[Cite as *State v. Walker*, 2017-Ohio-8814.]

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

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	Case No. 16CA26
v.	:	
JELANI WALKER,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellant.	:	RELEASED: 11/09/2017

APPEARANCES:

Timothy Young, Ohio Public Defender, and Francisco E. Lüttecke, Assistant Ohio Public Defender, Columbus, Ohio, for Appellant.

Keller J. Blackburn, Athens County Prosecuting Attorney, and Merry M. Saunders, Assistant Athens County Prosecuting Attorney, Athens, Ohio for Appellee.

Hoover, J.

{¶ 1} Defendant-appellant, Jelani Walker, appeals the judgment of the Athens County Court of Common Pleas convicting him of aggravated trafficking in drugs and aggravated possession of drugs and sentencing him to a mandatory five years in prison. On appeal, Walker argues that his convictions are supported by insufficient evidence and are against the manifest weight of the evidence because there was no evidence presented that he possessed the drugs. He also argues that he received ineffective assistance of counsel.

{¶ 2} Upon review of the record, we conclude that Walker's convictions are supported by sufficient evidence and are not against the manifest weight of the evidence because the jury had before it sufficient evidence to find that Walker knew of and possessed the drugs found in the

vehicle and did not clearly lose its way in finding Walker guilty of these offenses. We further conclude that he did not receive ineffective assistance of counsel.

{¶ 3} Accordingly, we affirm the judgment of the trial court.

II. Facts and Procedural History

{¶ 4} On March 16, 2016, Walker was indicted with one count of trafficking in heroin in an amount equal to or greater than 250 grams, a first-degree felony, in violation of R.C. 2925.03(A)(1), with a major drug offender specification; one count of possession of heroin in an amount equal or greater than 250 grams, a first-degree felony, in violation of R.C. 2925.11(A), with a major drug offender specification; and one count of possession of cocaine in an amount less than 5 grams, a fifth-degree felony, in violation of R.C. 2925.11(A).

{¶ 5} A superseding indictment was later issued charging Walker with one count of aggravated trafficking in Pentylone in an amount equal to or greater than 5 times the bulk amount but less than 50 times the bulk amount, a second-degree felony, in violation of R.C. 2925.03(A)(2); one count of aggravated possession of Pentylone in an amount equal to or greater than 5 times the bulk amount but less than 50 times the bulk amount, a second-degree felony, in violation of R.C. 2925.11(A); and one count of possession of cocaine in an amount less than 5 grams, a fifth-degree felony, in violation of R.C. 2925.11(A).

{¶ 6} On September 16, 2016, the case proceeded to trial. The following evidence was presented, in relevant part:

{¶ 7} Trooper Drew Kuehne of the Ohio State Highway Patrol testified that on March 23, 2016, he was on routine patrol in Athens County when he observed a blue Toyota Rav4 commit a traffic violation. He initiated a traffic stop.

{¶ 8} As Trooper Kuehne approached the vehicle, he saw a male occupant, later identified as Walker, sit up in the backseat. When he got to the passenger side window, he asked the driver, later identified as Leisa Strong, for her license and registration. Strong could not provide Trooper Kuehne with her license; but Walker provided him with a copy of the vehicle's rental agreement. Trooper Kuehne then asked Strong to accompany him to his cruiser so he could gather her information. Strong complied.

{¶ 9} Back at his cruiser, Trooper Kuehne learned that Strong's license was expired. He also noticed inaccuracies on the rental agreement Walker provided him. For example, the agreement listed a vehicle other than a blue Toyota Rav4. Trooper Kuehne returned to the vehicle and asked Walker whether he had an accurate agreement. Walker then provided Trooper Kuehne with the correct rental agreement showing that he had rented the vehicle the previous day in Michigan. During this encounter, however, Trooper Kuehne noticed that Walker appeared very nervous. For instance, his carotid artery on the right side of his neck was pulsating; he was moving around in his seat and rubbing his hands on his legs; and he was running his hands through his hair. Trooper Kuehne asked Walker if he could search the vehicle; but Walker refused. Trooper Kuehne returned to his cruiser where he entered Walker's and Strong's information into his system and started issuing Strong a citation.

{¶ 10} Meanwhile, Trooper Brian Spackey of Ohio Department of Public Safety, who had arrived on scene shortly after Trooper Kuehne, ran his canine around the vehicle. The canine indicated the presence of narcotics. Trooper Kuehne approached the vehicle and told Walker to exit the car. Instead of getting out of the vehicle, however, Walker rolled up his window and locked his door. Trooper Kuehne quickly opened the passenger door, unlocked the doors, and opened Walker's door. Walker appeared very nervous and was moving back and forth. Trooper

Kuehne told Walker to step out of the car and show his hands. Walker did not, so Trooper Kuehne pulled him out of the car and patted him down. A few minutes later, Trooper Kuehne escorted Walker toward Trooper Spackey's patrol car; but before they made it to the cruiser, Walker sprinted away.

{¶ 11} Trooper Kuehne ran after Walker, yelling at him to stop. Walker kept running and eventually jumped into a small lake. Rather than going in after him, Trooper Kuehne waited for backup. Soon after, law enforcement officers from various agencies arrived on scene. For roughly the next hour, they tried to get Walker to come out of the water voluntarily. Walker refused and continued to wade in the water, just out of law enforcement's reach. After some time, however, law enforcement officers were able to make a "human chain" and remove Walker from the lake.

{¶ 12} A subsequent search of the vehicle revealed a residual amount of cocaine on the backseat and several trash bags and a toolbox in the trunk. One trash bag contained women's clothing and another contained men's clothing. A third trash bag contained what appeared to Trooper Kuehne to be men's toiletries (e.g., black electronic hair trimmers, a dark blue bottle of deodorant, Irish Spring soap); a cell phone charger that fit Walker's phone; and condoms. The trash bag also contained a clear plastic bag containing a ziplock bag full of a brown, rock-like substance, later identified as roughly 280 grams of Pentylone, a Schedule 1 controlled substance, and other items commonly associated with drug trafficking including, numerous rubber bands, a small razor blade, and a digital scale. There were also several hundred small plastic baggies inside the toolbox.

{¶ 13} At the close of the State's case, Walker moved for acquittal pursuant to Crim.R. 29, arguing that the State failed to present evidence that he possessed the drugs. The trial court denied Walker's motion; and the defense proceeded with its case.

{¶ 14} Walker was the sole witness to testify on behalf of the defense and denied knowing anything about the contents of the third trash bag. He claimed that his belongings were exclusively in the bag containing the men's clothing. Finally, he maintained that the only reason he fled from law enforcement was because he feared police brutality.

{¶ 15} At the close of the defense's case, Walker renewed his Crim.R. 29 motions. The trial court denied Walker's motions; and the matter was submitted to the jury for deliberations.

{¶ 16} The jury ultimately found Walker guilty of trafficking and possessing Pentylone but not guilty of possessing cocaine. At Walker's sentencing hearing, the trial court merged his convictions for sentencing purposes; and the State elected to proceed to sentencing on the trafficking charge. The trial court sentenced Walker to a mandatory five years in prison.

{¶ 17} Walker timely appeals.

II. Assignments of Error

{¶ 18} Walker presents the following assignments of error for our review:

Assignment of Error No. I:

Jalani Walker was denied his right to due process and a fair trial when the jury convicted him of possessing and trafficking drugs against the manifest weight of the evidence. Fifth and Fourteenth Amendments, United States Constitution. (Trial Tr. Vol. 1 at 165-166, 180-182, 193, 215-218; Exh.12; Sept. 15, 2016 Verdict Forms)

Assignment of Error No. II:

The trial court violated Mr. Walker's rights to due process and a fair trial when, in the absence of sufficient evidence, it failed to grant his Crim.R.29 motions as to possession and trafficking of drugs. *State v. Hankerson*, 70 Ohio St.2d 87, 434 N.E.2d 1362 (1982); Fourteenth Amendments to the United States Constitution;

Article I, Section 16, of the Ohio Constitution; Crim.R. 29; Crim.R. 52(B). (Trial Tr. Vol. 2 at 72-73, 148)

Assignment of Error No. III:

Trial counsel provided ineffective assistance of counsel when it failed to properly request waiver of court costs. (Sentencing Tr. at 13-14; October 14, 2016 Judgment Entry)

III. Law and Analysis

A. The Sufficiency and Manifest Weight of the Evidence

{¶ 19} In his first assignment of error, Walker argues that his convictions are against the manifest weight of the evidence because the drugs could have just as easily belonged to Strong. In his second assignment of error, Walker argues that the trial court erred by overruling his motions for acquittal because the State failed to present sufficient evidence that the drugs belonged to him.

{¶ 20} 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. *Thompkins*, 78 Ohio St.3d at 387, 678 N.E.2d 541; *State v. Hunter*, 131 Ohio St.3d 67, 2011–Ohio–6524, 960 N.E.2d 955, ¶ 119. "Although a court of appeals may determine that a judgment of a trial court is sustained by sufficient evidence, that court may nevertheless conclude that the judgment is against the weight of the evidence." *Thompkins* at 387. But the weight and credibility of evidence are to be determined by the trier of fact. *State v. West*, 4th Dist. Scioto No. 12CA3507, 2014-Ohio-1941, ¶ 23. "A jury, sitting as the trier of fact, is free to believe all, part or none of the testimony of any witness who appears before it." *Id*. We defer to the trier of fact on these evidentiary weight and credibility issues

because it is in the best position to gauge the witnesses' demeanor, gestures, and voice inflections, and to use these observations to weigh their credibility. *Id*.

{¶ 21} Under Crim.R. 29(A), a defendant is entitled to acquittal on a charge against him "if the evidence is insufficient to sustain a conviction * * *." "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 (1991), paragraph two of the syllabus; *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). The court must defer to the trier of fact on questions of credibility and the weight assigned to the evidence. *State v. Kirkland*, 140 Ohio St.3d 73, 2014–Ohio–1966, 15 N.E.3d 818, ¶ 132.

{¶ 22} For the possession charges, the State had to present evidence that Walker knowingly obtained, possessed, or used a controlled substance or controlled substance analog, i.e., the bag full of Pentylone. R.C. 2925.11(A). For the trafficking charge, the State had to present evidence that Walker knowingly prepared for shipment, shipped, transported, delivered, prepared for distribution, or distributed Pentylone, and knew or had reasonable cause to believe that it was intended for sale or resale by himself or another person. R.C. 2925.03(A)(2).

{¶ 23} "A person acts knowingly, regardless of purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist." R.C. 2901.22(B). "[P]ossession" is defined as "having control over a thing or substance, but may not be inferred solely from mere access to the thing or substance through

ownership or occupation of the premises upon which the thing or substance is found." R.C. 2925.01(K). "Possession may be actual or constructive." *State v. Moon,* 4th Dist. Adams No. 08CA875, 2009–Ohio–4830, ¶ 19, citing *State v. Butler,* 42 Ohio St.3d 174,175, 538 N.E.2d 98 (1989) ("[t]o constitute possession, it is sufficient that the defendant has constructive possession").

{¶ 24} " ' "Actual possession exists when the circumstances indicate that an individual has or had an item within his immediate physical possession." ' " *State v. Criswell, 4th Dist. Scioto No. 13CA3588, 2014-Ohio-3941,* ¶ 10, quoting *State v. Kingsland,* 177 Ohio App.3d 655, 2008–Ohio–4148, 895 N.E.2d 633, ¶ 13 (4th Dist.), quoting *State v. Fry,* 4th Dist. Jackson No. 03CA26, 2004–Ohio–5747, ¶ 39. " 'Constructive possession exists when an individual knowingly exercises dominion and control over an object, even though that object may not be within his immediate physical possession.' " *Id.,* quoting *State v. Hankerson,* 70 Ohio St.2d 87, 434 N.E.2d 1362 (1982), syllabus; *State v. Brown,* 4th Dist. Athens No. 09CA3, 2009–Ohio–5390, ¶ 19. "For constructive possession to exist, the [S]tate must show that the defendant was conscious of the object's presence." *Id*., citing *Hankerson* at 91; *Kingsland* at ¶ 13. "Both dominion and control, and whether a person was conscious of the object's presence may be established through circumstantial evidence." *Id., citing Brown* at ¶ 19. "Moreover, two or more persons may have joint constructive possession of the same object." *Brown at ¶ 19.*

{¶ 25} " 'Although a defendant's mere proximity is in itself insufficient to establish constructive possession, proximity to the object may constitute some evidence of constructive possession. * * * Thus, presence in the vicinity of contraband, coupled with another factor or factors probative of dominion or control over the contraband, may establish constructive possession.' " *Criswell* at ¶ 11, quoting *Kingsland* at ¶ 13.

{¶ 26} The evidence presented at trial supported the jury's conclusion that Walker had knowledge of the drugs and exercised dominion and control over them. For instance, the drugs were found in a vehicle that Walker rented; and the drugs were found in a trash bag containing a cell phone charger that fit Walker's phone and what could be perceived as men's toiletries. Walker also appeared very nervous during the traffic stop and ultimately fled the scene. *State v. Collins*, 8th Dist. Cuyahoga No. 87248, 2006-Ohio-4375, ¶ 4, citing *State v. Brown,* Cuyahoga App. No. 83976, 2004-Ohio-5863, at ¶ 25 and *State v. Coleman*, 1st Dist. Hamilton No. C-980617, 1999 WL 632926 (Aug. 20, 1999) (defendant's act of fleeing apprehension constituted circumstantial evidence that he knew the drugs were in the vehicle.).

{¶ 27} Moreover, "[t]he presence of such a vast amount of drug evidence in the car supports an inference that the appellant knew about the presence of drugs and that he * * * exercised control over each of the items found." *State v. Riggs,* 4th Dist. Washington No. 98CA39, 1999 WL 727952, *5 (Sept. 13, 1999), citing *State v. Soto,* 8th Dist. Cuyahoga No. 57301, 1990 WL 145651 (Oct. 4, 1990). *Accord State v. Robinson*, 4th Dist. Lawrence No. 14CA24, 2016-Ohio-905, ¶ 37 (297 grams of heroin found in wheel well of car constituted "a vast amount of drug evidence"). "[A] factfinder can [also] 'conclude that a defendant who exercises dominion and control over an automobile also exercises dominion and control over illegal drugs found in the automobile.' " *State v. Yakimicki,* 10th Dist. Franklin No. 12AP–894, 2013–Ohio–2663, ¶ 23, quoting *State v. Rampey,* 5th Dist. Stark No. 2004CA00102, 2006–Ohio–1383, ¶ 37.

{¶ 28} Although Walker testified that he had no idea drugs were in the vehicle and fled the scene purely out of fear, the jury was free to believe all, part, or none of his testimony. *State v. West*, 4th Dist. Scioto No. 12CA3507, 2014–Ohio–1941, ¶ 23; *see also State v. Gavin*, 4th

Dist. Scioto No. 13CA3592, 2015-Ohio-2996, ¶ 29. Moreover, when conflicting evidence is presented at trial, a conviction is not against the manifest weight of the evidence simply because the jury believed the testimony presented by the State. *State v. Tyson,* 4th Dist. Ross No. 12CA3343, 2013–Ohio–3540, ¶ 21.

{¶ 29} In sum, the jury had before it sufficient evidence to conclude that Walker knew of and possessed the drugs found in the vehicle. Moreover, the jury apparently found the State's version of events more credible than Walker's; and they were free to do so. This is not an exceptional case where the evidence weighs heavily in favor of the defendant and where it is clear that the jury lost its way or created a manifest miscarriage of justice.

{¶ 30} Accordingly, we overrule Walker's first and second assignments of error.

B. Ineffective Assistance of Counsel

{¶ 31} In his third assignment of error, Walker argues that trial counsel was ineffective by failing to file an affidavit of indigency and request a waiver of costs before sentencing.

{¶ 32} Criminal defendants have a right to counsel, including a right to the effective assistance of counsel. *McMann v. Richardson,* 397 U.S. 759, 771, 90 S.Ct. 1441, 25 L.Ed.2d 763 (1970), fn. 14. To establish constitutionally ineffective assistance of counsel, a criminal defendant must show (1) that his counsel's performance was deficient and (2) that the deficient performance prejudiced the defense and deprived him of a fair trial. *Strickland v. Washington,* 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). *Accord State v. Issa,* 93 Ohio St.3d 49, 67, 752 N.E.2d 904 (2001); *State v. Goff,* 82 Ohio St.3d 123, 139, 694 N.E.2d 916 (1998). "In order to show deficient performance, the defendant must prove that counsel's performance fell below an objective level of reasonable representation. To show prejudice, the defendant must

show a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different." *State v. Conway,* 109 Ohio St.3d 412, 2006-Ohio-2815, 848 N.E.2d 810, ¶ 95. "Failure to establish either element is fatal to the claim." *State v. Jones,* 4th Dist. Scioto No. 06CA3116, 2008-Ohio-968, ¶ 14.

{¶ 33} When considering whether trial counsel's representation amounts to deficient performance, "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance * * * ." *Strickland* at 689. Thus, "the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." (Quotation omitted.) *Id.* "A properly licensed attorney is presumed to execute his duties in an ethical and competent manner." *State v. Taylor,* 4th Dist. Washington No. 07CA11, 2008–Ohio–482, ¶ 10, citing *State v. Smith,* 17 Ohio St.3d 98, 100, 477 N.E.2d 1128 (1985). Therefore, a defendant bears the burden to show ineffectiveness by demonstrating that counsel's errors were so serious that he or she failed to function as the counsel guaranteed by the Sixth Amendment. *State v. Gondor,* 112 Ohio St.3d 377, 2006-Ohio–6679, 860 N.E.2d 77, ¶ 61.

{¶ 34} "To establish prejudice, a defendant must demonstrate that a reasonable probability exists that but for counsel's errors, the result of the trial would have been different." *State v. Walters*, 4th Dist. Washington Nos. 13CA33 and 13CA36, 2014-Ohio-4966, ¶ 24, citing *State v. White,* 82 Ohio St.3d 15, 23, 693 N.E.2d 772 (1998). "Furthermore, courts may not simply assume the existence of prejudice, but must require that prejudice be affirmatively demonstrated." *Id*. "There are countless ways to provide effective assistance in any given case; therefore, judicial scrutiny of counsel's performance must be highly deferential." *Id.*

{¶ 35} "[T]here is no reason for a court deciding an ineffective assistance claim to * * * address both components of the inquiry if the defendant makes an insufficient showing on one." *Strickland,* 466 U.S. at 697, 104 S.Ct. 2052, 80 L.Ed.2d 674. "In particular, a court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies." *Id.*

{¶ 36} R.C. 2947.23(A)(1) governs the imposition of costs in criminal cases and provides in relevant part: "In all criminal cases * * * the judge * * * shall include in the sentence the costs of prosecution * * * and render a judgment against the defendant for such costs." A trial court must include in the sentence the costs of prosecution and render a judgment against the defendant for costs, even if the defendant is indigent. *State v. White*, 103 Ohio St.3d 580, 2004–Ohio–5989, 817 N.E.2d 393, ¶ 8.

{¶ 37} "R.C. 2947.23 formerly required a defendant to request a waiver of costs at the time of sentencing." *State v. Moore*, 4th Dist. Scioto No. 15CA3717, 2016-Ohio-8274, ¶ 40, citing *State v. Threatt*, 108 Ohio St.3d 277, 2006–Ohio–905, 843 N.E.2d 164, paragraph two of the syllabus; *State v. Brown*, 8th Dist. Cuyahoga No. 103427, 2016–Ohio–1546, ¶ 14; *State v. Farnese*, 4th Dist. Washington No. 15CA11, 2015–Ohio–3533, ¶ 15. However, the statute has been amended so that a defendant no longer must request a waiver of costs at the time of sentencing. "Now, the trial court 'retains jurisdiction to waive, suspend, or modify the payment of the costs of prosecution at the time of sentencing or at any time thereafter.' " *Moore* at ¶ 14, citing R.C. 2947.23(C); *accord* Farnese at ¶ 12, citing *State v. Hawkins*, 4th Dist. Gallia No. 13CA3, 2014–Ohio–1224, ¶ 18; *State v. Walker*, 8th Dist. Cuyahoga No. 101213, 2014–Ohio–4841, ¶ 9. "Thus, 'a defendant is no longer required to move for a waiver of court costs at the sentencing hearing or waive it.' " *Id.*, citing *Farnese* at ¶ 15. "As a result, ineffective assistance

of trial counsel claims based upon a failure to request a waiver of costs at the time of sentencing have become difficult—if not impossible—to establish." *Id.*, citing *Farnese* at ¶ 15; *accord State v. Weddington,* 4th Dist. Scioto No. 15CA3695, 2015–Ohio–5249, ¶ 23.

{¶ 38} Here, Walker has not lost the ability to seek a waiver of costs under R.C. 2947.23(C); and therefore, he cannot demonstrate prejudice. *Moore* at ¶ 42 ("[E]ven if the court could state that trial counsel performed deficiently by failing to request a waiver at sentencing, appellant cannot demonstrate prejudice. Appellant has not lost the ability to seek a waiver of costs [under R.C. 2947.23(C)."); *State v. Savage*, 4th Dist. Meigs No. 15CA2, 2015–Ohio–4205, ¶ 32 (defendant not precluded from now seeking waiver of the payment of costs based on claimed indigency since R.C. 2947.23(C) was amended); *State v. Williams*, 3d Dist. Auglaize No. 2–13–31, 2014–Ohio–4425, ¶ 17 (determining that any error trial counsel made by failing to object to costs at sentencing not prejudicial when appellant retained the ability to seek waiver under court's continuing jurisdiction granted in R.C. 2947.23(C)). As a result, he is unable to demonstrate a claim of ineffective assistance of counsel.

{¶ 39} Accordingly, we overrule Walker's third assignment of error.

IV. Conclusion

{¶ 40} Having overruled each of Walker's assignments of error, we affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED. Appellant shall pay the costs.

The Court finds that reasonable grounds existed for this appeal.

It is ordered that a special mandate issue out of this Court directing the Athens County Court of Common Pleas 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.
McFarland, J.: Concurs in Judgment and Opinion as to Assignment of Error III. Concurs in Judgment Only as to Assignments of Error I and II.

For the Court

BY: ______________________________
Marie Hoover, 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.