

The Art and Science Of Judicial Decision-Making

In preparation for the session, please review the following case studies and prepare responses based on the facts and law provided and be prepared to discuss when we meet on December 11th.

There are six cases to consider, titled:

1. Breaking a promise.
2. Stray cat strut.
3. Fluffy and Mango.
4. Criminal Trespass or Party.
5. Yorkie in a car.
6. You know 'em when you see 'em (minors)

Breaking a promise.

Fact Pattern

After his indictment on multiple offenses in three separate cases, Scott negotiated a plea agreement to resolve all cases. As part of the plea agreement, Scott agreed to enter a guilty plea to one count of theft, a first-degree misdemeanor. The state agreed to dismiss the remaining charges.

At the plea hearing, an acting judge accepted the guilty plea, found Scott guilty, and continued the matter for sentencing.

At the sentencing hearing, the state asked for a 30-day jail sentence. After some debate whether the prosecutor had agreed to remain silent at sentencing, the trial court sentenced Scott to 180 days in jail with 150 days suspended, \$240 in stipulated restitution, \$250 in fines/costs, and ordered Scott would be *persona non grata* for one year at the Meijer store where the theft occurred.

Scott believed the state breached the plea agreement, disregarding a promise upon which the plea rested to a significant degree. The sentencing judge, who had not presided over the plea hearing, informed Scott that he had his own opinion on sentence, after reviewing the record and Scott's Presentence Investigation report. Thus, the sentencing judge determined that any recommendation of the prosecutor was "not really having much impact on my decision" considering all the information before the court. Scott wants a new sentencing and specific performance of the plea agreement.

Applicable Law

A plea agreement is considered a contract between the State and a criminal defendant, and upon breach, the non-breaching party may seek either rescission or specific performance. *Santobello v. New York*, 404 U.S. 257 (1971).

Query: Should Scott be given a new sentencing hearing? Does the reasoning provided by the sentencing judge make a difference? Explain.

Stray Cat Strut.

Fact Pattern

Michael used to live an idyllic life at the end of a dead-ending lane by the river. The bridge crossing the river was closed to all but pedestrian traffic, but lately, some local animal lovers showed up and began dumping huge feed piles on the bridge to feed a growing population of stray cats.

Michael began engaging animal lovers in spirited confrontations, objecting to the gathering of stray cats on the bridge about 500 feet from his home. Animal lovers went to court and obtained a CPO against Michael and Michael did not appeal that order.

The CPO prohibited Michael from having contact with or coming within 500 feet of animal lovers. It further provided that if Michael “accidentally comes in contact with [animal lovers] in any public or private place, [Michael] must depart immediately.”

One day, as Michael is out walking along the bridge, animal lovers arrive in their vehicle. Michael continued to stroll on the bridge, observing nature, crossing from one side of the bridge to the other, and then walked past the vehicle on his way home. As he passed the vehicle, he did not engage the occupants or signal recognition of animal lovers. Instead, he began recording it with his phone over his shoulder as he continued to stroll by and observe nature. The entire encounter with animal lovers lasted about 3 minutes.

Michael is charged with violating the protection order. In his defense, he argues that he did not initiate the encounter with animal lovers and acted reasonably by heading home. He further contended he was not reckless in “pausing” a few times while walking home because his pauses lasted seconds. Finally, Michael argues that the purpose of a CPO is to prevent threatening conduct, and he engaged in no threats or intimidation.

Applicable Law

R.C. 2919.27(A)(2) provides: “[n]o person shall recklessly violate the terms of ... [a] protection order issued pursuant to section ... 2903.214 of the Revised Code.”

R.C. 2901.22(C) defines recklessly as: “with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that the person’s conduct is likely to cause a certain result or is likely to be of a certain

nature. A person is reckless with respect to circumstances when, with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that such circumstances are likely to exist.”

Query: Did Michael act recklessly in violating the terms of the CPO? Should consideration be given to Michael’s argument regarding the purpose of a CPO in adjudicating his case? Explain.

Fluffy and Mango.

Fact Pattern

When Sarah moved in with Robert, she brought two pets to the family, Fluffy the cat and Mango the dog. They were very happy for almost 2 years, and both Sarah and Robert knew Mango had a biting tendency, attributed to Mango's anxiety. After Sarah and Robert broke up, Sarah took Fluffy and Mango with her to Texas to live with a new partner. Robert moved to Ohio.

After several months in Texas, Mango bit Sarah's new partner, who needed medical treatment for the bite. Sarah believed Mango was responding to Sarah's own mental health issues, which caused Mango to be anxious and bite. As a result, Sarah called Robert and asked if the pets could live with him, intending to send both pets because they were bonded. Sarah remembered that Robert was good to Fluffy and Mango and trusted him to care for the pets.

Robert agreed, and Sarah and her new partner drove the pets to Ohio, to Robert's home, where Fluffy and Mango stayed for almost two years preceding any controversy. Sarah transferred the pet insurance policy to Robert, representing to the insurance company that Robert was the new owner, and Robert began paying the premiums. He also re-registered the pets' microchips in his name, paying the subscription fees for the microchip service. Robert also registered Mango in his county and purchased dog tags for Mango, as his dog. Robert made all medical decisions for Fluffy and Mango and did not request support from Sarah for any expenses.

Sarah had minimal contact with Robert, limited to updates on the pets' health and well-being. Sarah sent occasional gifts to the pets and visited Fluffy and Mango once, with Robert's permission, during that period.

Eventually, Sarah decided it was time for Robert to give the pets back. When Robert refused, Sarah filed suit, alleging conversion and seeking replevin to recover possession of Fluffy and Mango. Robert argued Sarah gifted him the pets, and therefore, he was now the owner. Sarah countered that she never relinquished ownership, citing R.C. 955.11(B) as to Mango, specifically.

Applicable Law

A completed inter vivos gift requires (1) an intention on the part of the donor to transfer the title and right of possession of the particular property to the donee.

then and there, and (2) in pursuance of such intention, a delivery by the donor to the donee of the subject-matter of the gift to the extent practicable or possible, considering its nature, with relinquishment of ownership, dominion, and control over it. *Turner v. Turner*, 2023-Ohio-1298, ¶ 19 (6th Dist.), citing *Bolles v. Toledo Tr. Co.*, 132 Ohio St.21 (1936), paragraph one of the syllabus.

R.C. 955.11(B) provides:

Upon the transfer of ownership of any dog, the seller of the dog shall give the buyer a transfer of ownership certificate that shall be signed by the seller. The certificate shall contain the registration number of the dog, the name of the seller, and a brief description of the dog. Blank forms of the certificate may be obtained from the county auditor. A transfer of ownership shall be recorded by the auditor upon presentation of a transfer of ownership certificate that is signed by the former owner of a dog and that is accompanied by a fee of five dollars.

Query: Did Sarah gift the pets to Robert, transferring ownership? Does R.C. 955.11(B) control as to the transfer of Mango, meaning no certificate = no transfer of ownership? Explain.

Criminal trespass or party.

Fact Pattern

Chester's uncle lives in a rental home owned by Valiant Homes. Chester's uncle has invited him over, and Chester likes to visit his uncle on occasion. One such evening, Chester attended a party at his uncle's apartment and brought ten other friends. Not long after, other tenants of Valiant Homes complain to the landlord, Grace, over the trash and noise coming from the uncle's property. Grace calls the police and she confronts Chester. This incident leads to Chester's arrest for criminal trespass.

For more than a year prior to this incident, Grace had witnessed Chester on the property, sometimes visiting his uncle's apartment but also occupying vacant units in the complex. According to Grace, she had been struggling to keep homeless people out of the empty units, noting damage to the windows caused by the illicit entry in the apartments.

In the six months before his arrest, Chester had been repeatedly informed, after being found, that he was not allowed on Valiant Homes' property. Further, Chester's name was added to a "banned list" which Grace kept and displayed on her office window. This list was to provide notice of those who aren't allowed in Valiant Homes apartments.

Chester, however, stated he was never told his name was on the banned list or he wasn't allowed at Valiant Homes any longer. Rather, Chester claimed he was invited by his uncle to be at the apartment that night, although Chester's uncle was not at the apartment when Grace and the police came to the property to investigate noise complaints. Nonetheless, Grace acknowledges Chester was not charged with breaking into his uncle's apartment and recognized Chester "was a guest" to his uncle.

Applicable Law

R.C. 2911.21 provides:

(A) No person, without privilege to do so, shall do any of the following:

(1) Knowingly enter or remain on the land or premises of another;

(2) Knowingly enter or remain on the land or premises of another, the use of which is lawfully restricted to certain people, purposes, modes, or hours, when the offender knows the offender is in violation of any such restriction or is reckless in that regard;

(3) Recklessly enter or remain on the land or premises of another, as to which notice against unauthorized access or presence is given by actual communication to the offender, or in a manner prescribed by law, or by posting in a manner reasonably calculated to come to the attention of potential intruders, or by fencing or other enclosure manifestly designed to restrict access;

(4) Being on the land or premises of another, negligently fail or refuse to leave upon being notified by signage posted in a conspicuous place or otherwise being notified to do so by the owner or occupant, or the agent or servant of either;

R.C. 2901.01(A)(12) "Privilege" means an immunity, license, or right conferred by law, bestowed by express or implied grant, arising out of status, position, office, or relationship, or growing out of necessity.

"Trespass is an invasion of the possessory interest of property, not an invasion of title." *State v. Herder*, 65 Ohio App.2d 70, 74, 415 N.E.2d 1000 (10th Dist.1979).

Query: Do the facts establish all necessary elements for trespass? Explain your answer.

A yorkie in a car.

Fact Pattern

Jane worked as a shopper, and liked to bring Dexter, her Yorkie, with her as she worked. On the day in question, Jane was buying groceries for a client at Walmart and it was hot outside. Jane left Dexter in the car, windows cracked, and secured Dexter by his leash to the back seat. There was a bowl of water on the floorboard and Jane left the car and the A/C running while she shopped.

John walked by Jane's car on his way into the store and noticed a dog, "scratching at the windows" and "panting real hard." John believed Dexter was in distress and called police. He reported it was very hot outside, and the car was not running. He also reported the windows were rolled up.

Officers arrived and "observed a small dog that was leashed to the backseat," panting and scratching at the windows. At least one window was cracked "approximately an inch" and the weather outside was low 80s and sunny. One officer stayed with the car while other officers went inside the store to locate the owner.

After a PA announcement yielded no response, officers viewed security footage to identify the owner. They observed the vehicle arrive and Jane enter the store, then located Jane inside the store. Jane did not "seem too concerned," continuing her phone conversation and shopping. Jane did say she believed the car was running and was surprised how long she had been in the store. Based on security footage, Dexter had been inside the vehicle for an hour and a half.

Jane returned to the vehicle, unlocked the car door, and set Dexter down on the floorboard. Dexter "started chugging a bunch of water that she had on the floorboard." Jane then left with Dexter.

Jane was charged with cruelty to animals. The officers and John testified regarding the apparent distress exhibited by Dexter, the water out-of-reach on the floorboard, the warm conditions, and the heat inside the vehicle. None of these witnesses knew anything about Dexter's usual temperament.

Jane countered that Dexter was on an extended leash, her driver's side window was cracked an inch or so, and her sunroof propped open. She also claimed she left her car running with the A/C on, but it must have turned off after 30 minutes. She also claimed that Dexter always pants when he sees people because he is

excited. She also stated that Dexter did not “chug” water and required no follow-up medical care.

Applicable Law

R.C. 959.139 (A)(4) provides:

(A) No person shall: . . .

(4) Keep animals other than cattle, poultry or fowl, swine, sheep, or goats in an enclosure without wholesome exercise and change of air, nor or [sic.] feed cows on food that produces impure or unwholesome milk; . . .

Query: Did the prosecution establish the elements for cruelty to animals? Explain.

You know ‘em when you see ‘em (minors).

Fact Pattern

Three college students – Bart, Elise, and Trevor – made a stop at the nearby Swift Mart to purchase alcohol for a party they were attending later that night. While all three were under the age of 21, Bart (the driver) had a fake ID which he took with him on this drive. When the three arrived at Swift Mart, Elise and Trevor stayed in the car while Bart went in to purchase some beers.

Because of Swift Mart’s proximity to the local college, Agents Harlow and Cruz were conducting surveillance at Swift Mart, which had consistently been a hot spot for underage purchases of alcohol.

While Bart was inside Swift Mart, Agent Harlow entered into the establishment presenting herself as a patron to better observe Bart. Agent Harlow suspected Bart was underage because of his hair style, lack of muscle and facial hair, and choice of attire. Though no discrete test or training for identifying a target’s age exists, Agent Harlow has experience and training to aid her identification of underage individuals seeking to purchase alcohol.

Once Bart gathered his alcoholic beverages, he presented his fake ID to the cashier. According to Agent Harlow, the cashier did not look at the ID for very long. Further, Agent Harlow could not see the contents of the ID from her perspective before Bart put the ID away.

Swift Mart regularly provided training and tips on how to detect fake ID’s to their cashiers, including defects or oddities on the ID itself and the customer’s body language. The cashier who checked out Bart later claimed they did not see anything wrong with the ID presented and found Bart’s demeanor normal. After Bart returned to his vehicle, Agents Harlow and Cruz approached the vehicle’s driver and passenger side windows. They intentionally stood close enough to speak with the students but did not intend to prevent them from driving away. In fact, Agents Harlow and Cruz believed the students were fully free to leave and not address the agents if they desired.

When asked, Bart showed Agent Harlow his driver’s license which indicated Bart was under 21 years of age. Neither Elise nor Trevor had their driver’s licenses on them but they both admitted to being under 21 years, as well. Additionally, Bart produced the fake ID when Agent Harlow inquired about it.

According to Bart, Agents Harlow and Cruz were too close to his vehicle for him to drive away and that they had parked their car such that he could not exit the Swift Mart parking lot. Because of these things, Bart felt as though he was not free to leave the encounter.

Bart, Elise, and Trevor were arrested thereafter for underage purchase/possession of alcohol and moved to suppress the evidence gathered from the stop conducted by Agents Harlow and Cruz.

Motion to Suppress

Through counsel, the defendants challenged the initial stop as an investigatory stop, lacking sufficient probable cause. Noted the agent witnessed Bart display an ID to the store clerk prior to purchasing the alcohol, which should have dispelled any suspicion regarding Bart's age. Also argued that the agent's assessment of Bart's physical appearance was highly subjective, without factual basis.

The state opposed the motion to suppress, arguing the agents had probable cause to briefly detain and question, arising from a suspicion of underage purchase of alcohol. As to the agents' observations of youth, the state argued authority in curfew cases was persuasive on the issue. See, e.g., *State v. Nichols*, 3d Dist. Seneca No. 13-03-75, 2004-Ohio-2355, ¶ 7:

Herein, Officer Marquis testified that he believed Nichols was underage and breaking the local curfew law. He based this suspicion on Nichols' appearance and his knowledge and experience as a police officer. During the suppression hearing, the trial court was able to observe Officer Marquis on both direct and cross examination. The trial court was also able to personally observe Nichols' actual physical appearance. The trial court is in a better position than this court to judge the accuracy of Marquis' assessment of Nichols' appearance. The fact that a person appears to be under the age of eighteen and is out after curfew certainly gives rise to enough of a reasonable suspicion that illegal activity is afoot to permit a police officer to conduct an investigative stop.

Applicable Law

R.C. 4301.69(E)(1) provides: "No underage person shall knowingly order, pay for, share the cost of, attempt to purchase, possess, or consume any beer or intoxicating liquor in any public or private place. No underage person shall knowingly be under the influence of any beer or intoxicating liquor in any public place.

An investigatory stop requires reasonable suspicion that warrants the brief detention. See *Terry v. Ohio*, 392 U.S. 1, 21-22, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

The reasonable suspicion standard is something less than the probable cause needed for arrest, permitting an “intermediate response” by police when confronted with a suspicious individual. *State v. Bobo*, 37 Ohio St.3d 177, 180, 524 N.E.2d 489 (1988), quoting *Adams v. Williams*, 407 U.S. 143, 145-146, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972) (additional citation omitted.); see also *State v. Hairston*, 156 Ohio St.3d 363, 2019-Ohio-1622, 126 N.E.3d 1132, ¶ 10, citing *United States v. Sokolow*, 490 U.S. 1, 7, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989).

Query: Should the motion to suppress be granted? Explain your answer.