

CASE DECISION LIST

(Case 105386 continued)

prejudice; Crim.R. 32.1.

The trial court did not err when it denied defendant's motion to suppress. When looking at the totality of the circumstances, the affidavit supporting the search warrant provided a substantial basis for the issuing judge to conclude that there was a fair probability that contraband or evidence of drug trafficking would be found in the home. The affidavit was based on two anonymous tips that were sufficiently corroborated by evidence of drug trafficking found in defendant's trash. Defendant was not prejudiced by the trial court's failure to inform him of the effect of his plea. The trial court did not violate defendant's due process rights when it did not permit him to withdraw his plea because he did not receive the sentence that he thought he was going to receive and there was nothing in the record establishing that the trial court had agreed to sentence the defendant to a particular sentence.

105568	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v MELVIN WEST			

Affirmed.

Mary J. Boyle, J., Tim McCormack, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *R.C. 2953.08(G)(2), maximum sentence, R.C. 2929.14(C)(4), consecutive sentences, court costs.*

The trial court's imposition of a maximum sentence was supported by the record and was not contrary to law, and the record supported the trial court's imposition of consecutive sentences. Further, because the lower court retains jurisdiction to waive, suspend, or modify the payment of the costs of prosecution, we do not need to remand this case for the appellant's assignment of error relating to court costs.

105601	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v ANTHONY CHRISTIAN			

105602	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v MARCUS CAMMON			

Reversed and remanded.

Sean C. Gallagher, J., and Mary J. Boyle, P.J., concur; Larry A. Jones, Sr., J., dissents with separate opinion.

KEY WORDS: *Terry stop; reasonable suspicion; motion to suppress; hand-to-hand drug transaction.*

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(Case 105602 continued)

The detectives articulated a reasonable suspicion that the defendants were engaged in criminal conduct justifying the initial encounter and detention, and therefore, the trial court erred in suppressing the evidence based on its conclusion regarding the validity of the initial stop.

105679 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ABDUL HAKIM

Affirmed.

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

KEY WORDS: Motion to suppress; search warrant; probable cause; scope of the search warrant; Fourth Amendment; particularity requirement; plain view; plain smell; marijuana; incriminating nature; immediately apparent.

The trial court's judgment granting defendant's motion to suppress was affirmed. The plain view doctrine did not apply to a common, orange translucent pill bottle because the incriminating nature of the contents in the pill bottle was not immediately apparent to the officer without the officer first manipulating the bottle. The plain smell doctrine did not apply to a "balled up" paper towel because the trial court implicitly found that the officer's testimony that he smelled marijuana lacked credibility; the officer failed to include the fact that he smelled marijuana in his written report and did not mention it on direct examination.

105804 CLEVELAND MUNI. G CIVIL MUNI. & CITY
CITY OF CLEVELAND v CARL A. COLLINS

Affirmed.

Tim McCormack, P.J., Mary J. Boyle, J., and Sean C. Gallagher, J., concur.

KEY WORDS: OVI; R.C. 4511.19; traffic stop; marked lane violation; ALS suspension; reasonable suspicion; totality of circumstances; motion to suppress; field sobriety tests; NHTSA standards; substantial compliance; speedy trial; tolling events; R.C. 2945.72.

The trooper's observing appellant's vehicle cross the marked lane on the roadway at 1:00 a.m. provided the trooper with reasonable and articulable suspicion to initiate a traffic stop. Where the trooper then discovered the driver was under an ALS suspension for a prior OVI refusal and the trooper smelled alcohol on the driver's breath, under the totality of the circumstances, the trooper reasonably suspected the driver was intoxicated and he was justified in extending the scope of the detention to perform field

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sobriety tests. The trooper substantially complied with NHTSA standards in administering the field sobriety tests. The appellant's motion to suppress was therefore properly denied. Appellant's right to a speedy trial was not violated due to numerous tolling events.

105913 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PROBATION'S FOLDING SERVICE, INC., ET AL. v CINCINNATI INSURANCE COMPANY, ET AL.

Affirmed.

Melody J. Stewart, J., Eileen A. Gallagher, A.J., and Anita Laster Mays, J., concur.

KEY WORDS: Statute of frauds; third party; breach of contract; lost profits.

A nonparty to a contract cannot raise the defense of statute of frauds because it is an affirmative defense that is personal to a party to the contract.

Plaintiff's breach of contract claim for lost profits failed because it failed to prove the existence of any contract that had been breached. What plaintiff claimed was an oral, three-year contract was a series of work orders that were separately quoted and billed.

Expert opinion on lost profits using the plaintiff's gross profit margin for the preceding 13 years did not establish a claim of lost profits to a reasonable degree of certainty because it did not differentiate unrelated types of work performed for different customers.

106001 LAKEWOOD MUNI. C CRIMINAL MUNI. & CITY
CITY OF LAKEWOOD v VALENTIN M. DOBRA

Affirmed.

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

KEY WORDS: KEYWORDS: Misdemeanor; petty offense; sentence; abuse of discretion; no contest; plea.

The trial court did not abuse its discretion in imposing a sentence within the statutory range for defendant's first-degree misdemeanor conviction. The trial court was not required to specifically state its findings related to the overriding purposes of misdemeanor sentencing under R.C. 2929.21 and the required misdemeanor sentencing factors under R.C. 2929.22.

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106019 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v THOMAS EADDIE

Affirmed.

Patricia Ann Blackmon, P.J., Anita Laster Mays, J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Consecutive sentences; judicial bias.*

Trial court did not err in imposing consecutive sentences, and sentence was not tainted by judicial bias.

106047 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: A.F.R.

Affirmed.

Melody J. Stewart, J., Eileen T. Gallagher, P.J., and Patricia Ann Blackmon, J., concur.

KEY WORDS: *Juv.R. 40(D)(3)(b)(i).*

Juv.R. 40(D)(3)(b)(i) plainly states that a magistrate's decision must be "filed," not "journalized." The filing date of a magistrate's decision starts the time period for objecting, and filing is signified by the clerk's stamp "Received for Filing," not the date the decision is postmarked.

106072 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: L.M.

Affirmed.

Anita Laster Mays, J., Eileen T. Gallagher, P.J., and Mary J. Boyle, J., concur.

KEY WORDS: *R.C. 2151.414(B)(1), best interest of the child, guardian ad litem.*

The trial court did not err to the prejudice of appellant in terminating his parental rights and finding that it is in the best interest of the child to transfer permanent custody to the Cuyahoga County Department of Children and Family Services pursuant to R.C. 2151.414(B)(1). In addition, the trial court was not bound to the recommendation of the guardian ad litem in making its permanency decision.

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106158 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JESUS SANTIAGO

Affirmed.

Tim McCormack, P.J., Mary J. Boyle, J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Allied offenses; manifest weight; res judicata.*

Where appellant raised a manifest weight claim in his direct appeal, res judicata prevents him from raising such a claim in this fourth appeal. Additionally, because he failed to raise the issue of allied offenses in his direct appeal, res judicata precludes the appellant from raising such issue in this subsequent appeal.

106175 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JENNIFER WRIGHT

Affirmed.

Patricia Ann Blackmon, J., Mary J. Boyle, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Consecutive sentences; presentence report; maximum sentence.*

Trial court did not err in imposing maximum, consecutive sentences, and in considering defendant's prior offenses and other conduct listed in presentence investigation report.