

Court of Appeals of Ohio

Eleventh Appellate District

Diane V. Grendell
Judge

Timothy P. Cannon
Judge

Colleen Mary O'Toole
Judge

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Thomas R. Wright
Presiding/Administrative Judge

Shibani Sheth-Massacci
Court Administrator/Magistrate/
Administrative Counsel

June 11, 2018

RELEASE

ASHTABULA 2017-A-0077

STATE OF OHIO, Plaintiff-Appellee v. ANDRE MCGOWAN,
Defendant-Appellant.

Judgment affirmed. See Opinion and Judgment Entry. [RICE] (GRENDPELL) (CANNON)
CIVIL - post-conviction relief; second request to set aside conviction;
res judicata; no argument; App.R. 16(A)(7).

2017-A-0082 2017-A-0083 2017-A-0084

ILLUMINATING COMPANY, Plaintiff-Appellee v. JAMES J. WISER,
et al., Defendants-Appellants.

Judgment affirmed. See Opinion and Judgment Entry. [RICE] (CANNON) (O'TOOLE)
ENERGY & UTILITIES LAW - measure of damages for negligent
destruction of utility pole is cost of pole and facilities attached thereto
based on reproduction cost less accrued depreciation of damaged
pole and facilities attached thereto; indirect costs of repairs (overhead)
are a proper element of damage for which recovery may be had in
case involving damage to utility pole where such costs can be proved
with reasonable certainty and have been correctly made in accord with
sound accounting principles.

GEAUGA 2017-G-0141

STATE OF OHIO, Plaintiff-Appellee v. MADISON K. COZZONE,
Defendant-Appellant.

Judgment affirmed in part and reversed in part; remanded. O'Toole, J., concurs in
judgment only. See Opinion and Judgment Entry. [CANNON] (RICE) (O'TOOLE)
CRIMINAL - felony sentencing; R.C. 2929.11; R.C. 2929.12; silent
record; failure to comply with the conditions of intervention and
community control; R.C. 2929.14; consecutive sentences; clearly and
convincingly find the record does not support the trial court's findings;

R.C. 2929.15(B); technical violation of community control sanctions; motion for reconsideration; nullity; remand for resentencing.

LAKE

2017-L-027 STATE OF OHIO, Plaintiff-Appellee v. THOMAS C. DIBIASE, Defendant-Appellant.

Judgment affirmed. Wright, P.J., concurs in judgment only. See Opinion and Judgment Entry. [O'TOOLE] (WRIGHT) (RICE)

POST CONVICTION RELIEF - a trial court's decision to grant or deny a petition for post conviction relief is reviewed for abuse of discretion; a petition for post conviction relief must be filed within 180 days after the trial transcript is filed in the court of appeals unless the petitioner can meet the criteria set forth in R.C. 2953.23(A)(1); R.C. 2953.21(A)(1)(b) defines actual innocence for purposes of post conviction relief proceedings; Herrera v. Collins, 506 U.S. 390 (1993) and Schlup v. Delo, 513 U.S. 298 (1995) construed.

2017-L-086 STATE OF OHIO, Plaintiff-Appellee v. DANIEL T. YALLAH, Defendant-Appellant.

2017-L-087
Judgment affirmed. O'Toole, J., concurs in judgment only. See Opinion and Judgment Entry. [RICE] (GRENDALL) (O'TOOLE)

CRIMINAL LAW - OVI; traffic stop; identified citizen informant; vehicle color and model; direction of travel; driving recklessly; officer observations; potential marked lanes violation; weaving within lanes; erratic acceleration; hard braking; reasonable suspicion; valid investigative stop.

2017-L-148 STATE OF OHIO, Plaintiff-Appellee v. KY'SEAN C. LEE, Defendant-Appellant.

Judgment affirmed. O'Toole, J., concurs in judgment only. See Opinion and Judgment Entry. [RICE] (CANNON) (O'TOOLE)

CRIMINAL LAW - trial court did not abuse its discretion in denying defense counsel's request to continue trial when he was advised by the state four days earlier that co-defendant would testify against defendant where defendant did not agree to continuance but rather wanted trial to proceed at that time and would not agree to speedy trial waiver although time was about to expire in few weeks. CRIMINAL LAW - EVIDENCE - state presented sufficient evidence to support firearm specification to aggravated burglary where defendant used gun after he forced his way into victim's home, although he did not use the gun to gain entry into the home. CRIMINAL LAW - ALLIED OFFENSES LESSER INCLUDED - trial court did not err in not merging aggravated burglary and aggravated robbery convictions where offenses were committed separately and were of dissimilar import since different harm was committed with respect to aggravated robbery.

TRUMBULL

2018-T-0043

STATE OF OHIO, Plaintiff-Appellee v. THOMAS JAMES REESE,
Defendant-Appellant.

Dismissed. O'Toole, J., concurs in judgment only. See Memorandum Opinion and Judgment Entry. [GRENDALL] (RICE) (O'TOOLE)

APPELLATE REVIEW - duplicate appeal; App.R. 26(B); cannot determine the substance or intention of appellant's pleading.