

**COURT OF APPEALS OF OHIO**  
**EIGHTH APPELLATE DISTRICT**  
**COUNTY OF CUYAHOGA**

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 109097
v.	:	
	:	
THOMAS HAWKINS,	:	
	:	
Defendant-Appellant.	:	

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JOURNAL ENTRY AND OPINION

**JUDGMENT: AFFIRMED**  
**RELEASED AND JOURNALIZED: December 12, 2019**

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Criminal Appeal from the Cuyahoga County Court of Common Pleas  
Case No. CR-19-643502-A

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***Appearances:***

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Blaise D. Thomas, Assistant Prosecuting Attorney, *for appellee*.

Friedman & Gilbert, and Marcus S. Sidoti, *for appellant*.

MARY J. BOYLE, P.J.:

{¶ 1} This cause came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.App.R. 11.1. Additionally, R.C. 2937.222(D) requires that this

matter be given priority and decided expeditiously, with a prompt decision on the trial court's order.

{¶ 2} Defendant-appellant, Thomas Hawkins ("Hawkins"), appeals the trial court's decision revoking his bond and denying him pretrial bail. He raises one assignment of error for our review:

The appellant should not have been held without bail pursuant to ORC 2937.222.

{¶ 3} Finding no merit to his assignment of error, we affirm.

#### **I. Procedural History and Factual Background**

{¶ 4} On August 15, 2019, Hawkins was arrested for aggravated vehicular homicide after he allegedly drove with a blood-alcohol content of .199, went through a red light at a high rate of speed, and collided with another vehicle, killing its driver.

{¶ 5} At Hawkins's initial court appearance in Cleveland Heights Municipal Court on August 28, 2019, he pleaded not guilty. The case was bound over to the Cuyahoga County Court of Common Pleas, and on August 28, 2019, the docket reflects that his bond was set for \$100,000.

{¶ 6} The trial court's August 30, 2019 journal entry states "first appearance not held," although Hawkins and his counsel appeared, and that the trial court reduced Hawkins's bond to \$50,000, with the condition that he "follow up with mental health services." Hawkins posted bond and was released.

{¶ 7} On September 16, 2019, the Cuyahoga County Grand Jury indicted Hawkins for one count of aggravated vehicular homicide in violation of

R.C. 2903.06(A)(1)(a), a felony of the second degree; one count of aggravated vehicular homicide in violation of R.C. 2903.06(A)(2)(a), a felony of the third degree; one count of failure to stop after an accident in violation of R.C. 4549.02(A)(1), a felony of the third degree; and two counts of driving while under the influence in violation of R.C. 4511.19(A)(1)(a) and (c), misdemeanors of the first degree. Hawkins pleaded not guilty, and on September 30, 2019, the trial court ordered that the original posted bond of \$50,000 “cash/surety/prop.” be continued.

{¶ 8} On October 3, 2019, a different trial judge, who was assigned after Hawkins’s arraignment, held the first pretrial hearing and granted the state’s oral motion to suspend Hawkins’s administrative license, which was stipulated to by Hawkins’s defense counsel. The trial court also stated that Hawkins was to be placed on court-supervised release, “GPS/electronic home monitoring” and “transdermal alcohol detection monitoring” as part of his bond. The trial court stated that Hawkins was only allowed to leave his home for court appearances, probation appointments, medical appointments, and medical emergencies, and that any additional movement would require prior approval from the court. It also stated that Hawkins was to report weekly to the probation department and submit to alcohol and drug testing during each visit. Finally, the trial court stated that Hawkins did not have driving privileges and was not permitted to have, come into contact with, or be in possession of any firearm. The trial court then set a bond hearing date and instructed Hawkins’s defense counsel to submit Hawkins’s medical records before the hearing for in-camera inspection.

{¶ 9} Just days later, on October 8, 2019, the state filed a motion to deny bail and revoke Hawkins’s bond, and the trial court held a hearing on the motion on October 9, 2019. As of that date, Hawkins had been released on bond for 39 days.

{¶ 10} At the hearing, Cleveland Heights Detective Sergeant David Speece (“Sergeant Speece”) testified that on the night of August 15, 2019, at around 11 p.m., he received a report of a fatal vehicular accident in Cleveland Heights, Ohio. He said the driver of one of the vehicles involved, Eugene Rankin (“Rankin”), was killed and that the other driver, Hawkins, who was driving a Colorado GMC pickup truck, was transported to the hospital.

{¶ 11} Sergeant Speece testified that he reviewed body camera footage of Hawkins being transported to the hospital after the crash and said that the footage showed Hawkins in the ambulance stating, “Just kill me. Just let me go. Let me die.” Sergeant Speece said that Hawkins told the officer in the ambulance that he was trying to end his life and had drank some alcohol.

{¶ 12} Sergeant Speece said that the hospital performed a blood draw on Hawkins. The state admitted the toxicology laboratory report showing the results of the blood draw as an exhibit, which showed that Hawkins had a blood-alcohol content of .199.

{¶ 13} Sergeant Speece stated that, at the scene, an officer from the Ohio State Highway Patrol collected the “black box downloads” from both vehicles. The data collected from Hawkins’s vehicle showed that five seconds prior to the accident, Hawkins was traveling at 66 m.p.h. and at the time of impact, Hawkins was traveling

at 71 m.p.h. and that his throttle remained in full throttle from five seconds before the impact until the time of impact. He said that the data also showed that Hawkins did not apply the brakes before impact. Sergeant Speece testified that Hawkins's vehicle collided with the driver's side door of Rankins's vehicle and that both vehicles traveled over 100 feet as a result of the collision.

{¶ 14} Sergeant Speece stated that police found a knife and a "flight instrument manual" in Hawkins's vehicle.

{¶ 15} Sergeant Speece said that he spoke to motorists who witnessed the crash. These witnesses told him that after the collision, Hawkins exited his vehicle and walked away from the scene, but was detained by some of the motorists and held until the police arrived. He said that the witnesses also stated that Rankins had the green light and Hawkins was approaching a red light when he went through the intersection and hit Rankins's vehicle.

{¶ 16} Sergeant Speece also testified that when he was at the scene, he was "notified that [Hawkins's vehicle] was part of a ['be on the lookout' report] that was placed earlier in the week where Mr. Hawkins was missing and Solon had made a missing persons report regarding Mr. Hawkins[.]" He said upon learning this information, he began "investigating incidents that happened prior to and leading up to the traffic crash on August 15th."

{¶ 17} Sergeant Speece stated that he spoke with a police officer from Solon and learned that Hawkins "had a previous military career as a \* \* \* nuclear engineer on a submarine in the United States Navy" and subsequently worked for NASA.

Sergeant Speece learned that on August 6, 2019, Hawkins sent emails to one of his coworkers at NASA, Dr. Padetha Tin (“Dr. Tin”), which contained anti-Buddhist rhetoric. Sergeant Speece explained that Dr. Tin was a Buddhist and stated that he received a copy of the emails that Hawkins sent to Dr. Tin from the human resources administrator at NASA. The emails were admitted into evidence. Sergeant Speece summarized the email Hawkins sent to Dr. Tin on August 6th, in which Hawkins wrote Buddhism “was a poverty stricken religion and that their worship and their ways were not welcome in the United States and that they should take back the Indian nations and Indian land by even nuclear weapons, where he would eradicate all the people, then take the resources of \* \* \* India[.]” Sergeant Speece said that in one of the emails, Hawkins identified himself as a Christian.

{¶ 18} Sergeant Speece also stated that he received copies of police reports from Solon, which showed that on August 6, 2019, Hawkins was placed on administrative leave at NASA as a result of the emails. According to reports, Hawkins left work and drove to where his ex-wife used to live, then drove to a Lowe’s in Youngstown, Ohio and “picked up some hinges[.]” and then drove to a Buddhist meditation center in Springfield, Illinois, where Dr. Tin was the president. Sergeant Speece stated that Hawkins told officers that he conducted surveillance on the meditation center for hours and “had some good thoughts and bad thoughts.” According to the reports, Hawkins’s phone died while driving to Illinois, and during that time was when his wife filed a missing persons report with the Solon Police Department.

{¶ 19} Sergeant Speece stated that the reports showed that Hawkins eventually returned to his house, where police located him on August 7, 2019. Sergeant Speece testified that according to the reports, Hawkins's wife also intended to seek a divorce around the same time. The reports also stated that Hawkins's wife recognized that Hawkins was suffering from mental health issues and asked Hawkins's parents, who lived in Florida, to intervene.

{¶ 20} Sergeant Speece testified that police interviewed Hawkins upon locating him at the house, and a recording of the interview was admitted into evidence. Sergeant Speece stated that Hawkins told police during the interview that he "believed Dr. Tin could control the thoughts of others" and "had made the Dayton shooting happen using liquid crystals from his research," and that Hawkins explained to police that he sent the email to Dr. Tin "hoping to expose [Dr. Tin] for using liquid crystals to control other people."

{¶ 21} Sergeant Speece explained that during the interview, police learned that Hawkins possessed numerous firearms and that the police, Hawkins, Hawkins's wife, and Hawkins's parents arranged to have his parents keep the weapons for safekeeping until they flew home to Florida, after which time the firearms were transported to Hawkins's wife's parents' home in Hudson, Ohio.

{¶ 22} Also during the interviews, police suggested that Hawkins receive mental health treatment, but Hawkins rejected the suggestion, "believ[ing] that his high intelligence would be affected by any medication or drugs that might be

prescribed by a mental health facility and that was part of his reason not to go to mental health treatment.”

{¶ 23} A report from the Solon Police Department, dated September 5, 2019, which was after Hawkins was charged and released on bond, stated that police received a report that Hawkins was suicidal and left the area. The report stated that police located Hawkins, who “stated that he was mentally ill and his life was ruined.” Hawkins allegedly said that “he had left the house to go kill himself either by jumping off a bridge or throwing himself onto the highway” and “that his wife and kids had left the house after he was arrested a few days ago.” The report stated that Hawkins said “he needed help and went voluntarily” with police to a hospital for evaluation.

{¶ 24} When asked if he had concerns for the community’s safety at large if the trial court continued Hawkins’s bond, Sergeant Speece said that he had “extreme concerns,” stating:

[F]irst of all, [Hawkins] exhibited a suicidal thought that ended another person’s life from an initial mental break that happened on the 6th; he has stuff in his truck that says that he can probably not only drive and not \* \* \* return to court and commit other acts; he’s got a mental ideation against Buddhist people that could manifest itself in a mosque shooting, or \* \* \* a mass death where he could either use the knife that was in his truck or other weapons that he could get his hand[s] on. He knows where the weapons are now because they’re stored at the in-laws['] house in Hudson. He has flight training, which could cause \* \* \* not only on-the-ground assault, but an air assault, or an ability to not come back and answer to the \* \* \* crime for the aggravated vehicular homicide.



{¶ 25} The state admitted the police reports, the emails that Hawkins sent to Dr. Tin, a photograph of the knife found in Hawkins's vehicle, and the recording of the police's interview of Hawkins as exhibits.

{¶ 26} On cross-examination, Sergeant Speece stated that he did not know if Hawkins actually had any flight training, but was simply referencing the fact that Hawkins had flight instrument manuals in his truck. Sergeant Speece also said that he was not aware of whether there was a human-resources issue between Hawkins and Dr. Tin prior to Hawkins sending the emails. He also agreed that Hawkins never stated that he had thoughts to commit violence while surveilling Dr. Tin's meditation center. Sergeant Speece also stated that he had no information that showed that Hawkins had attempted to flee the jurisdiction or not abided by his bond conditions and stated that Hawkins did not have any prior criminal history.

{¶ 27} The court's journal entry stated that it received Hawkins's medical records for an in-camera review and placed those records under seal. At the beginning of the hearing, the trial court stated that it received the medical records but had not yet reviewed them. However, at the end of the hearing, the trial court stated that it had, in fact, reviewed the medical records in camera, marked them as an exhibit, and kept them under seal.

{¶ 28} The trial court granted the state’s request, revoked Hawkins’s bond, and denied him any pretrial bail. The court also granted the state’s request that Hawkins be evaluated for competency pursuant to R.C. 2945.371.<sup>1</sup>

{¶ 29} Hawkins appealed.

{¶ 30} On November 4, 2019, a majority of the panel remanded the matter to the trial court

for the limited purpose of issuing findings pursuant to R.C. 2937.222(B), which requires the trial court to state whether it found by clear and convincing evidence that (1) the proof is evident or the presumption great that the accused committed the offense of which he is charged, (2) the accused poses a substantial risk of serious physical harm to any person or to the community, and (3) no release conditions will reasonably assure the safety of that person and the community.

{¶ 31} On November 15, 2019, the trial court issued a journal entry complying with our limited remand and issuing findings of fact under R.C. 2937.222. We will address each of the trial court’s findings in the next section.

## **II. Law and Analysis**

{¶ 32} In his sole assignment of error, Hawkins argues that the trial court erred in granting the state’s request to revoke his bond and deny him pretrial bail.

{¶ 33} In 1997, the General Assembly proposed to amend Section 9, Article I, of the Ohio Constitution to allow courts to deny bail to defendants who allegedly committed felonies and posed a “substantial risk of serious physical harm to others

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<sup>1</sup> As of November 25, 2019, the docket reflects that a pretrial was held on November 18, 2019, during which the trial court stated that the next pretrial would be set upon receipt of Hawkins’s evaluation from the court psychiatric clinic.

or to the community.” *Smith v. Leis*, 106 Ohio St.3d 309, 2005-Ohio-5125, 835 N.E.2d 5, ¶ 38. The amendment was adopted in 1997 and took effect in 1998. *Id.*

**{¶ 34}** Conforming to that amendment, the General Assembly enacted R.C. 2937.222, which became effective July 29, 1999, and provided for “a hearing to determine whether certain accused felons should be denied bail” and set forth the evidence a trial court should consider when making that determination. *Id.* at ¶ 42.

**{¶ 35}** R.C. 2937.222(A) states that “[o]n the motion of the prosecuting attorney or on the judge’s own motion, the judge shall hold a hearing to determine whether an accused person charged with \* \* \* a felony of the first or second degree [or] a violation of section 2903.06 of the Revised Code \* \* \* shall be denied bail.” Hawkins was charged with a violation of R.C. 2903.06, aggravated vehicular homicide, which is also a felony of the second degree.

**{¶ 36}** The statute also states, “At the hearing, the accused has the right to be represented by counsel[,] \* \* \* an opportunity to testify, to present witnesses and other information, and to cross-examine witnesses who appear at the hearing.” It also states that “the rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing.”

**{¶ 37}** Under R.C. 2937.222(A), it is the state’s burden to show that (1) the proof is evident or the presumption great that the accused committed the offense with which the accused is charged, (2) the accused poses a substantial risk of serious physical harm to any person or to the community, and (3) no release conditions will reasonably assure the safety of that person and the community. R.C. 2901.01(A)(8)

defines “substantial risk” as “a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist.”

**{¶ 38}** R.C. 2937.222(B) states that a trial court may not deny a person bail unless it finds, by clear and convincing evidence, that (1) the proof is evident or the presumption great that the accused committed the offense with which the accused is charged, (2) the accused poses a substantial risk of serious physical harm to any person or to the community, and (3) no release conditions will reasonably assure the safety of that person and the community. “Clear and convincing evidence” means “that measure or degree of proof which is more than a mere ‘preponderance of the evidence,’ but not to the extent of such certainty as is required ‘beyond a reasonable doubt’ in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.” *State v. Mitchell*, 2d Dist. Montgomery No. 28280, 2019-Ohio-2465, ¶ 16, quoting *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954).

**{¶ 39}** In addition, R.C. 2937.222(C) states that when determining whether the accused poses a substantial risk of serious physical harm to any person or to the community and whether there are conditions of release that will reasonably assure the safety of that person and the community, the trial court should consider “all available information regarding”:

- (1) The nature and circumstances of the offense charged, including whether the offense is an offense of violence or involves alcohol or a drug of abuse;

- (2) The weight of the evidence against the accused;
- (3) The history and characteristics of the accused, including, but not limited to, both of the following:
  - (a) The character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, and criminal history of the accused;
  - (b) Whether, at the time of the current alleged offense or at the time of the arrest of the accused, the accused was on probation, parole, post-release control, or other release pending trial, sentencing, appeal, or completion of sentence for the commission of an offense under the laws of this state, another state, or the United States or under a municipal ordinance.
- (4) The nature and seriousness of the danger to any person or the community that would be posed by the person's release.

{¶ 40} Hawkins first argues that the trial court erred because it “impermissibly summarily granted the state’s motion” to revoke his bond without making the necessary findings to do so under R.C. 2937.222. However, the record before us shows that the trial court set forth the necessary findings. Therefore, we find Hawkins’s first argument to be meritless.

{¶ 41} Hawkins next argues that the trial court erred in revoking his bond. Before reviewing the trial court’s findings, we must determine what the standard of review is when reviewing a trial court’s decision revoking a defendant’s bond and denying bail. Our court has yet to determine that issue, and while other courts have determined the standard of review, they all take different approaches.

{¶ 42} In *State v. Brown*, 6th Dist. Erie No. E-06-025, 2006-Ohio-3377, the Sixth District stated that the standard of review was

whether at appellant's bond hearing there was sufficient evidence presented by which the court could have formed a firm belief or conviction in support of its finding, that the presumption would be great that the accused \* \* \* did commit the offenses charged and that no release conditions would exist at this time, that the court would be able to impose, that would reasonably assure that safety of that person or the community[.]

*Id.* at ¶ 25.

{¶ 43} In *State v. Urso*, 11th Dist. Trumbull No. 2010-T-0042, 2010-Ohio-2151, the Eleventh District stated that the standard of review was similar to the standard when reviewing a trial court's decision on a motion to suppress. In relying on federal court cases, it said:

[I]n reviewing factual determinations of the trial court, an appellate court reviewing a motion to deny bail is bound to accept the trial court's findings of fact where they are supported by competent, credible evidence. Accepting these facts as true, the appellate court independently reviews the trial court's legal determinations de novo.

*Id.* at ¶ 47.

{¶ 44} In *State v. Henderson*, 10th Dist. Franklin No. 16AP-870, 2017-Ohio-2678 and *State v. Foster*, 10th Dist. Franklin No. 08AP-523, 2008-Ohio-3525, the Tenth District reviewed the trial court's denial of bail for an abuse of discretion. *Henderson* at ¶ 5; *Foster* at ¶ 6.

{¶ 45} Most recently, in *Mitchell*, 2d Dist. Montgomery No. 28280, 2019-Ohio-2465, the Second District stated, "Typically, where the degree of proof required to sustain an issue must be clear and convincing, a reviewing court will examine the record to determine whether the trier of fact had sufficient evidence before it to satisfy the requisite degree of proof." *Id.* at ¶ 17. However, it noted the

different approaches taken by the Sixth, Eleventh, and Tenth Districts, but did not decide upon which standard to follow. It stated, “We need not resolve these conflicts, however, because the trial court’s decision was correct under any of these standards.” *Id.* at ¶ 24.

{¶ 46} In his appellate brief, although he states that the trial court “abused its discretion,” Hawkins argues that regardless of the standard of review, we should reverse the trial court’s revocation of his bond, specifically arguing that the trial court’s finding that no release conditions would reasonably assure the safety of Hawkins and the community was not supported by the record. Notably, the state does not note the different standards of review or argue for this court to apply a particular standard.

{¶ 47} Like the Second District, however, we find that Hawkins’s assignment of error should be overruled regardless of the standard of review we apply. We will review each of the trial court’s findings under R.C. 2937.222 separately.

#### **A. Proof that Hawkins Committed the Charged Offense**

{¶ 48} The trial court first found that

The presumption is great that the accused committed the offense described in division (A) of this section with which the accused is charged. Here, the state presented evidence that the defendant was driving at an excessive rate of speed, went through a red light and t-boned the vehicle driven by the alleged victim causing his death. The state presented evidence that the defendant attempted to flee from the scene. The state presented evidence that the result of the defendant’s blood draw was .199.

{¶ 49} The trial court's findings are clearly supported by the record. Sergeant Speece testified that data collected from Hawkins's vehicle showed that he was traveling at 71 m.p.h. when he went through a red light and collided with the Rankins's vehicle, and that Hawkins did not apply the brakes before impact. He also testified that Hawkins attempted to leave the scene, but other motorists held Hawkins there until police arrived, and that a toxicology report, which was admitted into evidence, showed that Hawkins had a blood-alcohol content of .199 on the night of the accident.

**B. Whether Hawkins Poses a Substantial Risk of Serious Physical Harm to Others or Community**

{¶ 50} Next, the trial court found that Hawkins

poses a substantial risk of serious physical harm to any person or to the community. At the hearing, the state presented evidence, testimony and argument that the defendant has threatened violence against himself and others in the community. The evidence included that prior to the instant offense, the defendant had issues with an individual at his employment with NASA who was the president of a religious temple, had issues with his marriage and had issues with his mental health. The state produced evidence that the defendant sent an email to himself and blind-copied the NASA employee with whom he had an issue. The email included his anti-Buddhist views and a threat that those who practice this shall be killed. The state also presented evidence that the defendant travelled to Springfield, Illinois to the Buddhist Meditation Center where the NASA employee was the president. The testimony included that the defendant conducted surveillance outside the center for hours. The evidence also included that the defendant believed that this NASA employee was responsible for controlling and commanding the shooter in the Dayton, Ohio mass shooting. In addition, the evidence included that prior to the instant offense, the defendant experienced mental health issues that required police intervention. Evidence was presented that in the past, the defendant has rejected treatment for his mental health issues. The evidence also included that the instant offense occurred after all of the



above described incidents. Moreover, the defendant has a previous military and flight career and access to an array of weapons.

Furthermore, the court reviewed mental health records provided by the defense for the court to conduct an in-camera review. The records were placed under seal. The court considered the records in its decision.

{¶ 51} The record supports the trial court's findings. Sergeant Speece testified that he received reports from the Solon Police Department, which were admitted into evidence, stating that Hawkins sent emails to a coworker that contained anti-Buddhism rhetoric. The reports stated that after being placed on administrative leave, Hawkins traveled to the coworker's Buddhist meditation center in Illinois and conducted surveillance for hours. Sergeant Speece also testified that Hawkins told investigators that he believed his coworker was responsible for the mass shooting in Dayton, Ohio, and that Hawkins rejected the investigators' suggestions that he seek out mental health treatment. The record also shows that Hawkins had a number of firearms that he arranged to be kept at his in-laws' house in Hudson, Ohio.

### **C. No Release Conditions will Reasonably Assure Safety of Hawkins or the Community**

{¶ 52} Finally, the trial court found that

the violence threatened against himself, others and the community, the display of erratic behavior in the community, the allegations in the instant matter and the defendant's access to weapons, all of which was produced and supported at the hearing, this court finds by clear and convincing evidence that no release conditions will reasonably assure the safety of the person and community.

{¶ 53} The trial court's findings are clearly supported by the record. Testimony presented at the hearing established that Hawkins behaved erratically on

numerous occasions. He sent anti-Buddhist rhetoric to a coworker, was placed on administrative leave, traveled out of state to that coworker's Buddhist meditation center in Illinois and conducted surveillance on it for hours, told investigators that he believed his coworker could control the thoughts of others and was responsible for a mass shooting, drank a significant amount of alcohol and then drove his vehicle through a red light at a high rate of speed, killing another motorist, and became suicidal again on September 5 while out on bond. There was also testimony that Hawkins had access to weapons that were being held at his in-laws' house.

**{¶ 54}** Based on the above, (1) the trial court's findings of fact were supported by the record, and its decision does not constitute an abuse of discretion; (2) the trial court's factual findings were supported by competent, credible evidence; and (3) there was sufficient evidence presented by which the trial court could have formed a firm belief or conviction in support of its findings under R.C. 2937.222. Therefore, Hawkins's argument fails regardless of the standard of review applied, and we overrule his assignment of error.

**{¶ 55}** Judgment affirmed.

It is ordered that appellee recover from appellant 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.

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MARY J. BOYLE, PRESIDING JUDGE

LARRY A. JONES, SR., J., CONCURS;  
KATHLEEN ANN KEOUGH, J., DISSENTS WITH SEPARATE OPINION

KATHLEEN ANN KEOUGH, J., DISSENTING:

{¶ 56} I offer no opinion on the substantive grounds and arguments raised in this appeal because I disagree with the procedure employed by the majority when it issued a mid-appeal remand for the trial court to make findings that it was statutorily required to make prior to revoking Hawkins’s bond and denying him pretrial bail. This procedure was contrary to this court’s precedent in *State v. Dukes*, 8th Dist. Cuyahoga No. 103303, 2015-Ohio-5153.

{¶ 57} When a trial court fails to make statutory findings, this court does not utilize mid-appeal remands for the trial court to issue those findings. *See, e.g., State v. Fowler*, 8th Dist. Cuyahoga No. 101101, 2014-Ohio-5687 (R.C. 2929.14(C)(4) consecutive sentencing findings); *State v. Brown*, 8th Dist. Cuyahoga No. 106771, 2018-Ohio-4707 (R.C. 2929.14(C)(4) consecutive sentence findings); *D. Nolte v. L. Nolte*, 8th Dist. Cuyahoga No. 43120, 1981 Ohio App. LEXIS 11706 (June 11, 1981) (R.C. 3109.04 modification of custody findings); *Dukes* (R.C. 2937.222 denial of bail and bond revocation findings).

**{¶ 58}** The appropriate procedure is to review the case on the merits as presented by the record on appeal and the arguments made by the parties, and then issue an opinion based on our review. In bond revocation cases, which the General Assembly has expressly stated takes priority and are to be decided expeditiously, the nature of our review is even more imperative because someone's liberty has been denied. The majority's approach essentially condoned the trial court's error, leaving only Hawkins to suffer the consequences of being unlawfully held in the county jail during the entire period of this appeal.

**{¶ 59}** Although I offer no opinion on the substantive grounds, I find disingenuous the majority's immediate and nonchalant dismissal of Hawkins's first assignment of error. At the time Hawkins filed his appeal, the trial court did not make any of the statutory findings required under R.C. 2937.222. The findings were only made after a majority of this court ordered the trial court to make them. Hawkins's assignment of error was meritorious until this court improperly intervened to offer the trial court a lifeline.

**{¶ 60}** Also, the trial court's continued failure to follow the mandates of R.C. 2937.222 cannot go unnoticed. Despite the clear, unambiguous, and expressed language in the statute that allows the trial court to maintain jurisdiction over the case, including the issue of bond, the trial court did not do anything in furtherance of Hawkins's case. The trial court ordered that Hawkins be subject to a competency evaluation, yet no formal court order was issued or evaluation conducted because the matter was "pending in the court of appeals." The record reflects that the state

even offered that the matter of bond could be revisited once the competency evaluation was completed. When a defendant's mental health is at issue, the trial court should be focused on getting the defendant evaluated and treated.

{¶ 61} For the foregoing reasons, I dissent.