

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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August 4, 2022

110821 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JAMES WATERS

Affirmed.

Kathleen Ann Keough, J., Anita Laster Mays, P.J., and Cornelius J. O'Sullivan, Jr., J., concur.

KEY WORDS: *Motion to suppress; driving under the influence; accident; reasonable suspicion; field sobriety tests; substantial compliance; Miranda; Reagan Tokes Law.*

Trial court properly denied appellant's motion to suppress the evidence following a fatal car accident where appellant was driving under the influence. The officers had reasonable suspicion to believe he was impaired because of the accident, strong odor of alcohol, his combative behavior, glassy eyes, slurred speech, and admission to drinking. Officer substantially complied with NHTSA guidelines even though minor deviations from the standards existed. Even if appellant's statements were made in violation of Miranda, the results of the field sobriety tests were sufficient for probable cause to arrest for driving under the influence. Appellant's constitutional challenges to his sentence based on the Reagan Tokes Law are overruled.

110868 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
TREASURER OF CUYAHOGA COUNTY, OHIO v
UNKNOWN HEIRS OF NANCY WEISNER, ET AL.

Affirmed.

Frank Daniel Celebrezze, III, P.J., Mary Eileen Kilbane, J., and Mary J. Boyle, J., concur.

KEY WORDS: *Foreclosure; discretion of court to distribute excess funds; excess sale proceeds; R.C. 2117.06(C); presentment; equitable relief; default judgment.*

The trial court properly denied the mortgager-debtor's request for distribution of excess funds from a foreclosure sale when the mortgager-debtor defaulted in the foreclosure action and further failed to present a valid judgment that it obtained on the mortgage agreement.

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110874 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: A.J.

Affirmed.

Lisa B. Forbes, J., Michelle J. Sheehan, P.J., and Cornelius J. O'Sullivan, Jr., J., concur.

KEY WORDS: *Juvenile-offender registrant; sex-offender classification; gross sexual imposition; R.C. 2152.83 factors.*

There was no basis to conclude that the juvenile court failed to consider the relevant statutory factors when classifying the delinquent as a juvenile-offender registrant and a tier II sex offender. Juvenile inappropriately touched his four-year-old niece when he was babysitting her.

110937 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: A.S., ET AL.

110989 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: A.S., ET AL.

Affirmed.

Kathleen Ann Keough, P.J., Mary Eileen Kilbane, J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Permanent custody; legal custody; documentation.*

Juvenile court did not err in granting permanent custody to CCDCFS. Aunt refused to cooperate and comply with the process of signing the necessary documentation to lawfully obtain legal custody of the minor children.

110947 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v BENJAMIN DAGLEY

Affirmed.

Anita Laster Mays, P.J., Kathleen Ann Keough, J., and Cornelius J. O'Sullivan, Jr., J., concur.

KEY WORDS: *Probation violation hearing; due process; equal protection; sentence contrary to law; plain error; Crim.R. 52; notice of violation; R.C. 2929.11; R.C. 2929.12; Crim.R. 32.*

The trial court did not err when it sentenced the defendant to incarceration for violating probation because the defendant was advised at the initial sentencing.

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110957 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: M.D., ET AL.

110958 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: J.M.K., ET AL.

110959 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: I.S., ET AL.

Affirmed.

Eileen T. Gallagher, J., Anita Laster Mays, P.J., and Cornelius J. O'Sullivan, Jr., J., concur.

KEY WORDS: *Permanent custody; best interest of the child; mental health; anger management.*

Judgment placing children in permanent custody of CCDCFS affirmed where evidence supported the court's findings that the children could not be reunified with Mother within a reasonable time and that permanent custody was in the children's best interests.

110986 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v HORACE CRAWFORD

Affirmed.

Mary Eileen Kilbane, P.J., Eileen T. Gallagher, J., and Mary J. Boyle, J., concur.

KEY WORDS: *Sixth Amendment; Confrontation Clause; remote testimony; video testimony; COVID-19; Evid.R. 901; authentication; abuse of discretion; Crim.R. 29; sufficiency of the evidence; manifest weight of the evidence; ineffective assistance of counsel; plain error; prosecutorial misconduct; closing arguments; motion for mistrial; Reagan Tokes.*

The trial court's decision to permit a witness who tested positive for COVID-19 to testify remotely via Zoom did not violate appellant's confrontation rights where there was a legitimate public policy reason for doing so and the three requirements of confrontation were not hindered. Text messages were properly authenticated when numerous witnesses with knowledge of the messages testified that the evidence was authentic. Appellant's convictions were supported by sufficient evidence and were not against the manifest weight of the evidence. Various isolated comments do not amount to plain error, and defense counsel's decision not to object to the comments did not constitute ineffective assistance of counsel. Comments made during the state's closing argument were not improper and did not constitute plain error. The trial court's denial of appellant's motion for mistrial following a juror outburst was not an abuse of discretion. Appellant's indefinite sentence pursuant to the Reagan Tokes Law does not violate his constitutional rights.

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110991 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DARIUS ANTONIO WILLIAMS

Affirmed.

Lisa B. Forbes, P.J., Eileen T. Gallagher, J., and Cornelius J. O'Sullivan, Jr., J., concur.

KEY WORDS: *Self-defense; shooting; manifest weight of the evidence; defendant at fault in creating the situation.*

The state presented evidence that showed, beyond a reasonable doubt, that the defendant was at fault in creating the situation which gave rise to him shooting the victim three times. The defendant went to victim's house, got a gun out of his truck, and shot the victim. The jury was free to not believe the defendant's testimony that the victim put a gun to the defendant's head.

111033 CLEVELAND MUNI. G Civil Muni. & City
LANCE INVESTMENT CORP. v MINNYAWN BURKHALTER, ET AL.

Vacated and remanded.

Cornelius J. O'Sullivan, Jr., J., Lisa B. Forbes, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Summary judgment; bankruptcy; discharge of debts; Chapter 7; 11 U.S.C. 524; void judgment.*

The trial court's judgment granting summary judgment in favor of appellee was void because the appellant's debt was discharged in bankruptcy.

111034 DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate
HASINA MOMOTAZ v ABDUS SATTAR

Affirmed.

Sean C. Gallagher, A.J.; Eileen A. Gallagher, J., concurs with separate concurring opinion; Anita Laster Mays, J., concurs and concurs with the separate concurring opinion of Eileen A. Gallagher, J.

KEY WORDS: *Divorce; marriage; valid; subject-matter jurisdiction; Civ.R. 44.1(B); foreign law; expert opinion; Bangladesh; Mohammedan; Muslim; Nikah Nama; contract; telephonic; ceremony; solemnization; witnesses; offer; acceptance; cohabitation; consummated; child; registration; expert; legal opinion; spousal support; duration; de facto; amount; factors; property division; equitable; attorney fees; discretion; R.C. 3105.171; R.C. 3105.171(A)(2); R.C. 3105.171(C)(1); R.C. 3105.171(F);*

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(Case 111034 continued)

R.C. 3105.18(C)(1); R.C. 3105.73(A).

Upheld trial court's summary-judgment decision finding that the Muslim marriage between husband and wife was valid under Bangladesh law and that the trial court had subject-matter jurisdiction over the parties' divorce. Under applicable foreign law, the alleged lack of a valid registration did not invalidate the marriage. The trial court did not abuse its discretion in determining the amount and duration of spousal support, making an equitable property division, and awarding some attorney fees to wife. Nothing in R.C. 3105.18 requires the court to use a de facto termination date in determining spousal support, and the duration of the marriage is only one factor to consider when determining what amount of spousal support is appropriate. The record demonstrated that the trial court considered the requisite statutory factors under R.C. 3105.18(C)(1), 3105.171(F), and 3105.73(A). The judgment of the trial court was affirmed.

111039 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: J.D., ET AL.

Affirmed.

Anita Laster Mays, P.J., Eileen A. Gallagher, J., and Michelle J. Sheehan, J., concur.

KEY WORDS: Permanent custody; R.C. 5151.414; delay of trial; abuse of discretion; manifest weight of the evidence; legal custody; best interest of the child; reunification; R.C. 2151.419.

The trial court did not abuse its discretion by violating the 120-day deadline to hold a permanent custody hearing pursuant to R.C. 5151.414(A)(2) because Mother was responsible for the delay of trial. The trial court did not abuse its discretion by awarding permanent custody of two of the children to CCDCFS against the manifest weight of the evidence because such award was in the best interest of the children. The trial court did not err in issuing legal custody orders regarding the four remaining children because such an award was in the best interest of the children. Additionally, CCDCFS made reasonable efforts to reunite the children with Mother in accordance with R.C. 2151.419(A)(1).

111047 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v CELLISTINE TORRES

Reversed and remanded.

Anita Laster Mays, P.J., Frank Daniel Celebrezze, III, J., and Mary J. Boyle, J., concur.

KEY WORDS: S.B. 201; Reagan Tokes Law; constitutionality.

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(Case 111047 continued)

The trial court's refusal to impose sentence pursuant to S.B. 201 known as the Reagan Tokes Law on the ground that the law is unconstitutional is in error pursuant to this court's en banc decision in State v. Delvallie, 8th Dist. Cuyahoga No. 109315, 2022-Ohio-470.

111049 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
ANGELA GODDARD v GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY, ET AL.

Affirmed.

Cornelius J. O'Sullivan, Jr., J., Lisa B. Forbes, P.J., and Mary J. Boyle, J., concur.

KEY WORDS: Summary judgment; Civ.R. 54; Civ.R. 3; service on John Doe defendants; final appealable order; slip and fall; negligence.

Because appellant failed to serve the John Doe defendants in the original case, the case against those defendants was never commenced under Civ.R. 3; therefore, the John Doe defendants are not proper parties to this case and the court's entry granting summary judgment in the refiled case is a final appealable order.

The trial court did not err in granting summary judgment because no issue of material fact existed that the appellee did not have a duty to appellant because the condition of the ramp in the transit station was open and obvious.

111088 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v QUENTIN STAKEN

Affirmed.

Anita Laster Mays, J., and Eileen A. Gallagher, J., concur; Sean C. Gallagher, A.J., concurs in judgment only (with separate opinion).

KEY WORDS: Confrontation clause; manifest of the evidence.

The appellant's right to confront witnesses against him was not violated as a result of the victim and her husband testifying through a videoconference. The victim and her husband's testimony were not used to identify the appellant, but merely to provide context to the investigation. Appellant's conviction was not against the manifest weight of the evidence because the trial court was in the best position to determine the credibility of the witness.

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111092 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v TASHALEE NORRIS

Dismissed.

Mary Eileen Kilbane, J., Frank Daniel Celebrezze, III, P.J., and Mary J. Boyle, J., concur.

KEY WORDS: *Motion to withdraw postsentence guilty plea; Crim.R. 32.1; manifest injustice; affidavit; hearing on motion to withdraw postsentence guilty plea; collateral consequences; moot.*

Where the appellant voluntarily completed her misdemeanor sentence and there is no evidence of collateral consequences, the appeal is moot and the reviewing court has no jurisdiction over the case.

111116 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ANTOINE L. THOMAS

Affirmed.

Mary J. Boyle, J., Frank Daniel Celebrezze, III, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Abuse of discretion; R.C. 2929.15; R.C. 2929.17; community-control sanction; condition of release under community control; drug testing; Jones test; condition reasonably related to goals of community control.*

The trial court did not abuse its discretion when it imposed drug testing as a condition of appellant's community-control sanction. Appellant pled guilty to robbery and attempted felonious assault. The victim stated that appellant and his co-defendants pistol-whipped and robbed him after he refused to buy drugs and a prostitute from them. The presentence investigation report revealed that appellant had an extensive history of drug abuse and drug possession. Therefore, the condition of drug testing was reasonably related to the goals of community control under State v. Jones, 49 Ohio St.3d 51, 550 N.E.2d 469 (1990).

111124 DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate
RAFAEL DEJESUS QUEZADA, JR. v PAMELA ALEXANDRA PENA VIZCAINO

Affirmed.

Lisa B. Forbes, P.J., Eileen T. Gallagher, J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Divorce; annulment; Civ.R. 60(B)(1); mutual mistake.*

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(Case 111124 continued)

Trial court's denial of Civ.R. 60(B)(1) motion for relief from judgment affirmed. There was no evidence in the record to support appellant's argument that the parties were mistaken about the nature of the annulment proceeding. A motion for relief from judgment is not a substitute for a direct appeal.

111136 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v TREVON READ-BATES

Affirmed.

Frank Daniel Celebrezze, III, P.J., Mary Eileen Kilbane, J., and Mary J. Boyle, J., concur.

KEY WORDS: Motion to withdraw guilty plea; Crim.R. 32.1; abuse of discretion; jurisdiction after appeal and affirmance.

After this court affirmed appellant's convictions in his direct appeal, Crim.R. 32.1 did not vest jurisdiction in the trial court to maintain and determine his subsequent motion to withdraw his guilty plea. The trial court did not abuse its discretion in denying appellant's motion without hearing.

111148 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ANTONIO BROWN

Affirmed.

Mary J. Boyle, J., Anita Laster Mays, P.J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: Constitutionality of the Reagan Tokes Act; indefinite sentence.

The Reagan Tokes Act is constitutional. Therefore, appellant's sentence under the Reagan Tokes Act is valid.

111165 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
MICHAEL BUEHNER v MICHAEL JOSEPH CHESELKA, JR., ET AL.

Affirmed.

Emanuella D. Groves, J., Anita Laster Mays, P.J., and Cornelius J. O'Sullivan, Jr., J., concur.

KEY WORDS: Legal malpractice; attorney-client relationship; fee-agreement; duty; breach; damages; statute of limitation.

(Case 111165 continued)

Trial court properly granted summary judgment on appellee's legal malpractice claims where evidence showed that an attorney-client relationship existed, and appellant was contractually duty bound to represent appellee through all phases of the case.

Appellant's conduct in representing appellee fell below the standard of care, where he failed to communicate to appellee that the trial court had rendered an unfavorable ruling regarding the motion for new trial and the necessity of appealing the decision. Appellee had to engage additional counsel to perform the services that appellant was obligated to perform. As a result of appellant's breach, appellee incurred significant legal fees and other costs. Appellee established that an attorney-client relationship existed, which gave rise to a duty, and that appellant breached the duty of care, which proximately caused appellee's damages.

We also find that appellee's legal malpractice action was not barred by the statute of limitations because it was commenced within one-year from the time appellant was terminated.

111170	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v QASIM ADL			

Affirmed.

Sean C. Gallagher, A.J., Kathleen Ann Keough, J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Homicide; murder; having weapons while under disability; sufficiency; manifest weight; circumstantial evidence; eyewitness; forensic evidence; hearsay; Evid.R. 801(C); harmless error; Crim.R. 52(A); peremptory challenge; race; racially neutral explanation; Batson claim; clear error.*

Appellant's convictions for murder and having weapons under disability were supported by the sufficiency of the evidence and were not against the manifest weight of the evidence. Although appellant challenged the credibility of the eyewitness who testified appellant was shooting a gun in the air toward the victim's vehicle, her testimony was consistent with the testimony of other witnesses and the forensic and other evidence that was introduced. A statement that was introduced to show the effect it had on appellant was not hearsay. Because no clear error was shown, the appellate court deferred to the trial court's resolution of the defendant's Batson claim and its acceptance of the prosecutor's racially neutral explanation for exercising its peremptory challenges to exclude three potential jurors who were African-American.

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111176 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ERIC GETTINGS

Affirmed.

Frank Daniel Celebrezze, III, J., Anita Laster Mays, P.J., and Mary J. Boyle, J., concur.

KEY WORDS: *Reagan Tokes Law; indefinite sentence; constitutional; due process; separation of powers; vagueness.*

Appellant's sentence under the Reagan Tokes Law was not unconstitutional based upon this court's prior decision in State v. Delvallie, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.).

111223 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v HARRY M. BARR

Affirmed.

Cornelius J. O'Sullivan, Jr., J., Lisa B. Forbes, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Repeat violent offender specification; 1984 rape conviction; voidable; res judicata.*

The trial court had subject matter jurisdiction over the case and personal jurisdiction over the defendant and, therefore, under State v. Harper, 160 Ohio St.3d 480, 2020-Ohio-2913, 159 N.E.3d 248, and State v. Henderson, 161 Ohio St.3d 285, 2020-Ohio-4784, 162 N.E.3d 776, any sentencing error, to the extent one even exists, renders the sentence voidable, not void. Voidable sentencing errors must be raised on direct appeal. Appellant's contention that his 1984 rape conviction was too old to form the basis of the repeat violent offender specification attendant to his 2007 conviction in this case is res judicata since he failed to raise the issue in his direct appeal.

111253 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
JAMES P. BREEN, ET AL. v GROUP MANAGEMENT SERVICES, INC.

Affirmed.

Eileen A. Gallagher, J., Sean C. Gallagher, A.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Motion to dismiss; failure to state a claim upon which relief may be granted; Civ.R. 12(B)(6); standing.*

Trial court did not err in dismissing plaintiffs' complaint pursuant to Civ.R. 12(B)(6) due to lack of standing where complaint did not

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(Case 111253 continued)

allege any relationship between plaintiffs and defendant that could support plaintiffs' claims for breach-of-contract or breach-of-fiduciary duty against defendant.