROWN

Affirmed.

Kathleen Ann Keough, P.J., Mary J. Boyle, J., and Anita Laster Mays, J., concur.

KEY WORDS: *Motion for leave; motion for new trial; exculpatory evidence; newly discovered evidence; unavoidably prevented; public records request.*

Trial court did not abuse its discretion in denying appellant leave to move for a new trial or denying his petition for postconviction relief because appellant failed to demonstrate that (1) he was unavoidably prevented from discovering the evidence he relied on it support of his motion; (2) how the supporting documentation qualified as Brady material; and (3) the State suppressed the evidence supporting his motion. Appellant failed to demonstrate that he complied with R.C. 149.43 in his attempt to obtain public records to support his "unavoidably prevented" burden.

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113867 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
JOHN PAGANINI v THE CATARACT EYE CENTER OF CLEVELAND, ET AL.

114019 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
JOHN PAGANINI v THE CATARACT EYE CENTER OF CLEVELAND, INC., ET AL.

Affirmed.

Eileen T. Gallagher, J., Eileen A. Gallagher, A.J., and Mary J. Boyle, J., concur.

KEY WORDS: *Jury interrogatories; inconsistent; waiver; reconcilable; noneconomic damages; unconstitutional; as applied; due course of law.*

Trial court properly denied appellants' motion for JNOV or for a new trial because they failed to object to alleged inconsistency between special jury interrogatories and the general verdict and because the inconsistency was easily reconcilable.

Trial court's finding that cap on noneconomic damages provided in R.C. 2323.42(A)(3) is unconstitutional as applied to appellee was proper because the cap on damages arbitrarily and unreasonably deprived appellee of his due-course-of-law rights guaranteed by the Ohio Constitution.

113881 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
RELD & G ENTERPRISE INC., ET AL. v RABIH I. ELDANAF

Affirmed.

Sean C. Gallagher, J., Emanuella D. Groves, 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: *Close corporation; shareholder derivative action; Civ.R. 23.1; standing.*

Affirmed. The trial court correctly granted defendant's partial summary judgment upon all claims asserted by plaintiff in her individual capacity because the plaintiff's claims, based on a minority shareholder asserting claims against another minority shareholder, must be asserted in compliance with Civ.R. 23.1, which includes the requirement to verify the complaint and allege with particularity the efforts made to obtain the desired relief stymied by the controlling shareholders.

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113962 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ERIC WEISS

Affirmed.

Deena R. Calabrese, J., Michelle J. Sheehan, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Restitution; motion to modify; R.C. 2929.18; restitution to third parties; evidence.*

The trial court did not abuse its discretion in denying defendant's motion to modify restitution. At the time restitution was imposed, the relevant statute permitted restitution to third parties such as insurance companies. Ohio Supreme Court precedent indicates that courts must look to the version of the restitution statute as it existed at the time of a defendant's sentencing, i.e., whether the person or entity was statutorily eligible for restitution at the time of sentencing. In addition, restitution is not merely to benefit the victim, but is an integral part of an offender's sentence for both punishment and retribution. Defendant did not provide evidence that he had satisfied his restitution obligations. Finally, defendant failed to offer any evidence that the victim had been compensated in whole or in part by an insurance carrier or other third party. Representations by counsel do not constitute evidence.

114119 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
CHARLES ARDERY v HYUNDAI OF BEDFORD, ET AL.

Affirmed and remanded.

Emanuella D. Groves, P.J., Sean C. Gallagher, J., and William A. Klatt, J.,* concur.

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

KEY WORDS: *Arbitration; stay of proceedings; contract.*

Trial court did not err when it granted appellee's motion to stay proceedings pending submission to arbitration, where it found that the parties had agreed to the arbitration agreement and that the subject of the claim was covered under that agreement.