

[Cite as *State v. Dukes*, 2015-Ohio-5153.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103303

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CHARLES DUKES

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-13-570468-A

BEFORE: Keough, P.J., E.T. Gallagher, J., and Laster Mays, J.

RELEASED AND JOURNALIZED: December 9, 2015

ATTORNEYS FOR APPELLANT

Robert L. Tobik
Cuyahoga County Public Defender
By: Erika B. Cunliffe
Assistant Cuyahoga County Public Defender
310 Lakeside Avenue
Cleveland, Ohio 44113

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor
By: Daniel T. Van
Assistant Prosecuting Attorney
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

KATHLEEN ANN KEOUGH, P.J.:

{¶1} This cause came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1. The purpose of an accelerated appeal is to allow the appellate court to render a brief and conclusory opinion. *Crawford v. Eastland Shopping Mall Assn.*, 11 Ohio App.3d 158, 463 N.E.2d 655 (10th Dist.1983); App.R. 11.1(E).

{¶2} Defendant-appellant, Charles Dukes, appeals the trial court's decision denying him pretrial bail. For the reasons that follow, we reverse and remand.

{¶3} On January 4, 2013, Dukes was arrested for aggravated vehicular homicide following a traffic accident where Dukes's van collided with Thomas Thomas's vehicle, allegedly causing Thomas's death. At his initial court appearance in the Cleveland Municipal Court, Dukes waived his right to a preliminary hearing and was bound over to the Cuyahoga County Court of Common Pleas. The court set Dukes's bond at \$25,000 cash/surety/property. The following day, Dukes posted bond and was released from custody.

{¶4} Dukes was subsequently indicted in February on two counts of aggravated vehicular homicide and three counts of driving while under the influence of alcohol. At felony arraignment, Dukes pleaded not guilty and the trial court ordered that the original posted bond of \$25,000 cash/surety/property be continued.

{¶5} Prior to trial, Dukes moved to suppress evidence against him relating to a blood sample taken by police while he was in the hospital following the traffic accident. Following a denial of Dukes's motion to suppress, the case was tried to a jury. The state dismissed one count of driving while under the influence of alcohol after its case-in-chief. The jury found Dukes guilty of aggravated vehicular homicide, a third-degree felony, and driving while under the influence of alcohol, a first-degree misdemeanor. He was found not guilty of the

second-degree-felony charge of aggravated vehicular homicide and the other first-degree-misdemeanor offense of driving while under the influence of alcohol. Dukes appealed his convictions in *State v. Dukes*, 8th Dist. Cuyahoga No. 101124, 2015-Ohio-676 (“*Dukes I*”).

{¶6} In *Dukes I*, this court found that trial court erred in denying Dukes’s motion to suppress. Specifically, this court found that the state failed to establish that it substantially complied with the Ohio Department of Health regulations regarding the sealing and refrigerating of Dukes’s blood sample, and whether the lab director had obtained a permit from the director of health. *Id.* at ¶ 58. Accordingly, this court vacated Dukes’s convictions for driving while under the influence and aggravated vehicular homicide. *Id.* at ¶ 59. However, this court noted that Dukes could be retried on the homicide charge. *Id.*

{¶7} In February 2015, Dukes filed a motion for release on bail pursuant to Crim.R. 46 requesting that the court set reasonable bail. In support of his motion, Dukes maintained that because his convictions were reversed he is presumed innocent, he was free on bail prior to and during his trial, and he never missed a court hearing, despite facing a second-degree felony charge. Dukes further maintained that he was found not guilty of the second-degree felony charge. In response, the state opposed any type of unconditional bond or personal recognizance and requested a stay of the proceedings pending appeal of *Dukes I*.¹

{¶8} In July 2015, the court granted the state’s request for a stay and summarily denied Dukes’s request for bail. Therefore, Dukes is currently incarcerated and awaiting retrial on the sole charge of aggravated vehicular homicide in violation of R.C. 2903.06(A)(2)(a), a

¹On November 10, 2015, the Ohio Supreme Court declined to accept the state’s appeal of *Dukes I*. *State v. Dukes*, 11/10/15 Case Announcements, 2015-Ohio-4633.

third-degree felony. Dukes appeals, raising as his sole assignment of error that the trial court's order denying his request for bail violates his rights under the state and federal constitutional that both guarantee his entitlement to bail. We agree.

{¶9} As an initial matter, denial of bail pursuant to R.C. 2937.222 is a final appealable order. R.C. 2937.222(D)(1) ("An order of the court of common pleas denying bail pursuant to [R.C. 2937.222] is a final appealable order."); *see also State v. Russell*, 8th Dist. Cuyahoga No. 89639, 2007-Ohio-1589, ¶ 4; *State v. Chambliss*, 8th Dist. Cuyahoga No. 91272, 2008-Ohio-3800, ¶ 12. Therefore, we find absolutely no merit to the state's repeated challenge that this appeal should be dismissed for lack of a final appealable order.

{¶10} The law is clear and unequivocal that Section 9, Article I of the Ohio Constitution guarantees a defendant consideration of bail, and this guarantee is put into effect by Crim.R. 46 and R.C. 2937.222. Pursuant to Crim.R. 46(C), in determining what is reasonable bail, the trial court must weigh various factors: the nature and circumstances of the offense charged; the weight of the evidence; confirmation of the accused's history; the accused's history of flight or failure to appear at court proceedings; his ties to the community, including his family, financial resources and employment; his character and mental condition; and whether he is on any court-related supervision. After weighing these factors, the trial judge sets the amount of bail within his sound discretion.

{¶11} In this case, however, the trial court summarily denied Dukes bail. Because Dukes is charged with aggravated vehicular homicide, in violation of R.C. 2903.06, the trial court, in order to deny him bail, was required to follow the dictates of R.C. 2937.222.

{¶12} R.C. 2937.222(B) clearly provides that no accused person shall be denied bail unless the judge makes certain findings.

No accused person shall be denied bail pursuant to this section unless the judge finds by clear and convincing evidence that the proof is evident or the presumption great that the accused committed the offense described in division (A) of [R.C. 2937.222] with which the accused is charged, finds by clear and convincing evidence that the accused poses a substantial risk of serious physical harm to any person or to the community, and finds by clear and convincing evidence that no release conditions will reasonably assure the safety of that person and the community.

R.C. 2937.222(B). Furthermore, subsection (C) of R.C. 2937.222 lists the factors the court is required to consider in making its determination.

{¶13} In this case, the trial court did not make any findings prior to summarily denying Dukes's request for bail. Therefore, the trial court violated the express dictates of R.C. 2937.222. Accordingly, this matter is remanded to the trial court to follow the requirements of Civ.R. 46, including subsections (C) and (H), when considering Dukes's request for pretrial bail.

If the court determines that Dukes should be denied bail, it is required to consider all relevant factors found in R.C. 2937.222 and make its findings.

{¶14} Finally, we note that this court reversed Dukes's conviction in February 26, 2015. Dukes soon after moved for pretrial bail on March 16, 2015. However, the trial court did not rule on his request until July 15, 2015. The trial court is ordered to immediately and without delay consider Dukes's request for bail in accordance with the law.

{¶15} Judgment reversed and remanded.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

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

KATHLEEN ANN KEOUGH, PRESIDING JUDGE

EILEEN T. GALLAGHER, J., and
ANITA LASTER MAYS, J., CONCUR