

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ATHENS COUNTY

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	Case Nos. 15CA14
	:	15CA15
vs.	:	15CA16
	:	
DJ AMIREH,	:	<u>DECISION AND JUDGMENT</u>
KYLE TUSSING,	:	<u>ENTRY</u>
MEGAN MARZEC,	:	
	:	
Defendants-Appellants.	:	Released: 03/25/16

APPEARANCES:

Patrick C. McGhee, Center for Student Legal Services, Athens, Ohio, for Appellants.

Lisa A. Eliason, Athens City Law Director, and James K. Stanley, Athens City Prosecutor, Athens, Ohio, for Appellee.

McFarland, J.

{¶1} Appellants DJ Amireh, Kyle Tussing and Megan Marzec appeal from their convictions for persistent disorderly conduct, entered after a bench trial in the Athens County Municipal Court. In their consolidated appeals Appellants contend that 1) they were denied due process of law by being convicted where there was insufficient evidence to sustain their convictions; and 2) their convictions for disorderly conduct were against the manifest weight of the evidence. Because we conclude that Appellants'

convictions were supported by sufficient evidence and were not against the manifest weight of the evidence, we overrule both of Appellants' assignments of error. Accordingly, the decisions of the trial court are affirmed.

FACTS

{¶2} On the afternoon of January 22, 2015, at approximately 12:45 p.m., a group of Ohio University Students, numbering anywhere from thirty-five to seventy-five people, took to the streets after holding a rally protesting a tuition increase. Appellants DJ Amireh, Kyle Tussing and Megan Marzec were part of the group, Marzec holding the title of Undergraduate Senate President. The march began on Court Street, and proceeded down Washington, College and Union streets, before ending at College Green. Athens Police Officer Nick Magruder was dispatched to the scene and began attempting to direct the protesters off the street and onto the sidewalk by waving his hands and issuing verbal orders. As Magruder issued orders, Amireh and Tussing yelled expletives at Magruder's direction, and while in very close proximity to him screamed "fuck the police." Marzec, who was carrying a bullhorn, would sound the siren on the bullhorn when Magruder would attempt to speak, in an apparent effort to drown him out. The group also chanted "whose streets, our streets," while marching.

{¶3} Despite Magruder's efforts, the group refused to exit the street and move to the sidewalk. Magruder's trial testimony regarding the traffic situation at the time of the march will be discussed in detail below. Athens Police Chief Thomas Pyle became involved toward the end of the march, as he was in the area. He testified that he actually stopped one car in order for the group to cross the street at the intersection of College and Washington Streets. Both Magruder and Pyle testified that because the group would not move to the sidewalk, Magruder drove his cruiser with lights and sirens on and proceeded to block the intersection of College and Union to protect the protesters and keep anyone from coming through the intersection. Once Magruder did this, the crowd dispersed into the College Green area. At that point, Magruder approached Appellants to obtain their information and informed them they would be issued citations for persistent disorderly conduct.

{¶4} Complaints were filed against Appellants on January 23, 2015, charging them with fourth degree misdemeanor persistent disorderly conduct, in violation of Athens City Ordinance 13.04.01(A)(4). Appellants pled not guilty and the matter proceeded to a bench trial on March 23, 2015. The State presented the testimony of Officer Magruder, Chief Pyle, and Athens Deputy Service Safety Director Ron Lucas. Amireh, Tussing and

Marzec all testified in their own defense. The trial court ultimately found Appellants guilty as charged, and sentenced each of them to thirty days in jail, suspended on the condition that they remained law abiding citizens for one year and performed thirty hours of community service within sixty days. No fines were imposed. It is from these convictions and sentences that Appellants now bring their timely appeals, which have been consolidated. They jointly raise the following assignments of error.

ASSIGNMENTS OF ERROR

- I. THE DEFENDANTS WERE DENIED DUE PROCESS OF LAW BY BEING CONVICTED WHERE THERE WAS INSUFFICIENT EVIDENCE TO SUSTAIN THE CONVICTION.
- II. THE CONVICTION OF THE DEFENDANTS FOR DISORDERLY CONDUCT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.”

ASSIGNMENTS OF ERROR I AND II

{¶5} For ease of analysis, we address Appellants' assignments of error in conjunction with one another. In their first assignment of error, Appellants contend that they were denied due process of law by being convicted where there was insufficient evidence to sustain the conviction. In their second assignment of error, they further argue that their convictions for persistent disorderly conduct were against the manifest weight of the evidence. “When a court reviews a record for sufficiency, ‘[t]he relevant

inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.’ ” *State v. Maxwell*, 139 Ohio St.3d 12, 2014-Ohio-1019, 9 N.E.3d 930, ¶ 146; quoting *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus (1991); *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781 (1979). “The court must defer to the trier of fact on questions of credibility and the weight assigned to the evidence.” *State v. Dillard*, 4th Dist. Meigs No. 13CA9, 2014-Ohio-4974, ¶ 27; citing *State v. Kirkland*, 140 Ohio St.3d 73, 2014-Ohio-1966, 15 N.E.3d 818, ¶ 132.

{¶6} In determining whether a criminal conviction is against the manifest weight of the evidence, an appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997); *State v. Hunter*, 131 Ohio St.3d 67, 2011-Ohio-6524, 960 N.E.2d 955, ¶ 119.

{¶7} “Although a court of appeals may determine that a judgment is sustained by sufficient evidence, that court may nevertheless conclude that

the judgment is against the weight of the evidence.” *Thompkins* at 387.

{¶8} As set forth above, Appellants claim their convictions were against the manifest weight of the evidence and were not supported by sufficient evidence. Appellants were convicted of persistent disorderly conduct, a fourth degree misdemeanor under Athens City Ordinance 13.04.01(A)(4), which provides, in pertinent part, as follows:

"(A) No person shall recklessly cause inconvenience, annoyance, or alarm to another, by doing any of the following:

* * *

(4) Hindering or preventing the movement of persons on a public street, road, highway, or right-of-way, or to, from, within, or upon public or private property, so as to interfere with the rights of others, and by any act which serves no lawful and reasonable purpose of the offender.

* * *

(E) Whoever violates this section is guilty of disorderly conduct, a minor misdemeanor. If the offender persists in disorderly conduct after reasonable warning or request to desist, disorderly conduct is a misdemeanor of the fourth degree."

“A person acts recklessly when, with heedless indifference to the consequences, he perversely disregards a known risk that his conduct is likely to cause a certain result or is likely to be of a certain nature.” *State v. Gregorino*, 11th Dist. Portage No. 2003-P-0071, 2004-Ohio-4698, ¶ 17.

Further, “[a] person is reckless with respect to circumstances when, with heedless indifference to the consequences, he perversely disregards a known risk that such circumstances are likely to exist.” *Id.*; citing R.C. 2901.22(C).

{¶9} Appellants contend that the State failed to prove beyond a reasonable doubt that they hindered or interfered with the rights of the motorists in the roadway, and thus also failed to prove that they recklessly caused inconvenience, annoyance or alarm to another, aside from the police that responded to their march. Based upon the following, we disagree with Appellants.

{¶10} The evidence introduced by the State at trial indicated that Athens Police Officer Nick Magruder was dispatched to East Washington and College Streets at about 12:45 p.m. on the afternoon of January 22, 2015. The State elicited testimony from Magruder that he was informed by dispatch that a group of individuals were walking up South Court Street towards Washington Street and blocking the traffic and roadway. Magruder testified that when he arrived, he observed about 35-50 people walking in

the street. At that point he began trying to direct the group onto the sidewalk by waving his hands and verbally ordering them onto the sidewalk.

However, the group continued walking in the street. At one point, two males, later identified as Appellants Amireh and Tussing, shouted "fuck the police" directly towards Magruder. Magruder also testified that he heard the group chanting "whose streets, our streets," while they marched.

Additionally, a female, later identified as Marzec, had a bullhorn with her. Magruder testified that when he would try to verbally order the protesters onto the sidewalk, Marzec would sound the siren on the bullhorn to essentially drown him out.

{¶11} Magruder testified regarding the traffic situation at the time of the incident. On direct examination, he testified that "[t]here were vehicles, they were some ways behind them, but you could tell they were keeping slow due to the individuals in the traffic way." This testimony was objected to based upon speculation, but was overruled. On cross examination, Magruder conceded that no drivers complained to him of being hindered. On re-direct, Magruder testified, with respect to other vehicles in the roadway on Washington Street, "I remember seeing them back there but I never saw them actually moving. They were just kind of standing still at that point." He testified that he could not see whether there was any traffic

behind the group on Court Street. He then proceeded to testify that while on Washington Street, "there was a vehicle behind them[,] " but that he couldn't recall what happened to the traffic that was behind them, only that there was "traffic" behind the group. Appellants place much emphasis on the fact that on re-cross, Magruder conceded that the vehicles could have been stopped at the red light or could have been turning into the parking garage. However, we do not believe that such concession negates his prior testimony that he believed the cars had to "keep slow" and were at a "standstill" due to the protesters walking the street.

{¶12} The State's witnesses also included Athens Police Chief Thomas Pyle and Athens Deputy Service Safety Director Ron Lucas. Pyle arrived later in the march, but testified that as he and the group approached the intersection of College and Washington, someone, possibly himself, stopped traffic because it would have been unsafe to let the group go down the street. He testified that he believes he stopped one car. He further testified that at that point, Officer Magruder followed the group in his cruiser with lights and sirens, and then went around the group to block the intersection of College and Union, to protect the crowd. Ron Lucas testified that he observed the group walking on College Street, but that he did not recall if any vehicles were following them.

{¶13} We conclude that the above testimony taken as a whole, including the call from dispatch, as well the testimony of Magruder and Pyle, demonstrates that Appellants, along with the other protesters, recklessly caused inconvenience, annoyance and alarm to one or more motorists by hindering traffic on a public street or right-of-way. We further conclude that the chant of the protesters which stated "Whose streets? Our streets[]" demonstrated a heedless indifference to the consequences of their actions, including the rights of the motorists on the roadway. As such, we cannot conclude that the trier of fact, in this case, the trial court, clearly lost its way.

{¶14} In their brief, Appellants direct this Court's attention to *State v. Gregorino*, supra, in support of their argument that the State failed to prove that any motorists were affected by their conduct. However, we find *Gregorino* to be factually distinguishable from the case presently before us and thus find it to be inapplicable with respect to this particular element of the offenses at issue, primarily the element of hindering motorists.

{¶15} In *Gregorino*, an anti-war group marched through a college campus toward Main Street, which was a state route that was four to five lanes wide. *Gregorino* at ¶ 4. Prior to the group reaching Main Street, law enforcement closed a section of the street by blocking it with police cars. *Id.*

at ¶ 5. Despite warnings and announcements not to enter the street, some members of the group, including Gregorino, walked onto Main Street. *Id.* Gregorino, who was targeted as the leader of the group, was ultimately arrested and charged with disorderly conduct. *Id.* at ¶ 6. At trial, the State presented the testimony of a motorist who stated she was annoyed and inconvenienced when she had to take an alternate route to pick up a pizza because Main Street had been closed. *Id.* at ¶ 7.

{¶16} On appeal, Gregorino’s conviction for disorderly conduct was reversed, with the appellate court holding that his conviction was not supported by sufficient evidence. Although the appellate court determined that the motorist’s testimony sufficiently demonstrated annoyance and inconvenience, and that the State sufficiently proved Appellant had no lawful reason to be in the street, the court held that the State failed to demonstrate that Gregorino impeded traffic. *Id.* at ¶ 18-21. Because law enforcement closed the street before the demonstrators reached the roadway, the court held that it was the police, not Gregorino, who annoyed and inconvenienced the motorist. *Id.* at ¶ 22.

{¶17} We find the facts of *Gregorino* to be distinguishable from the present facts. Here, Pyle’s testimony indicated that he stopped at least one vehicle so the group of protesters could cross the intersection of College and

Washington Streets because he felt it would have been unsafe for them to go down the street at that intersection. At the time Pyle stopped traffic, the protesters had already been in the street for some time. Further, both Pyle and Magruder testified regarding Magruder blocking the intersection of College and Union Streets. Pyle testified Magruder blocked the intersection to protect the protesters and all involved. Magruder testified that when the protesters would not move out of the street and onto the sidewalk, he got into his cruiser, went around the group and blocked the intersection so no one could come through. Thus, the testimony at trial indicates that the protesters were already in the street and refused to exit the street, thus requiring law enforcement to close the intersection for safety purposes. As such, the protesters, rather than law enforcement, impeded traffic. Thus, we find *Gregorino* to be inapplicable with respect to this particular element of the offense.

{¶18} Next, we address Appellants' argument that their reason for protesting served a lawful and reasonable purpose, so as to shield them from application of the statute. The trial court relied on *City of Cleveland v. Egeland*, 26 Ohio App.3d 83, 497 N.E.2d 1383 (8th Dist. 1986), in support of its reasoning in finding Appellants guilty of persistent disorderly conduct. The trial court specifically referenced *Egeland* in response to defense

counsel's argument that Appellants' protest served a lawful and reasonable purpose. We conclude that the trial court's reliance on *Egeland* was proper.

{¶19} In *Egeland*, the protesters were protesting against nuclear warfare. *Egeland* at paragraph one of the syllabus. Despite the offender's "conscientious belief in the importance of the subject about which he demonstrates[,] the *Egeland* court held that such belief does not provide the offender with a lawful privilege to obstruct the roadway." *Id.* at 86. The court ultimately concluded that the conduct at issue served no lawful or reasonable purpose. *Id.*; see also *State v. Gregorino*, *supra*, at ¶ 20 (holding that the right to free speech did not provide Gregorino, who was part of an anti-war group protest, with a lawful reason to be in the street.).

{¶20} We find both *Egeland* and *Gregorino* to be persuasive authority on this particular element of the offense and as such find it applicable to the case presently before us. Thus, based on the reasoning of these cases, we find Appellants' protest of a tuition increase was not a lawful or reasonable purpose to be in the street. Accordingly, we cannot conclude that the trial court lost its way in reaching this result. Finally, there seems to be no real dispute that Appellants persisted in their conduct after reasonable warnings to desist were made by Officer Magruder.

{¶21} Based upon the foregoing testimony and evidence introduced at trial, we cannot conclude that the trial court clearly lost its way or that Appellants' convictions for persistent disorderly conduct were against the manifest weight of the evidence. In summary, we have concluded that the State demonstrated that the protesters, and specifically Appellants herein, recklessly hindered the flow of traffic on the roadway, thereby causing inconvenience, annoyance or alarm to involved motorists. First, there is testimony in the record that Magruder was dispatched to the area due to individuals walking in the street that were “blocking traffic” or “blocking the roadway.” Although there is no testimony in the record that any motorist specifically reported inconvenience, annoyance or alarm to Magruder personally, there is testimony that Magruder was dispatched to the area in response to a call from a motorist that protesters were in the street.

{¶22} Next, there is also testimony from Magruder that he saw vehicles moving slow and at one point at a standstill. Additionally, and importantly, Pyle testified that he stopped traffic, or at least one vehicle, and that Magruder was forced to block another intersection with his cruiser in order to protect the protesters. Both of these actions were taken in response to protesters already being in the street and refusing to move to the sidewalk. We conclude this testimony constitutes competent credible evidence that

Appellants recklessly hindered traffic and caused annoyance to the involved motorists. Further, we have concluded that Appellants had no lawful or reasonable purpose to hinder traffic and that the evidence is clear that Appellants persisted in their conduct after a reasonable warning to desist.

{¶23} After reviewing the record, weighing the evidence and all reasonable inferences, and considering the credibility of witnesses, we find that the trial court did not clearly lose its way and create such a manifest miscarriage of justice that we must reverse Appellants' convictions. Moreover, “ ‘[w]hen an appellate court concludes that the weight of the evidence supports a defendant's conviction, this conclusion necessarily also includes a finding that sufficient evidence supports the conviction.’ ” *State v. Crocker*, 2015-Ohio-2528, 38 N.E.3d 369, ¶ 29 (4th Dist. 2015); citing *State v. Adkins*, 4th Dist. Lawrence No. 13CA17, 2014-Ohio-3389, ¶ 27. Having already determined that Appellants' persistent disorderly conduct convictions are not against the manifest weight of the evidence, we necessarily reject Appellants' additional claim that their convictions are not supported by sufficient evidence. Thus, Appellants' first and second assignments of error are both overruled. Accordingly, the decisions of the trial court are affirmed.

JUDGMENT AFFIRMED.

Abele, J., concurring in judgment and opinion:

{¶24} The appellants in the case sub judice expressed justifiable outrage over exorbitant fees and costs at public universities. Although I am inclined to support their view on this topic, I nevertheless concur in both the judgment and opinion that affirms the trial court's judgment that appellants are guilty of the offense of persistent disorderly conduct. After my review, I believe that ample evidence supports the trial court's conclusion that appellants' impromptu march, on busy downtown streets during a Thursday noon hour, interfered with, and impeded the flow of, traffic.

{¶25} Citizens in the United States of America have the right to freely speak and to protest and, in fact, enjoy the greatest protection of the freedom of expression in the world. Our United States Constitution and the Ohio Constitution guarantee the right to exercise free speech and expression. A robust, healthy marketplace of ideas is an essential element of a free and informed populace. It is truly unfortunate that people in many other countries do not share this sacred right. However, the right of free expression does not give one an absolute right to expression at any time, at any place, or in any manner of a person's choosing. The government may impose reasonable restrictions if compelling reasons exist to do so, and if those restrictions are applied in a content-neutral manner. Generally, a

march in a public street, without prior approval and a permit, can result in an arrest for the interference or blockage of traffic.

{¶26} Here, my review of the evidence reveals that the march on busy city streets during a weekday noon hour interfered with, and impeded the flow of, traffic. Once again, a person does not have an absolute right to exercise their right to free speech and expression in any manner that they may so choose. In fact, at that time other locations were readily available for the expression of the appellants' views (e.g. sidewalk, courthouse grounds, college green) and would not have resulted in charges filed in the municipal court. Regardless of their cause's virtue, the appellants engaged in an activity that, unfortunately, improperly infringed on the rights of others and constitutes a criminal offense. Thus, I concur.

Hoover, J., dissenting:

{¶27} I respectfully dissent from the principle opinion.

{¶28} I would find that the State of Ohio failed to provide sufficient evidence to show that Amireh, Tussing, and Marzec impeded traffic.

{¶29} The standards for the sufficiency of the evidence and the manifest weight of the evidence are clearly set forth in the principle opinion.

{¶30} In *State v. Gregorino*, 11th Dist. Portage No. 2003-P-0071, 2004-Ohio-4698, the Eleventh District Court of Appeals reversed the trial court's conviction of Gregorino, a protestor of the war with Iraq. Gregorino was marching in a group through the Kent State University campus. *Id.* at ¶ 4. Gregorino had been convicted of disorderly conduct for his actions. *Id.* at ¶ 9. The appeals court found that the State failed to provide sufficient evidence to show that Gregorino impeded traffic and ordered the conviction reversed. *Id.* at ¶¶ 21, 38. In *Gregorino*, the undisputed evidence at trial established the police closed the street and that it was the police that annoyed and inconvenienced the complainant, a woman who had wanted to travel on the closed street. *Id.* at ¶ 22.

{¶31} This case is strikingly similar to *Gregorino*. In the case sub judice, testimony of Officer Nick Magruder demonstrates that he had blocked the lane of travel. Prior to blocking the lane, no one had complained

to Officer Magruder. The principle opinion distinguishes *Gregorino* by saying that in this case the protesters rather than law enforcement impeded traffic. However, Officer Magruder responded to questions as follows:

Q. Okay. So how, how long would you say that you were in your patrol vehicle behind the group of marchers?

A. It was maybe five seconds then, and at that point, by then I knew that they were not going to get out of the roadway and that's when *I* proceeded to the other side of the lane of travel to, uh, *keep that blocked, keep that blocked so no one came through there.*

(Emphasis added.) Tr. Pages 16-17.

* * *

Q. Okay. Okay. And, uh, nothing, no drivers stopped you and complained, is that correct?

A. Not to myself, no. *I was in front of them*, so that'd be kind of difficult for, to speak...

(Emphasis added.) Tr. Page 43.

* * *

Q. ...nobody stopped and complained.

A. I don't know if the other officers talked to anyone, if, if Chief Pyle or if, uh, anyone else spoke to anyone, but I did not.

Q. Okay. And, just to make sure I understand this, everyone kept moving and you received no personal complaints about anybody else walking, any of the traffic block, and you, when you saw the situation, chose to park your car wasn't actually in the lane of travel when you...

A. No, it was up against the curb. For...

Q. All right.

A. ...city vehicles only.

Q. All right. So you parked your car off and then chose to block the lane of traffic yourself with the car. Is that correct?

A. To block them, to, uh, make them exit the, the roadway.

Q. But you blocked the lane of traffic?

A. Correct.

Q. Correct?

A. With my lights and sirens on.

Tr. Pages 44-45.

{¶32} Athens Police Department Chief Thomas Pyle also testified at trial. With respect to whether any vehicles were traveling behind the group,

he recalled that there was no traffic because somebody had stopped traffic for safety purposes. He thought that he was the one that had actually blocked the traffic while Officer Magruder blocked the intersection.

Q. Okay. Do you recall if you were able to observe any vehicles, um, traveling behind the group?

A. Now, it, it seems to me like there was no traffic coming down Washington Street. But I don't recall specifically. My, I was really focused on the crowd at that point.

Q. Okay.

A. Somebody, it might've been me, as we, as I approached the intersection of College and Washington, somebody stopped traffic. Because it would've been unsafe to let them go down the street.

Q. Okay.

A. I know Officer Magruder followed the crowd, uh, with lights, uh, on. With red lights on. Basically protecting them. And I believe at some point he turned on the siren. The crowd wouldn't get on the sidewalk so he went, uh, around them and kind of blocked the intersection of College and Union.

Q. Okay. So at what point did an individual block traffic as [unintelligible] to College and Washington? Was it at the intersection?

A. At the intersection. Yeah. And, like I said, it might've been me. I think I might've stopped, stopped a car and then I, I recall some other officers coming but I don't remember where. It might've been officers from investigations. And I remember yelling at somebody, block that intersection.

Tr. Pages 61-62.

{¶33} Chief Pyle also testified that he could not recall if there were any vehicles that were behind the group and that no one saw any traffic.

Q. Okay. Do you recall if any vehicles actually, um, at that, before the intersection was blocked had already made it onto College Street behind the group?

A. It's possible, but I have no specific recollection.

Tr. Page 62.

* * *

Q. And you indicated that no one saw any traffic, to your knowledge, correct?

A. Uh, from what I saw on Washington Street, no.

Tr. Page 70.

* * *

{¶34} I would find that the officers in this case blocked the intersection for safety purposes, just as law enforcement did in *Gregorino*. I would find that the State presented insufficient evidence to show that the appellants impeded traffic. The court in *Gregorino* stated:

We commend the actions of the police in ensuring the safety of the protestors and the general public. * * * However, by closing the street to avoid injuries, the police took away the element of the offense of disorderly conduct under R.C. 2917.11(A)(4).

The sound actions of the police do not excuse the state from its burden of showing that *Gregorino* was impeding traffic.

Gregorino, 2004-Ohio-4698, at ¶ 24. Likewise, I commend the officers for having the goal of keeping the students safe; however, by blocking the lane of travel, it was the officers who impeded traffic--if there was any traffic to impede, which is questionable.

{¶35} I would sustain the first assignment of error and find the second assignment of error moot. As a result, I would reverse the trial court's judgment and remand the case to vacate the convictions.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and costs be assessed to Appellants.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Athens County Municipal Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

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

Abele, J.: Concurs in Judgment and Opinion with Opinion.

Hoover, J.: Dissents with Dissenting Opinion.

For the Court,

BY: _____
Matthew W. McFarland, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.