

[Cite as *State v. Spees*, 2018-Ohio-2568.]

STATE OF OHIO            )  
                                  )ss:  
COUNTY OF MEDINA    )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No.     17CA0061-M

Appellee

v.

TRAVIS A. SPEES

APPEAL FROM JUDGMENT  
ENTERED IN THE  
MEDINA MUNICIPAL COURT  
COUNTY OF MEDINA, OHIO  
CASE No.     16TRC04699

Appellant

DECISION AND JOURNAL ENTRY

Dated: June 29, 2018

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SCHAFFER, Presiding Judge.

{¶1} Defendant-Appellant, Travis Spees, appeals from the judgment of the Medina Municipal Court. This Court affirms.

I.

{¶2} At approximately 2:15 a.m. one day in August, Officer Corey Searle observed a vehicle traveling eastbound on Sharon Copley Road. He turned his radar on the vehicle and determined that it was traveling fifteen miles per hour over the speed limit. Accordingly, he activated his overhead lights and stopped the vehicle. Spees was the vehicle’s driver and sole occupant.

{¶3} When Officer Searle initially approached Spees, he immediately detected the odor of alcohol and observed that Spees had bloodshot and glassy eyes. He briefly spoke with Spees and verified his license and registration before asking him to step out of his vehicle. After Spees stepped out, Officer Searle spoke with him a short while longer and conducted field sobriety

testing. Based on the observations he made that evening and Spees' performance on the tests, Officer Searle arrested Spees.

{¶4} Spees was charged with speeding and two counts of operating a vehicle under the influence of alcohol ("OVI"). He filed a motion to suppress, and the court held a hearing on his motion. Following the hearing, the court denied the motion. Spees then pleaded no contest to a single OVI charge in exchange for the dismissal of his remaining charges. The court sentenced him to three days in jail, a fine, and a license suspension, but stayed his sentence for purposes of his appeal.

{¶5} Spees now appeals from the court's judgment and raises three assignments of error for our review.

## II.

### **Assignment of Error I**

**The trial court erred in concluding that there were sufficient specific, articulable facts creating reasonable suspicion of operating a vehicle under the influence of alcohol to justify Officer Searle's continued detention of the driver[.]**

{¶6} In his first assignment of error, Spees argues that the trial court erred by denying his motion to suppress. Specifically, he argues that, once Officer Searle resolved his speeding violation, he lacked reasonable suspicion to further detain him. We disagree.

{¶7} Appellate review of a trial court's ruling on a motion to suppress presents a mixed question of law and fact. *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8. The trial court assumes the role of trier of fact and is in the best position to evaluate witness credibility and resolve factual issues. *State v. Mills*, 62 Ohio St.3d 357, 366 (1992). Accordingly, an appellate court must accept a trial court's findings of fact when they are supported by competent, credible evidence. *State v. Roberts*, 110 Ohio St.3d 71, 2006-Ohio-3665, ¶ 100. Accepting

those facts as true, the appellate court then must independently determine, without deference to the trial court's conclusion, whether those facts satisfy the applicable legal standard. *Burnside* at ¶ 8, citing *State v. McNamara*, 124 Ohio App.3d 706 (4th Dist.1997).

{¶8} When an officer stops a vehicle for a violation of a traffic law, an investigatory stop occurs. *State v. Johnson*, 9th Dist. Medina No. 03CA0127-M, 2004-Ohio-3409, ¶ 11. In general, “[a]n investigatory stop may last no longer than necessary to accomplish the initial goal of the stop.” *State v. Rackow*, 9th Dist. Wayne No. 06CA0066, 2008-Ohio-507, ¶ 8. *Accord Rodriguez v. United States*, 575 U.S. \_\_\_, 135 S.Ct. 1609, 1614 (2015). If, however, during the investigatory stop “the officer discovers additional facts from which it is reasonable to infer additional criminal activity[,] the officer is permitted to lengthen the duration of the stop to investigate such suspicions.” *State v. Williams*, 9th Dist. Lorain No. 09CA009679, 2010-Ohio-3667, ¶ 15. *Accord State v. Robinette*, 80 Ohio St.3d 234, 241 (1997). The question is whether, under the totality of the circumstances, the officer possessed reasonable suspicion to extend the detention. *See State v. Ross*, 9th Dist. Lorain No. 12CA010196, 2012-Ohio-6111, ¶ 8. *See also State v. Slates*, 9th Dist. Summit No. 25019, 2011-Ohio-295, ¶ 24 (“[A] police officer does not need probable cause to conduct a field sobriety test; rather, he must simply have a reasonable suspicion of criminal activity.”).

{¶9} The trial court found that, shortly after 2:15 a.m., Officer Searle stopped Spees for speeding because he was driving 60 miles per hour in a 45 mile-per-hour zone. Upon approaching Spees' vehicle, Officer Searle immediately detected an odor of alcohol and noted that Spees had bloodshot and glassy eyes. He then briefly conversed with Spees and checked his license and registration. After doing so, Officer Searle had Spees exit his vehicle. Spees then acknowledged that he had consumed one beer about an hour earlier, and Officer Searle

conducted field sobriety testing. The trial court determined that Officer Searle possessed reasonable suspicion to detain Spees beyond the initial traffic stop and to conduct field sobriety testing based on the speeding violation he observed, the “immediately noticeabl[e] odor of an alcoholic beverage [he detected] coming from the vehicle where [Spees] was the sole occupant,” and Spees’ “bloodshot and glossy eyes.”

{¶10} Spees argues that the trial court’s factual findings are erroneous in two respects. First, he argues that Officer Searle never described his eyes as being bloodshot. He asserts that the officer only described his eyes as being “red and glassy”; a descriptor that the NHTSA Manual does not recognize as being an indicator of impairment. Second, he argues that Officer Searle never said he considered Spees’ speeding violation to be an indicator of impairment. According to Spees, Officer Searle only possessed one indicator of impairment: “a non-descript odor of alcoholic beverage.” Because that single indicator did not give rise to reasonable suspicion to further detain him, Spees argues, the court erred by denying his motion to suppress.

{¶11} Officer Searle testified that he first observed Spees’ vehicle while clearing another traffic stop. Because the vehicle appeared to be traveling in excess of the speed limit, Officer Searle used his radar and confirmed that the vehicle was traveling 60 miles per hour in a 45 mile-per-hour zone. He then activated his lights and set off in pursuit of the vehicle. Spees, the driver and sole occupant of the vehicle, stopped shortly down the road.

{¶12} Officer Searle testified that, as soon as Spees lowered his window, he immediately detected the odor of an alcoholic beverage and saw that Spees had “red and glassy” eyes. He also noted that Spees’ speech was slightly labored, meaning that “[i]t took him a couple of seconds to get words out.” Based on all of the indicators he observed during the traffic stop, Officer Searle asked Spees to step out of his vehicle. He testified that the

*intensity* of the indicators that [he] [] observe[d] – the odor and how bloodshot and glassy his eyes were – indicated to [him] [] based on [his] experience \* \* \* and training with OVIs and being a field sobriety test instructor, \* \* \* that \* \* \* there was a decent potential that [Spees] [was] impaired \* \* \*.

(Emphasis added.) During another portion of his examination, he likewise testified that he decided to investigate Spees further because the indicators he detected, “such as the speech, the bloodshot, glassy eyes, the odor of an alcoholic beverage, things like that,” were indicative of impairment. Once Spees exited his vehicle, Officer Searle asked him how much alcohol he had consumed that evening, and Spees acknowledged that he had drunk a beer about an hour earlier. Officer Searle testified that, while Spees spoke, he could smell the odor of alcohol “obviously coming from his breath \* \* \*.”

{¶13} This Court has reviewed the record and must conclude that the trial court’s factual findings are based on competent, credible evidence. Contrary to Spees’ assertion, Officer Searle testified more than once that Spees had bloodshot eyes. He also testified that he stopped Spees just after 2:15 a.m., Spees was speeding, Spees was alone in his vehicle, he immediately detected the odor of alcohol when he encountered Spees, and Spees admitted that he had consumed one beer within the hour. This Court, therefore, accepts the trial court’s factual findings as true and considers the law as applied to those findings. *See Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, at ¶ 8.

{¶14} As noted, to detain Spees beyond the initial basis for his traffic stop and to conduct field sobriety testing, Officer Searle needed reasonable suspicion to believe that Spees was engaging in criminal activity. *See Ross*, 2012-Ohio-6111, at ¶ 8; *Slates*, 2011-Ohio-295, at ¶ 24. Although Spees claims that the officer only possessed one indicator of impairment, the record does not support his claim. Officer Searle testified that his suspicions were aroused because Spees had bloodshot, glassy eyes and he immediately detected the odor of alcohol when

he spoke with him. *See State v. Hochstetler*, 9th Dist. Wayne No. 16AP0013, 2016-Ohio-8389, ¶ 13; *State v. Tomko*, 9th Dist. Summit No. 19253, 1999 Ohio App. LEXIS 5133, \*8-9 (Nov. 3, 1999). Moreover, he specifically stated that it was the *intensity* of those indicators that led him to suspect, based on his training and experience in OVI detection, that Spees was impaired. *Compare State v. High*, 9th Dist. Medina No. 17C0019-M, 2017-Ohio-8264, ¶ 13 (affirming suppression where the officer failed to note any glossy or bloodshot eyes or characterize the odor of alcohol that he detected). Officer Searle's decision to further detain Spees, therefore, was not based on a mere hunch. *See State v. Hunter*, 151 Ohio App.3d 276, 2002-Ohio-7326, ¶ 31 (9th Dist.), quoting *United States v. Cortez*, 449 U.S. 411, 417-418 (1981).

{¶15} Upon review, this Court cannot conclude that the trial court erred when it found that Officer Searle had reasonable suspicion to further detain Spees and to conduct field sobriety testing. Thus, the trial court properly denied that portion of Spees' motion to suppress, and his first assignment of error is overruled.

### **Assignment of Error II**

**The trial court erroneously concluded that the State of Ohio met its burden of proving by clear and convincing evidence that Officer Searle substantially complied with the 2015 NHTSA Standards for the administration of the HGN, WAT, and OLS tests[.]**

{¶16} In his second assignment of error, Spees argues that the trial court erred by denying his motion to suppress because the State failed to prove, by clear and convincing evidence, that Officer Searle administered his field sobriety tests in substantial compliance with the 2015 National Highway Traffic Safety Administration ("NHTSA") Manual. For the following reasons, this Court rejects his argument.

{¶17} Because this assignment of error challenges the trial court’s suppression ruling, we incorporate the standard of review set forth in Spees’ first assignment of error. *See Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, at ¶ 8.

[A]n officer may testify concerning the results of a field sobriety test, and the prosecution may introduce the results of a such a test, if “the officer administered the test in substantial compliance with the testing standards for any reliable, credible, and generally accepted field sobriety tests that were in effect at the time the tests were administered, including, but not limited to, any testing standards then in effect that were set by the [NHTSA] \* \* \*.”

*State v. George*, 9th Dist. Wayne No. 13CA0036, 2014-Ohio-4123, ¶ 7, quoting R.C. 4511.19(D)(4)(b). The State bears the burden of demonstrating substantial compliance by clear and convincing evidence. *State v. Reddington*, 9th Dist. Medina No. 14CA0064-M, 2015-Ohio-2890, ¶ 19; R.C. 4511.19(D)(4)(b).

{¶18} At the suppression hearing, the State asked the court to take judicial notice of the NHTSA Manual in effect in 2015. Because the court honored that request, the State never produced the manual, moved to admit it into evidence, or offered testimony about its standards. Spees now argues that the State failed to prove by clear and convincing evidence that Officer Searle substantially complied with the manual’s standards.

{¶19} Ordinarily, this Court’s review would be hampered by the fact that neither party made the NHTSA Manual part of the record or outlined its standards through testimony. *See, e.g., State v. Filip*, 9th Dist. Medina No. 16CA0049-M, 2017-Ohio-5622, ¶ 13-16; *State v. Mencini*, 9th Dist. Summit No. 27322, 2015-Ohio-89, ¶ 20-21. That is because, in the absence of “standards in the record with which to compare [an officer’s] procedure, it is impossible for this Court to determine whether [a] test was given in substantial compliance.” *Mencini* at ¶ 21. Here, however, the trial court did more than simply take judicial notice of the manual. In issuing its suppression ruling, the court reproduced, as part of its entry, the applicable standards from the

manual. Neither party has asserted that the standards contained in the entry are inaccurate, and Spees has not argued that the court erred by taking judicial notice of the standards. *See* App.R. 16(A)(7); *Cardone v. Cardone*, 9th Dist. Summit Nos. 18349, 18673, 1998 Ohio App. LEXIS 2028, \*22 (May 6, 1998). Accordingly, under these particular facts and circumstances, this Court will consider Spees' argument on its merits. Nevertheless, we caution that we take no position on the propriety of the procedure that the parties and the lower court employed here. Our decision should not be read as condoning the trial court's decision to reproduce portions of the manual of its own accord.

#### **Horizontal Gaze Nystagmus ("HGN") Test**

{¶20} The trial court determined that Officer Searle substantially complied with the NHTSA Manual when administering the HGN test and observed four out of a possible six clues. Spees argues that Officer Searle failed to properly administer the test for two reasons. First, he argues that the officer's flashlight was flickering during the test. Because the NHTSA Manual indicates that flickering lights may result in a nystagmus unrelated to alcohol consumption, he asserts that Officer Searle conducted an invalid test. Second, he argues that Officer Searle failed to substantially comply with the test because he did not maintain his stimulus at an above eye level height while tracking Spees' eye movement.

{¶21} The State produced a dash cam recording that captured Spees' field sobriety tests. During the HGN test, the light that shines on Spees from Officer Searle's flashlight appears to flicker. Officer Searle testified, however, that the appearance of a flicker was due to the quality of the dash cam recording. He was adamant that his flashlight was not flickering during the test, that he used his flashlight on a nightly basis, and that it did not flicker.



{¶22} Officer Searle used his finger as the stimulus for the HGN test. The dash cam recording depicts him placing his finger at eye level when beginning each portion of the test and smoothly moving his finger out to each side. While fully extending his arm on each side, however, it appears that his finger dips slightly below eye level. Officer Searle conceded on cross-examination that the recording made it appear as if his finger dipped below eye-level.

{¶23} With regard to the flickering light, this Court cannot conclude that the trial court erred by denying the motion to suppress. Spees' entire substantial compliance argument hinges on the premise that Officer Searle's flashlight was, in fact, flickering. Whether the flashlight flickered, however, was a factual issue to be resolved by the trial court. Officer Searle testified that his flashlight did not flicker and the appearance of any flicker on the dash cam recording was due to the quality of the recording. In concluding that Officer Searle substantially complied with the NHTSA Manual, the trial court specifically noted that it had considered his credibility. Because the trial court was in the best position to evaluate his credibility and resolve the factual question concerning the flashlight, this Court will not overturn its determination on that issue. *See Mills*, 62 Ohio St.3d at 366. Spees' substantial compliance argument, therefore, fails upon its initial premise.

{¶24} With regard to Officer Searle's movement of the stimulus during the HGN test, the NHTSA Manual instructs officers to position their stimulus "approximately 12-15 inches (30-38 cm) in front of [the] subject's nose, and slightly above eye level to commence the test." It then instructs officers, for each distinct portion of the test, to move the stimulus smoothly out to each side before returning to center. Notably, the manual, as reproduced by the trial court, contains no standard instructing officers to *maintain* the stimulus at any exact height while

moving it out to the sides. Officer Searle stated on cross-examination, however, that maintaining the stimulus at a slightly above eye level height was preferable.

{¶25} Spees has not pointed this Court to any specific portion of the NHTSA Manual that requires an officer to maintain a stimulus at an above eye level height while conducting the HGN test. *See* App.R. 16(A)(7). Nor has he offered any legal support for his position that an officer fails to substantially comply with HGN testing standards when he allows his finger to dip slightly below eye level while administering the test. *See id.* R.C. 4511.19(D)(4)(b) only requires proof of substantial compliance with applicable testing standards, not strict compliance. *See State v. Boczar*, 113 Ohio St.3d 148, 2007-Ohio-1251, ¶ 23. Given Spees' limited argument on appeal, this Court cannot conclude that the trial court erred when it determined that Officer Searle substantially complied with the HGN test. Accordingly, we reject Spees' argument to the contrary.

#### **Walk and Turn Test & One-Leg Stand Test**

{¶26} The trial court determined that Officer Searle substantially complied with the NHTSA Manual when administering the walk and turn test and observed three out of a possible eight clues. Spees argues that the trial court erred by relying on those results because two of the clues Officer Searle allegedly observed "are dubious." He argues that the dash cam recording does not support Officer Searle's subjective assessment that he raised his arm more than six inches while walking. He also argues that the recording does not depict him failing to touch heel-to-toe on any of his steps.

{¶27} As to the one-leg stand test, the trial court also determined that Officer Searle substantially complied with the NHTSA Manual when administering the test and observed two out of a possible four clues. Spees argues that the court erred by relying on those results because

Officer Searle's testimony runs contrary to the dash cam recording. He asserts that the recording neither depicts him swaying during the test, nor raising his arms more than six inches. With regard to the latter, he notes that Officer Searle conceded that point on cross-examination. Spees argues that the court "ignored the video evidence" and thereby erred when it concluded that the State met its burden of demonstrating substantial compliance.

{¶28} Spees has not cited any particular provision of the NHTSA Manual in support of his arguments. *See* App.R. 16(A)(7). Nor has he even generally alleged that Officer Searle deviated from testing standards when conducting the walk and turn and one-leg stand tests. *See id.* His argument sounds strictly in credibility, as he claims that the dash cam recording contradicts Officer Searle's testimony. That argument, however, is distinct from one aimed at challenging the State's showing of substantial compliance. Spees' captioned assignment of error only challenges the court's finding of substantial compliance. *See State v. Pleban*, 9th Dist. Lorain No. 10CA009789, 2011-Ohio-3254, ¶ 41, quoting *State v. Marzolf*, 9th Dist. Summit No. 24459, 2009-Ohio-3001, ¶ 16 ("An appellant's captioned assignment of error 'provides this Court with a roadmap on appeal and directs this Court's analysis.'"). Because he has not presented this Court with a substantial compliance argument regarding his walk and turn test or his one-leg stand test, this Court will not formulate an argument on his behalf. *See Cardone*, 1998 Ohio App. LEXIS 2028, at \*22. Accordingly, we reject his argument insofar as it concerns those tests. His second assignment of error is overruled.

### **Assignment of Error III**

**The trial court erred in concluding that Officer Searle had probable cause to arrest the driver for operating a vehicle while under the influence of alcohol[.]**

{¶29} In his third assignment of error, Spees argues that the trial court erred by denying his motion to suppress because Officer Searle lacked probable cause to arrest him. We disagree.

{¶30} Because this assignment of error challenges the trial court's suppression ruling, we incorporate the standard of review set forth in Spees' first assignment of error. *See Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, at ¶ 8. An officer has probable cause to arrest an individual for impaired driving if, "at the time of arrest, the officer had sufficient facts derived from a reasonably trustworthy source to cause a prudent person to believe the suspect was driving under the influence." *State v. Hopp*, 9th Dist. Summit No. 28095, 2016-Ohio-8027, ¶ 8. "This inquiry requires consideration of the totality of the circumstances known to the officer at the time of arrest." *State v. Rogers*, 9th Dist. Wayne No. 16AP0014, 2017-Ohio-357, ¶ 9. "To prove impaired driving ability, the [S]tate can rely on physiological factors (e.g., odor of alcohol, glossy or bloodshot eyes, slurred speech, confused appearance) to demonstrate that a person's physical and mental ability to drive was impaired." *State v. Slone*, 9th Dist. Medina No. 04CA0103-M, 2005-Ohio-3325, ¶ 9, quoting *State v. Holland*, 11th Dist. Portage No. 98-P-0066, 1999 Ohio App. LEXIS 6143, \*14 (Dec. 17, 1999). "Virtually any lay witness, without special qualifications, may testify as to whether or not an individual is intoxicated." *State v. Zentner*, 9th Dist. Wayne No. 02CA0040, 2003-Ohio-2352, ¶ 19, quoting *State v. Delong*, 5th Dist. Fairfield No. 02CA35, 2002-Ohio-5289, ¶ 60.

{¶31} As previously noted, the trial court found that Officer Searle stopped Spees for speeding shortly after 2:15 a.m. The court found that Officer Searle immediately detected the odor of alcohol when he began speaking with Spees and later detected it on his breath when speaking with him outside his car. The court found that Spees had bloodshot and glassy eyes and admitted that he had consumed a beer about an hour earlier. Further, it found that Officer Searle

observed a number of clues when he conducted field sobriety testing, including that Spees was swaying front to back while performing the tests. The court concluded, based on the totality of the circumstances, that Officer Searle had probable cause to arrest Spees for an OVI.

{¶32} Spees argues that the trial court erred in its probable cause determination. According to Spees, Officer Searle never testified that he had bloodshot eyes and red, glassy eyes are not an indicator of impairment. He argues that the dash cam recording from the stop does not depict him swaying and, other than his speeding, there was no evidence that he drove his vehicle in an unsafe manner. He argues that a non-descript odor of alcohol does not provide probable cause for an arrest.

{¶33} This Court has reviewed the record and must conclude that the trial court's factual findings are based on competent, credible evidence. Officer Searle testified more than once that Spees had bloodshot eyes. Indeed, he testified that he suspected Spees of driving under the influence due to the *intensity* of Spees' bloodshot eyes and the odor of alcohol he detected. With regard to the field sobriety tests he conducted, he testified that he observed four out of a possible six clues on the HGN test. Specifically, he observed a lack of smooth pursuit in both eyes and a distinct and sustained nystagmus at maximum deviation in both eyes. He also observed additional clues on the walk and turn and one-leg stand tests. Officer Searle testified that he concluded Spees was impaired based on

the totality of the circumstances, between the [speeding] violation \* \* \*, the bloodshot, glassy eyes, [Spees'] admission of consumption, the odor of an alcoholic beverage obviously coming from his breath as he spoke, [and] \* \* \* all the clues that [he] observed on the field sobriety tests \* \* \*."

To the extent the dash cam recording did not capture Spees swaying, the recording depicts Spees from behind and at a straight angle. Officer Searle specifically testified that Spees was swaying front to back rather than side to side such that it was difficult to see on the recording. The trial

court, therefore, was presented with conflicting evidence on that point and was in the best position to judge the officer's credibility. *See Mills*, 62 Ohio St.3d at 366. Because the record contains competent, credible evidence in support of the foregoing findings, this Court accepts them as true and considers the law as applied to those findings. *See Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, at ¶ 8.

{¶34} The record reflects that Officer Searle had probable cause to arrest Spees. Officer Searle detected the odor of alcohol coming from Spees' person, saw that he had bloodshot and glassy eyes, and noted that he exhibited four out of a possible six clues on the HGN test. *See State v. Kordich*, 9th Dist. 15CA0058-M, 2017-Ohio-234, ¶ 17-18. Spees admitted that he had consumed at least one beer within the hour, and Officer Searle observed him swaying while he conducted the field sobriety tests. *See Tomko*, 1999 Ohio App.LEXIS 5133, at \*11. Moreover, Officer Searle initially stopped Spees because he was speeding during the middle of the night. *See State v. Nastick*, 9th Dist. Summit No. 28243, 2017-Ohio-5626, ¶ 25. Based upon the totality of the circumstances, Officer Searle reasonably could have concluded that Spees was driving while under the influence. *See Hopp*, 2016-Ohio-8027, at ¶ 8. *See also Zentner*, 2003-Ohio-2352, at ¶ 19, quoting *DeLong*, 2002-Ohio-5289, at ¶ 60. The trial court, therefore, did not err when it denied Spees' motion to suppress. His third assignment of error is overruled.

### III.

{¶35} Spees' assignments of error are overruled. The judgment of the Medina Municipal Court is affirmed.

Judgment affirmed.

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There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Medina Municipal Court, County of Medina, 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(C). 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.

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JULIE A. SCHAFER  
FOR THE COURT

CARR, J.  
TEODOSIO, J.  
CONCUR.

APPEARANCES:

DAVID C. SHELDON, Attorney at Law, for Appellant.

J. MATTHEW LANIER, Prosecuting Attorney, for Appellee.