[Cite as *State v. Taylor*, 2010-Ohio-962.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF LORAIN	)	

STATE OF OHIO	C.A. No. 09CA009570
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF LORAIN, OHIO CASE No. 06CR070302
JASON L. TAYLOR	
Appellant	

DECISION AND JOURNAL ENTRY

Dated: March 15, 2010

CARR, Judge.

{¶1} Appellant, Jason L. Taylor, appeals the judgment of the Lorain County Court of Common Pleas. This Court affirms.

I.

{¶2} On April 26, 2006, Jason L. Taylor, was indicted on one count of aggravated burglary in violation R.C. 2911.11(A)(1), a felony of the first degree; aggravated burglary in violation of R.C. 2911.11(A)(2), a felony of the first degree; aggravated robbery, in violation of R.C. 2911.01(A)(1), a felony of the first degree; and one count of robbery in violation of R.C. 2911.02(A)(2), a felony of the second degree. All of the aforementioned counts contained repeat violent offender specifications.

{¶3} The trial court appointed attorney James Sayre to represent Taylor. On June 1, 2006, Taylor filed a pro se motion to dismiss the indictment. On June 2, 2006, Taylor filed a pro se request for an evidentiary hearing. On June 8, prior to trial, the trial court held a hearing and

denied Taylor's pro se motions. In addition, the trial court granted the State's motion to dismiss the repeat violent offender specifications in the indictment. The case then proceeded to trial and on June 9, 2009, Taylor was found guilty of all four counts in the indictment.

{¶4} Taylor raises six assignment of error on appeal. This Court consolidates certain assignments of error to facilitate review.

II.

ASSIGNMENT OF ERROR I

"APPELLANT'S CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

ASSIGNMENT OF ERROR II

"THE EVIDENCE PRESENTED AT TRIAL WAS LEGALLY INSUFFICIENT TO CONVICT APPELLANT."

{¶5} Taylor argues that his convictions for aggravated burglary, aggravated robbery and robbery were not supported by sufficient evidence and were against the manifest weight of the evidence. This Court disagrees with both assertions.

{¶6} An appellate court's review of the sufficiency of the State's evidence and the manifest weight of the evidence adduced at trial are separate and legally distinct determinations. *State v. Gulley* (Mar. 15, 2000), 9th Dist. No. 19600. "While the test for sufficiency requires a determination of whether the state has met its burden of production at trial, a manifest weight challenge questions whether the state has met its burden of persuasion." Id., citing *State v. Thompkins* (1997), 78 Ohio St.3d 380, 390 (Cook J., concurring). When reviewing the sufficiency of the evidence, this Court must review the evidence in a light most favorable to the prosecution to determine whether the evidence before the trial court was sufficient to sustain a conviction. *State v. Jenks* (1991), 61 Ohio St.3d 259, 279.

> "An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The 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." (Citation omitted.) Id. at paragraph two of the syllabus.

{¶7} However, when determining whether a conviction is against the manifest weight of the evidence, the Court is not permitted to view the evidence in the light most favorable to the State in analyzing whether the State has met its burden of persuasion. *State v. Love*, 9th Dist. No 21654, 2004-Ohio-1422, at ¶11.

> "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 and a new trial ordered." *State v. Otten* (1986) 33 Ohio App.3d 339, 340.

This discretionary power should be exercised only in exceptional cases where the evidence presented weighs heavily in favor of the defendant and against conviction. Id.

{¶8} This Court has stated that "sufficiency is required to take a case to the jury[.] * * * Thus, a determination that [a] conviction is supported by the weight of the evidence will also be dispositive of the issue of sufficiency." (Emphasis omitted.) *State v. Roberts* (Sept. 17, 1997), 9th Dist. No. 96CA006462.

{¶9} In this case, Taylor was convicted of two counts of aggravated burglary, one count of aggravated robbery, and one count of robbery. The elements of aggravated burglary are defined in R.C. 2911.11, which states, in part:

> "(A) No person, by force, stealth, or deception, shall trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure, when another person other than an accomplice of the offender is

> present, with purpose to commit in the structure or in the separately secured or separately occupied portion of the structure any criminal offense, if any of the following apply:
>
> "(1) The offender inflicts, or attempts or threatens to inflict physical harm on another;
>
> "(2) The offender has a deadly weapon or dangerous ordnance on or about the offender's person or under the offender's control."

{¶10} The elements of aggravated robbery are outlined in R.C. 2911.01(A)(1), which states, "[n]o person, in attempting or committing a theft offense, as defined in section 2913.01 of the Revised Code, or in fleeing immediately after the attempt or offense, shall *** [h]ave a deadly weapon on or about the offender's person or under the offender's control and either display the weapon, brandish it, indicate that the offender possesses it, or use it[.]"

{¶11} Finally, the elements of robbery are outlined in 2911.02(A)(2), which states, "[n]o person, in attempting or committing a theft offense or in fleeing immediately after the attempt or offense, shall *** [i]nflict, attempt to inflict, or threaten to inflict physical harm on another[.]"

{¶12} Pursuant to R.C. 2913.01(K), aggravated burglary, aggravated robbery and robbery are categorized as "theft offenses."

{¶13} Pursuant to R.C. 2909.01(C), an "occupied structure" is "any house, building, outbuilding, watercraft, aircraft, railroad car, truck, trailer, tent, or other structure, vehicle, or shelter, or any portion thereof, to which any of the following applies:

> "(1) It is maintained as permanent or temporary dwelling, even though it is temporarily unoccupied and whether or not any person is actually present.
>
> "(2) At the time, it is occupied as the permanent or temporary habitation of any person, whether or not any person is actually present.
>
> "(3) At the time, it is specially adapted for the overnight accommodation of any person, whether or not any person is actually present.
>
> "(4) At the time, any person is present or likely to be present in it."

{¶14} A "deadly weapon" is "any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon." R.C. 2923.11(A).

{¶15} "Physical harm" includes "any injury, illness, or other physiological impairment, regardless of its gravity or duration." R.C. 2901.01(A)(3).

{¶16} The testimony of Vanessa Verbickey was critical to establishing the elements of aggravated burglary, aggravated robbery, and robbery. Ms. Verbickey testified as follows. On the night of January 23, 2006, she was sleeping on the couch in the living room of her apartment located on 2234 West Erie Avenue in Lorain, Ohio. Her son, Dominic Maczulis, was with Ms. Verbickey in the living room while her boyfriend, Daniel Maczulis, was sleeping in the bedroom. Shortly after midnight on January 23, Ms. Verbickey heard a knock on the front door. Ms. Verbickey thought it was her neighbor at the door but she admitted that she was not wearing her glasses and she was a little drowsy because she had not been feeling well.

{¶17} When Ms. Verbickey opened the door, two men pushed their way into the apartment. One man was holding a gun and he put the gun to her head. Ms. Verbickey would later identify the man with the gun as Taylor. Taylor said, "give me the f***ing money, bitch, or I'm going to shoot you." Ms. Verbickey began to cry and both men proceeded to make their way into the back bedroom where Daniel was sleeping. Ms. Verbickey opened a drawer and removed an envelope which contained $310. Ms. Verbickey then gave the envelope to Taylor and his partner. Ms. Verbickey testified that she had the cash on hand because she intended to use it to make her car payment. At this point, Ms. Verbickey's hands were trembling and she accidentally bumped Daniel's foot. When Daniel began to move in the bed, Taylor's partner proceeded to punch Daniel in the head. Ms. Verbickey testified that Daniel sustained bruises

around his mouth and was "bleeding pretty bad." Taylor's partner then ran out of the bedroom and Taylor attempted to follow. On his way out, Taylor tripped over a portable heater and fell to the ground. He then got back to his feet and followed his partner out of the house.

{¶18} On cross-examination, Ms. Verbickey testified that the individuals involved in the incident were an Hispanic and black male. Verbickey also stated that the Hispanic male was bald. Ms. Verbickey identified Taylor in court as the "Hispanic" male but, in actuality, Taylor is Caucasian. Ms. Verbickey testified that from her perspective, the man she identified in court as the perpetrator, Taylor, appeared to be Hispanic.

{¶19} Detective Brian Denman of the Lorain Police Department also testified on behalf of the State at trial. Detective Denman was called to Ms. Verbickey's apartment on the night of the incident. He recovered fingerprints from Ms. Verbickey's front door. Jodi Ganda, who is employed by the County of Lorain as a fingerprint technician, testified that she examined the fingerprints on Ms. Verbickey's front door. Ganda testified that these fingerprints were consistent with Taylor's known fingerprints.

{¶20} Taylor contends the only individual to have witnessed the crime, Ms. Verbickey, did not adequately identify Taylor as the perpetrator. In support of this position, Taylor emphasizes that Ms. Verbickey was feeling sick and was not wearing her glasses at the time of the incident. It follows, Taylor argues, that her ability to perceive the identity of the perpetrator may have been impaired. Ms. Verbickey testified that she cried and screamed when the two perpetrators forced their way into the apartment. Taylor notes that the State never presented evidence that anyone, including her boyfriend, Daniel, heard this scream. Taylor also notes Ms. Verbickey testified that on the night of the incident, she identified the perpetrators as a bald, Hispanic male and a black male. Officer Gedling, who spoke with Ms. Verbickey on the night of

the incident, testified that Ms. Verbickey told him that one of the perpetrators was a white or Hispanic male with a hooded sweatshirt and the other was a bald black male. Approximately a month after the incident, Ms. Verbickey identified Taylor in a photo lineup despite the fact that Taylor was not bald or Hispanic. Taylor suggests that Ms. Verbickey's identification of the perpetrator was not credible and believable in light of these facts.

{¶21} Taylor has not pointed to evidence which demonstrates that the jury clearly lost its way in finding him guilty of the aforementioned crimes. Ms. Verbickey not only identified Taylor in a photo lineup a month after the incident but she identified Taylor as the perpetrator at trial. Officer Gedling, who spoke with Ms. Verbickey on the night of the incident, testified that Ms. Verbickey stated the perpetrator was wearing a "sweatshirt with the hood pulled up" and that she "wasn't sure if he was white or Hispanic." At trial, Ms. Verbickey was asked on cross-examination if Taylor, who was seated in the courtroom, appeared to be Hispanic and she stated, "To me he does." When asked if Taylor appeared to be bald, Verbickey replied, "At the time he was." While Taylor is not, in fact, Hispanic, Ms. Verbickey's testimony tends to show that she perceived him to be Hispanic and she maintained that position from the night of the incident through her testimony at trial. Furthermore, the testimony of Officer Gedling tends to show that Ms. Verbickey's perception of the perpetrator's hairline may have been hindered by the fact that the perpetrator was wearing a sweatshirt with the hood pulled up. Therefore, her identification of Taylor in the photo lineup and her prior descriptions of the perpetrator were not inconsistent with her positive identification of Taylor as the perpetrator as trial.

{¶22} In his merit brief, Taylor also argues the fingerprints which were lifted from the inside of the screen door to Ms. Verbickey's apartment did not link him to Ms. Verbickey's apartment on the night of the incident. While Taylor does not dispute that his fingerprints were

on the screen door, he contends that the fingerprints could have been left on the door at some point prior to the night in question. In support of this position, Taylor notes that Ms. Ganda testified that there was not a reliable way to determine when the fingerprints were placed on the door. Taylor also argues that Ms. Verbickey had only been living at that location for twenty-three days at the time of the incident and that Taylor could have visited the residence when it was occupied by a different tenant. Sergeant Mark Carpentiere testified on behalf of the State at trial. Sergeant Carpentiere testified that during his interview with Taylor, Taylor informed him that he had never been to Ms. Verbickey's home. Taylor argues he was not necessarily associating the word "home" with the specific address but, rather, thought "home" to mean a dwelling place occupied by Ms. Verbickey.

{¶23} This Court will not overturn the trial court's verdict on a manifest weight of the evidence challenge only because the triers of fact chose to believe certain witness' testimony over the testimony of others. *State v. Crowe*, 9th Dist. No. 04CA0098-M, 2005-Ohio-4082, at ¶22. While Taylor argues that the State did not demonstrate that he was at the scene of the crime on the night of the incident, Taylor has not identified any evidence in the record which tends to show that his fingerprints could have been placed on Ms. Verbickey's screen door under a different set of circumstances. Given the fact that Taylor had not challenged the fact that his fingerprints were, in fact, on the screen door, it cannot be said that the jury clearly lost its way in determining that the fingerprints could serve as evidence of guilt.

{¶24} Accordingly, Taylor's convictions for aggravated burglary, aggravated robbery, and robbery are not against the manifest weight of the evidence. Having found that Taylor's convictions are not against the manifest weight of the evidence, this Court further necessarily

finds that there was sufficient evidence to support the jury's verdict. See *Roberts*, supra. Taylor's first and second assignments of error are overruled.

ASSIGNMENT OF ERROR III

"THE TRIAL COURT ERRED WHEN IT ADMITTED IMPERMISSIBLE HEARSAY TESTIMONY OF A STATE WITNESS."

{¶25} In his third assignment of error, Taylor argues that the trial court erred in admitting hearsay testimony. While Taylor identifies Detective Mark Carpentiere as the witness who purportedly testified as to inadmissible hearsay, Taylor does not identify the specific statements which constituted inadmissible hearsay. Therefore, Taylor has not sufficiently identified in the record the error on which his third assignment of error is based. See App.R. 12(A)(2). It follows that his third assignment of error is overruled.

ASSIGNMENT OF ERROR IV

"MR. TAYLOR WAS DENIED THE EFFECTIVE ASSISTANCE OF TRIAL COUNSEL."

ASSIGNMENT OF ERROR V

"THE TRIAL COURT ERRED WHEN IT FAILED TO GIVE PROPER JURY INSTRUCTIONS REGARDING EYEWITNESS IDENTIFICATION."

{¶26} In his fourth assignment of error, Taylor claims he was denied the effective assistance of trial counsel. Specifically, Taylor argues he was denied the effective assistance of counsel due to trial counsel's failure to file a pre-trial motion to suppress a suggestive photo lineup; when trial counsel failed to introduce at trial Mr. Taylor's booking photo; when trial counsel failed to request Crim.R 16(B)(1)(g) statements of Ms. Verbickey; and when trial counsel failed to request a *Telfair* jury instruction. In his fifth assignment of error, Taylor claims the trial court erred when it failed to give a *Telfair* jury instruction regarding eyewitness identification. This Court disagrees.

{¶27} In order to prevail on a claim of ineffective assistance of counsel, Taylor must show that "counsel's performance fell below an objective standard of reasonableness and that prejudice arose from counsel's performance." *State v. Reynolds* (1998), 80 Ohio St.3d 670, 674, citing *Strickland v. Washington* (1984), 466 U.S. 668, 687. "The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland*, 466 U.S. at 686. Thus, a two-prong test is necessary to examine such claims. First, Taylor must show that counsel's performance was objectively deficient by producing evidence that counsel acted unreasonably. *State v. Keith* (1997), 79 Ohio St.3d 514, 534, citing *Strickland*, 466 U.S. at 687. Second, Taylor must demonstrate that but for counsel's errors, there is a reasonable probability that the results of the trial would have been different. *Keith*, 79 Ohio St.3d at 534.

{¶28} It is well-settled that, "debatable trial tactics do not give rise to a claim for ineffective assistance of counsel." *State v. Hoehn,* 9th Dist. No. 03CA0076-M, 2004-Ohio-1419, at ¶45, citing *State v. Clayton* (1980), 62 Ohio St.2d 45, 49. Even if this Court questions trial counsel's strategic decisions, we must defer to his judgment. Id. The Ohio Supreme Court has stated:

> "'We deem it misleading to decide an issue of competency by using, as a measuring rod, only those criteria defined as the best of available practices in the defense field.' *** Counsel chose a strategy that proved ineffective, but the fact that there was another and better strategy available does not amount to a breach of an essential duty to his client." Id., quoting *State v. Lytle* (1976), 48 Ohio St.2d 391, 396.

{¶29} Taylor first argues that trial counsel's performance fell below the objective standard of reasonableness when he did not file a motion to suppress a photo lineup which was presented to Ms. Verbickey. This argument is premised on the contention that the photo lineup

was suggestive because none of the men in the lineup matched the description of the perpetrator that Ms Verbickey gave to Officer Gedling on the night of the incident. While none of the members of the photo lineup were bald, Officer Gedling specifically testified that Ms. Verbickey "wasn't sure if he was white or Hispanic." Taylor acknowledged in his brief that the photo lineup was not put together until after law enforcement officials discovered fingerprint evidence which linked Taylor to the crime scene. Therefore, because Taylor is a Caucasian male, it was reasonable that law enforcement officials selected other Caucasian males with similar physical characteristics to be present in the photo lineup. It follows that trial counsel's performance did not fall below an objective standard of reasonableness when he elected not to file a motion to suppress the photo lineup. See *Reynolds*, 80 Ohio St.3d at 674; *Strickland*, 466 U.S. at 687.

{¶30} Taylor argues that trial counsel's performance fell below an objective standard of reasonableness when he decided not to introduce Taylor's booking photo. The decision of trial counsel not to introduce Taylor's booking photo falls under the purview of trial tactics. Taylor contends that trial counsel should have introduced the booking photo to impeach the testimony of Ms. Verbickey and the officers relating to the identification of the perpetrator. However, it is reasonable that trial counsel wanted to avoid presenting the jury with an image of his client in a jailhouse setting. Deciding not to introduce the photograph could have been a matter of weighing the possible prejudicial impact of the photo against its probative value. Therefore, not introducing the photo was a reasonable strategic decision and did not constitute ineffective assistance of counsel.

{¶31} Taylor also argues trial counsel's performance fell below an objective standard of reasonableness when he did not request the prior statements of Ms. Verbickey pursuant to Crim.R. 16(B)(1)(g). Crim.R. 16 states, in pertinent part:

> "(B) Disclosure of evidence by the prosecuting attorney[.]
>
> "(1) Information subject to disclosure.
>
> "(g) In camera inspection of witness' statement. Upon completion of a witness' direct examination at trial, the court on motion of the defendant shall conduct an in camera inspection of the witness' written or recorded statement with the defense attorney and prosecuting attorney present and participating, to determine the existence of inconsistencies, if any, between the testimony of such witness and the prior statement.
>
> "If the court determines that inconsistencies exist, the statement shall be given to the defense attorney for use in cross-examination of the witness as to the inconsistencies."

{¶32} In this case, trial counsel had the opportunity to cross-examine Ms. Verbickey and raise issues relating to whether inconsistencies existed between her prior statements and testimony on direct examination. As discussed above, the trial transcript reveals that trial counsel was able to identify some minor inconsistencies in the testimony regarding the physical characteristics of the perpetrator. For example, Ms. Verbickey told Officer Gedling that the black perpetrator was bald but she testified that the perpetrator she perceived to be Hispanic was bald. However, Taylor has not shown that the result of the trial would have been any different if trial counsel had requested Ms. Verbickey's prior statements pursuant to Crim.R. 16(B)(1)(g). Therefore, Taylor cannot prevail on his claim that failing to request the statements constituted ineffective assistance of counsel.

{¶33} Finally, Taylor contends that trial counsel's failure to request a *Telfaire* jury instruction constituted ineffective assistance of counsel. In his merit brief, Taylor supports this contention by encouraging the Court to review his fifth assignment of error in which he argues that the trial court erred in failing to give a proper jury instruction on eyewitness identification.

{¶34} A *Telfaire* jury instruction is a reference to the model jury instruction appended to the majority opinion in *United States v. Telfaire* (C.A.D.C. 1972), 469 F.2d 552, 558-59, which

instructs the jury to consider, inter alia, "the capacity and opportunity of the witness to observe the defendant; the identification being or not being the product of the witness' own recollection, given the strength of the identification and the circumstances under which it was made; the inconsistent identifications that may have been made by the witness; and the general credibility of the witness." *State v. Guster* (1981), 66 Ohio St.2d 266, 268, fn.1.

{¶35} The Supreme Court of Ohio has stated that the decision to give a jury instruction depends on "whether a resolution by the jury of the disputed issues in the case requires or will be clearly assisted by the instruction." Id. at 271. In *Guster*, the Supreme Court held:

> "A trial court is not required in all criminal cases to give a jury instruction on eyewitness identification where the identification of the defendant is the crucial issue in the case and is uncorroborated by other evidence. A trial court does not abuse its discretion in deciding that the factual issues do not require, and will not be assisted by the requested instructions, and that the issue of determining identity beyond a reasonable doubt is adequately covered by other instructions." Id. at syllabus.

{¶36} In this case, trial counsel did not object to the jury instruction. Therefore, Taylor has forfeited all but plain error. *State v. Graves*, 9th Dist. No. 08CA009397, 2009-Ohio-1133, at ¶24, citing *State v. Smith*, 97 Ohio St.3d 367, 2002-Ohio-6659, at ¶45. To constitute plain error, the error must be obvious and have a substantial adverse impact on both the integrity of, and the public's confidence in, the judicial proceedings. *State v. Tichon* (1995), 102 Ohio App.3d 758, 767. A reviewing court must take notice of plain error only with the utmost caution, and only then to prevent a manifest miscarriage of justice. *State v. Bray*, 9th Dist. No. 03CA008241, 2004-Ohio-1067, at ¶12. "We recognize plain error only in the rare case where, but for the alleged error, the outcome of the proceeding would have been different." *State v. Hedrick* (Feb. 9, 1999), 9th Dist. No. 18955, citing *State v. Long* (1978), 53 Ohio St.2d 91, paragraph two and three of the syllabus. While Taylor has correctly identified that eyewitness identification was a

critical issue in this case, he has not explained how the result of trial would have been different had a *Telfaire* jury instruction been given. It follows that the trial court did not commit plain error by not giving the *Telfaire* jury instruction.

{¶37} In light of our resolution of his fifth assignment of error, Taylor has not outlined any other reasons why the result of the trial would have been different if trial counsel had requested a *Telfaire* jury instruction. Therefore, he cannot prevail on his claim that failing to request a *Telfaire* jury instruction amounted to ineffective assistance of trial counsel.

{¶38} It follows that Taylor's fourth and fifth assignments of error are overruled.

ASSIGNMENT OF ERROR VI

"THE CUMULATIVE EFFECTS OF THE ERRORS COMMITTED DURING TRIAL CONSTITUTED PREJUDICIAL ERROR THEREBY DENYING APPELLANT HIS RIGHT TO A FAIR TRIAL."

{¶39} In his sixth assignment of error, Taylor argues that the cumulative effects of the trial court errors constituted prejudicial error. This Court disagrees.

{¶40} Cumulative harmless errors may justify a reversal of conviction if the defendant was denied his constitutional right to a fair trial. See *State v. DeMarco* (1987), 31 Ohio St.3d 191, paragraph two of the syllabus. In this case, Taylor has failed to demonstrate any error in his trial. Therefore, it cannot be said that there were cumulative errors that denied Taylor the right to a fair trial. Taylor's final assignment of error is overruled.

III.

{¶41} Taylor's assignments of error are overruled. The judgment of the Lorain County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

DONNA J. CARR
FOR THE COURT

DICKINSON, P. J.
BELFANCE, J.
CONCUR

APPEARANCES:

KENNETH N. ORTNER, Attorney at Law, for Appellant.

DENNIS P. WILL, Prosecuting Attorney, and BILLIE JO BELCHER, Assistant Prosecuting Attorney, for Appellee.