

November 17, 2022

110885 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ELDER SANCHEZ-SANCHEZ

Affirmed in part, vacated in part and remanded.

Eileen A. Gallagher, J., Frank Daniel Celebrezze, III, P.J., and Cornelius J. O'Sullivan, Jr., J., concur.

KEY WORDS: Rape; R.C. 2907.02(A)(1)(b); sexual conduct; R.C. 2907.01(A); vagina; labia; vulva; anatomy; knowledge of minor; insertion; penetration; force or threat of force; R.C. 2971.03(B)(1)(C); gross sexual imposition; R.C. 2907.05(A)(4); sexual contact; R.C. 2907.01(B); illegal use of minor in nudity-oriented material; R.C. 2907.323(A)(1); nudity; R.C. 2907.01(H); nude photos; naked photographs; vague and ambiguous testimony; sufficiency of the evidence; victim testimony; corroboration; Crim.R. 29; motion for acquittal; manifest weight of the evidence; structural error; judicial bias; jury selection; voir dire; Confrontation Clause; hearsay; ineffective assistance of counsel; failure to object; plain error; cumulative error.

There was insufficient evidence to sustain a conviction for illegal use of a minor in nudity-oriented material or performance. The minor female testified that the defendant asked her for “naked pictures.” She said she sent him photographs that showed her face, which she took while she was completely naked. The photographs were not nudity-oriented material unless they depicted one of the body parts enumerated in the statutory definition of “nudity.” The state did not elicit any testimony about what body parts - beyond the minor’s face - were depicted in the photographs, which were not admitted into evidence. The minor’s testimony would be equally consistent with a description of photographs that did not depict nudity.

We affirmed the defendant’s convictions for rape and gross sexual imposition, which were supported by sufficient evidence and were not against the manifest weight of the evidence. The defendant argued that the victim may not have known enough about anatomy to differentiate her vagina from other genital structures, but it is well-settled that if the force of an object - like a finger - causes a victim’s labia to spread, that is sufficient penetration to constitute “sexual conduct” under the statute; it is not necessary for an object to penetrate into the vagina. There was sufficient evidence of rape where the minor victim testified that the defendant touched the “inside” of her “lower” “private part.”

We found that the trial court erred in giving the jury a flight instruction where it was not clear that the defendant appreciated that he had been identified as a person of interest in a criminal investigation and was taking active measures to avoid being found. While the trial court should not have given the instruction, we found the error harmless.

The trial court’s excusal of a venireperson for cause, which the

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defendant claimed was erroneous, was not a manifestation of bias against the defendant where the trial court based the excusal on an assessment of the venireperson's credibility during voir dire.

It was not plain error for the trial court to admit a detective's testimony that the victim's father offered reward money for the defendant's location, because it is not clear that the outcome of the proceedings would have been different had the testimony been stricken.

The defendant's trial counsel was not ineffective by discussing the defendant's lack of legal immigration status during voir dire and during the trial, where this discussion was clearly part of the defense strategy. Trial counsel was not ineffective by failing to object to the detective's testimony about the reward money, as we cannot say that the jury's verdict would clearly have been different if the jury had not heard the testimony or had been instructed to disregard it.

111175 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v MICHAEL THOMPSON

Affirmed.

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

KEY WORDS: Motion for postconviction discovery; noncapital case; Crim.R. 16; Crim.R. 42(C); R.C. 2953.21(A)(1)(e).

Trial court did not err in denying appellant's postconviction motion for discovery; there is no right to postconviction discovery in noncapital cases.

111289 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
CAPITAL ONE BANK USA NA v ANTONIO M. MCCLADDIE

Affirmed.

Anita Laster Mays, P.J., Lisa B. Forbes, J., and Emanuella D. Groves, J., concur.

KEY WORDS: Action on account; Civ.R. 56; summary judgment; sovereign persons.

The trial court's grant of summary judgment is affirmed. Viewed in a light most favorable to appellant, there was no genuine issue of material fact that appellant owed the amount claimed. In addition, Ohio courts do not recognize sovereign or natural person claims of lack of jurisdiction.

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111303 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v NICHOLAS VIERS

Affirmed.

Michelle J. Sheehan, J., Frank Daniel Celebrezze, III, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Consecutive sentences; statutory findings.*

A review of the transcript indicates the trial court made the statutory findings and engaged in the correct analysis for its imposition of consecutive sentences. While not required to, the trial court explained its reasons for the findings and the record contains evidence to support the findings. R.C. 2929.144(C)(4) requires the sentencing court to consider a defendant's "history of criminal conduct," rather than "convictions," and the trial court is permitted to consider conduct by a defendant that does not result in a conviction, provided the conduct is not the sole basis for the sentence. In addition, a defendant's juvenile record may be considered as part of an offender's criminal history for R.C. 2929.14(C)(4) purposes in determining whether to impose consecutive sentences.

111378 COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob
MICHELLE EPPS v STATE FARM MUTUAL AUTOMOBILE INSURANCE

Affirmed and remanded.

Michelle J. Sheehan, J., Frank Daniel Celebrezze, III, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Arbitration agreement; R.C. 2711.02; stay of proceedings; abuse of discretion.*

An insured filed a declaratory-judgment action against an insurer that sought to determine whether the insurer has a subrogation interest as to medical payments as to the insured's settlement agreement with another insurance company. Because the issue of subrogation of medical payments by the insurer is subject to an arbitration agreement between the insurance companies, the trial court did not abuse its discretion by staying the proceedings even though the insured was not a party to the arbitration agreement.

111409 PROBATE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
TINA R. HADDAD v NINA M. MAALOUF-MASEK, ET AL.

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Affirmed.

Frank Daniel Celebrezze, III, P.J., Kathleen Ann Keough, J., and Cornelius J. O'Sullivan, Jr., J., concur.

KEY WORDS: *Will contest; undue influence; jury instructions; R.C. 2315.01(A)(7); hearsay evidence; Evid.R. 804(B)(5); evidence admissibility; motion in limine.*

The jury's decision in a will-contest action between two sisters determining that a will was not the product of undue influence is affirmed. The probate court did not err when it misspoke during the reading of the jury instructions because the instruction was promptly remedied by paragraphs of correct instructions. The probate court also did not err in admitting hearsay evidence under Evid.R. 804(B)(5). Finally, the probate court did not err in limiting the evidence produced at trial to the years 2000 through 2005 because this limitation was consistent with the elements of an undue-influence claim.

111418 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: D.C., JR.

Reversed and remanded.

Lisa B. Forbes, P.J., and Mary J. Boyle, J., concur; Cornelius J. O'Sullivan, Jr., J., dissents (with separate opinion).

KEY WORDS: *Juvenile-delinquency adjudication; felonious assault; serious physical harm; sufficiency of the evidence.*

The state failed to present sufficient evidence of serious physical harm as required for felonious assault under R.C. 2903.11(A)(1) and 2901.01(A)(5)(c). The child-victim's mother testified that the child-victim had a concussion and a bruise, and the child-victim testified that he was "hurt" and "depressed."

111445 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: C.P.

Vacated; remanded.

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

KEY WORDS: *Juvenile; sexually oriented offense; classification; R.C. 2152.82; Tier II sex-offender; PRQJOR classification; unconstitutional.*

Judgment vacated and remanded. The juvenile court was required to classify the juvenile under R.C. 2152.82 as juvenile offender

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registrant at the time the court issued its dispositional order in November 2019. That did not occur, however. Instead, the juvenile court did not classify the juvenile until November 2021, which one month prior to his release date from ODYS. Because the juvenile was not classified at his disposition in November 2019, the juvenile court erred by classifying him as a Tier II sex-offender at the November 2021 hearing. The juvenile court further erred when it classified the juvenile as a PRQJOR in its March 9, 2022 judgment entry because the Ohio Supreme Court had found that R.C. 2152.86 is unconstitutional. Therefore, the March 9, 2022 judgment entry purporting to restate the juvenile's adjudication and classifying the juvenile as a Tier II sex-offender and a PRQJOR is vacated in its entirety. The juvenile court's November 21, 2019 dispositional judgment entry remains the final adjudication in this case.

111486 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: N.S., JR., ET AL.

Affirmed.

Michelle J. Sheehan, J., and Eileen A. Gallagher, J., concur; Frank Daniel Celebrezze, III, P.J., concurs (with separate concurring opinion attached).

KEY WORDS: *Permanent custody; domestic violence; time limitation for permanent-custody hearing; best interest of the child.*

R.C. 2151.414(A)(2) provides that the hearing for permanent custody shall be held no later than 120 days after the agency files the motion for permanent custody, but the court may continue the hearing "for a reasonable period of time" beyond the 120-day deadline "for good cause shown." Despite the time limitation, R.C. 2151.414(A)(2) expressly states that the trial court's failure to comply with the time period "does not affect the authority of the court to issue any order under this chapter and does not provide any basis for attacking the jurisdiction of the court or the validity of any order of the court."

Because of domestic violence in the home and mother's inability to provide a safe home for the children, the evidence before the trial court clearly and convincingly demonstrated that permanent custody to the agency is in the best interest of the children.

111549 COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob
DJD INVESTMENT COMPANY, LTD v RALPH HOLSOPPLE, ET AL.

111696 COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob
DJD INVESTMENT COMPANY, LTD v RALPH HOLSOPPLE, ET AL.

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Affirmed.

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

KEY WORDS: *Summary judgment; Civ.R. 56; option agreement; contract; written notice.*

Summary judgment was appropriate where there were no genuine issues of material fact as to whether plaintiff-appellee properly exercised its option to purchase defendant-appellant's condominium.

111708	JUVENILE COURT DIVISION	F	Civil C.P.-Juv, Dom, Probate
IN RE: M.J., ET AL.			

Affirmed.

Cornelius J. O'Sullivan, Jr., J., Kathleen Ann Keough, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *R.C. 2151.414(B)(1), permanent custody; R.C. 2151.414(B)(1)(d), 12 out of 22 months; best interest; R.C. 2151.414(D)(1); manifest weight; clear and convincing evidence.*

Clear and convincing evidence supported the trial court's decision to grant permanent custody to CCFCFS when children had been in agency custody for more than 12 months of a consecutive 22-month period and permanent custody was in the children's best interest.