

COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY, OHIO

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2010-P-0012
ALLISON L. SHOOK,	:	
Defendant-Appellant.	:	

Criminal appeal from the Portage County Municipal Court, Ravenna Division, Case No. R 2009 TRC 2064.

Judgment: Appeal dismissed.

Victor V. Viglucci, Portage County Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Plaintiff-Appellee).

Donald P. Mitchell, Jr., 3766 Fishcreek Road, #267, Stow, OH 44224, and *Kimberly Anne Valenti*, P.O. Box 1149 Hudson, OH 44236 (For Defendant-Appellant).

COLLEEN MARY O'TOOLE, J.

{¶1} On March 5, 2010, appellant, Allison L. Shook, by and through counsel filed a notice of appeal from a February 3, 2010 judgment entry of the Portage County Municipal Court, Ravenna Division.

{¶2} In the underlying action, appellant was charged with underage consumption. On February 3, 2010, the trial court issued the appealed entry which

overruled appellant's motion to suppress evidence. This appeal followed on March 5, 2010. Pursuant to the trial court docket, a jury trial is set for May 5, 2010.

{¶3} R.C. 2505.02 defines the types of orders that constitute a final appealable order:

{¶4} “(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

{¶5} “(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

{¶6} “(3) An order that vacates or sets aside a judgment or grants a new trial;

{¶7} “(4) An order that or denies a provisional remedy and to which both of the following apply:

{¶8} “(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

{¶9} “(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

{¶10} “(5) An order that determines that an action may or may not be maintained as a class action;

{¶11} “***”

{¶12} In regard to criminal cases, pursuant to R.C. 2953.02, a court of appeals only possesses jurisdiction to hear an appeal if it is from a “judgment or final order.” Furthermore, the Supreme Court of Ohio has stated that “in a criminal case there must

be a sentence which constitutes a judgment or a final order which amounts 'to a disposition of the cause' before there is a basis for appeal." *State v. Chamberlain* (1964), 177 Ohio St. 104, 106-107.

{¶13} In addition, an order denying a motion to suppress has been held not to be a final appealable order. See *State v. Ricciardi* (1999), 135 Ohio App.3d 155, 1999 Ohio App. LEXIS 4858.

{¶14} In the present case, the case is set for a jury trial in the trial court on May 5, 2010; thus, there is no sentence which appellant can appeal at this time. More importantly, the trial court's order denying appellant's motion to suppress is not a final appealable order.

{¶15} Appeal dismissed, sua sponte, for lack of a final appealable order.

MARY JANE TRAPP, P.J.,

TIMOTHY P. CANNON, J.,

concur.