

[Cite as *State v. Geisler*, 2008-Ohio-4836.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ATHENS COUNTY

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : Case No. 07CA35
 :
 vs. :
 :
 STEPHEN C. GEISLER, : DECISION AND JUDGMENT ENTRY
 :
 Defendant-Appellant. :

APPEARANCES:

COUNSEL FOR APPELLANT: David J. Winkelmann, 8 North Court Street, Suite 308,
Athens, Ohio 45701

COUNSEL FOR APPELLEE: C. David Warren, Athens County Prosecuting Attorney,
and Sabrina J. Ennis, Assistant Prosecuting Attorney,
1 South Court Street, 1st Floor, Athens, Ohio 45701

CRIMINAL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED: 9-18-08

PER CURIAM.

{¶ 1} This is an appeal from an Athens County Common Pleas Court judgment of conviction and sentence. The trial court found Stephen C. Geisler, defendant below and appellant herein, guilty of: (1) aggravated possession of drugs in violation of R.C. 2925.11(A), and (2) possession of lysergic acid diethylamide (LSD) in violation of R.C. 2925.11(A).

{¶ 2} Appellant raises the following assignment of error for review:

"OFFICER STABLER LACKED A REASONABLE ARTICULABLE SUSPICION TO PERFORM A TRAFFIC STOP ON THE VEHICLE THE APPELLANT WAS DRIVING, AND HIS STOP OF THE VEHICLE VIOLATED THE APPELLANT'S FOURTH AND FOURTEENTH AMENDMENT RIGHTS PURSUANT TO THE UNITED STATES CONSTITUTION AND HIS RIGHTS PURSUANT TO ARTICLE I, SECTION 14 OF THE OHIO CONSTITUTION."

{¶ 3} On January 10, 2007, Ohio University Police Officer John Stabler observed appellant's mini-van facing the wrong way on Park Place. He decided to stop the vehicle. Upon approaching appellant, the officer detected a strong odor of marijuana both on appellant's person and emanating from the vehicle. Officer Stabler then searched the vehicle and discovered controlled substances. Subsequently, authorities cited appellant for violating R.C. 4511.12, failure to obey a traffic control device.

{¶ 4} The Athens County Grand Jury returned an indictment charging appellant with: (1) possession of heroin in violation of R.C. 2925.11(A); (2) two counts of aggravated possession of drugs in violation of R.C. 2925.11(A); (3) two counts of possession of LSD in violation of R.C. 2925.11(A); and (4) possession of criminal tools in violation of R.C. 2923.24(B)(3).

{¶ 5} Appellant entered a not guilty plea and filed a motion to suppress the evidence uncovered as a result of the traffic stop. Appellant claimed, inter alia, that Officer Stabler lacked reasonable suspicion to stop appellant's vehicle for violating R.C. 4511.12(A). Appellant contended that the officer wrongly cited him for failure to obey a traffic control device because the street lacked a one-way traffic sign at the point where

he entered it. Appellant asserted that the officer's mistaken belief that appellant committed a traffic violation could not give rise to reasonable suspicion to stop his vehicle.

{¶ 6} Appellee argued that Officer Stabler possessed both a reasonable suspicion and probable cause to stop appellant's vehicle because the officer observed appellant driving the wrong way down a one-way street. Appellee contended that the absence of signage did not negate the validity of the stop because the road constituted a "divided street" for which a traffic control device was unnecessary.

{¶ 7} The trial court held a hearing to consider appellant's motion to suppress evidence. At the hearing, Officer Stabler testified that he observed appellant's vehicle facing the wrong way on a one-way street. He stated that he activated his lights so that appellant could back out of the wrong lane and place his vehicle in the correct lane. The officer explained that a median divides the two lanes of Park Place - one lane carries traffic east to west, and the other carries traffic west to east. Appellant had attempted to travel east to west on the portion of the road that carries traffic west to east.

{¶ 8} Officer Stabler stated that after appellant safely moved his vehicle into a proper lane of traffic, he stopped appellant's vehicle. Appellant exited and started to approach the officer's vehicle, but the officer requested that appellant move to the front of his vehicle to stay out of traffic. As Officer Stabler approached appellant, he smelled an "extremely strong odor of marijuana" emanating from appellant's person and vehicle. The officer also stated that he reasonably suspected that appellant was traveling down the wrong side of a divided roadway.

{¶ 9} The trial court denied appellant's motion to suppress evidence and found that the officer possessed reasonable suspicion that appellant had committed a traffic violation by driving the wrong way down a one-way street. The court rejected appellant's argument that the officer's mistaken belief as to which traffic statute appellant violated negated the existence of reasonable suspicion. The court further found that Park Place is a divided highway, within the meaning of R.C. 4511.35. The court explained:

"The question is not whether a conviction for a violation of R.C. 4511.35 could be sustained; rather, it is whether the officer, from an objective standpoint, had at least a reasonable suspicion to investigate and remedy a situation involving a stationary vehicle positioned in the wrong direction on a divided highway, including stopping the vehicle once the vehicle, at the officer's direction, moved to a safe and proper location."

{¶ 10} Appellant subsequently entered a no contest plea to one count of aggravated possession of drugs and one count of possession of LSD. The court sentenced appellant to consecutive one-year terms of imprisonment. This appeal followed.

{¶ 11} Before we consider appellant's assignments of error on their merits, we must first consider a threshold jurisdictional issue. Appellate courts must sua sponte raise jurisdictional issues involving final, appealable orders. See In re Murray (1990), 52 Ohio St.3d 155, 160, 556 N.E.2d 1169, fn.2; Whitaker-Merrell v. Geupel Co. (1972), 29 Ohio St.2d 184, 186, 280 N.E.2d 922.

{¶ 12} "In entering a final appealable order in a criminal case, the trial court must comply with Crim.R. 32(C), which states: 'A judgment of conviction shall set forth the plea, the verdict or findings, and the sentence. If the defendant is found not guilty or for

any other reason is entitled to be discharged, the court shall render judgment accordingly. The judge shall sign the judgment and the clerk shall enter it on the journal. A judgment is effective only when entered on the journal by the clerk." State v. Baker, - Ohio St.3d -, 2008-Ohio-3330, - N.E.2d -, at ¶8.

{¶ 13} "[A] judgment of conviction is a final appealable order under R.C. 2505.02 when it sets forth (1) the guilty plea, the jury verdict, or the finding of the court upon which the conviction is based; (2) the sentence; (3) the signature of the judge; and (4) the time stamp showing journalization by the clerk of court." Id. at ¶16. Courts have interpreted these requirements as imposing "a mandatory duty [on the trial court] to deal with each and every charge prosecuted against a defendant," and "[t]he failure of a trial court to comply renders the judgment of the trial court substantively deficient under Crim.R. 32[(C)]." State v. Brooks (May 16, 1991), Cuyahoga App. No. 58548, citing State v. Brown (1989), 59 Ohio App.3d 1, 2, 569 N.E.2d 1068; see, also, State v. Fox, Highland App. No. 04CA15, 2005-Ohio-792. Therefore, the failure to issue an entry to dispose of each prosecuted charge renders the court's order merely interlocutory. See State v. Lupardus, Washington App. No. 07CA46, 2008-Ohio-2660; State v. Johnson, Scioto App. No. 06CA3066, 2007-Ohio-1003; State v. Fox, Highland App. No. 04CA15, 2005-Ohio-792; see, also, Cleveland v. Duckworth (Jan. 24, 2002), Cuyahoga App. No. 79658 (stating that trial court must dispose of all charges in order for judgment to be final, appealable order).

{¶ 14} In the case at bar, the prosecution charged appellant with six offenses. The trial court's judgment entry, however, disposes of two charges, one count of aggravated possession of drugs and one count of possession of LSD. Earlier, the court

had journalized an entry dismissing the possession of heroin count. The court also found that appellant could be convicted of only one count of aggravated possession of drugs and one count of possession of LSD. However, the trial court did not journalize an entry that disposed of all of the remaining counts. Accordingly, we lack jurisdiction to consider this appeal and the appeal must be dismissed.

APPEAL DISMISSED.

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JUDGMENT ENTRY

It is ordered that the appeal be dismissed and that appellee recover of appellant costs herein taxed.

The Court finds that there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Athens County Common Pleas Court to carry this judgment into execution.

If a stay of execution of sentence and release upon bail has been previously granted, it is continued for a period of sixty days upon the bail previously posted. The purpose of said stay is to allow appellant to file with the Ohio Supreme Court an application for a stay during the pendency of the proceedings in that court. The stay as herein continued will terminate at the expiration of the sixty day period.

The stay will also terminate if appellant fails to file a notice of appeal with the Ohio Supreme Court in the forty-five day period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Ohio Supreme Court. Additionally, if the Ohio Supreme Court dismisses the appeal prior to the expiration of said sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Abele, P.J., Harsha, J. & McFarland, J.: Concur in Judgment & Opinion

For the Court

BY: _____

Peter B. Abele
Presiding Judge

BY: _____

William H. Harsha, Judge

BY: _____

Matthew W. McFarland, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.