[Cite as *State v. Cronin*, 2010-Ohio-4717.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
SANDUSKY COUNTY

State of Ohio — Court of Appeals No. S-09-032

Appellee — Trial Court No. 09 CR 454

v.

Mikell W. Cronin — **DECISION AND JUDGMENT**

Appellant — Decided: September 30, 2010

* * * * *

Thomas L. Stierwalt, Sandusky County Prosecuting Attorney,
and Norman P. Solze, Assistant Prosecuting Attorney, for appellee.

Christian R. Moore, for appellant.

* * * * *

COSME, J.

{¶ 1} This appeal stems from a physical altercation in which appellant, Mikell Cronin, allegedly bludgeoned his former friend, Steven Gore, with two different baseball bats. Appellant was found guilty by a jury of attempted murder in violation of R.C. 2903.02(A) and 2923.02, a first-degree felony, and felonious assault in violation of

2903.11(A)(1), a felony of the second degree, and sentenced by the Sandusky County Court of Common Pleas to an aggregate prison term of 16 years. Appellant argues that the evidence clearly establishes that he did not intend to commit murder, that he was acting in self defense, and that he did not possess a separate animus as to each of the allied offenses for which he was sentenced. Appellant also contends that the trial court committed plain error in failing to instruct the jury on lesser-included offenses and that his trial counsel was ineffective for failing to request such instructions. For the following reasons, we affirm the judgment of the trial court.

I. BACKGROUND

{¶ 2} On April 4, 2009, while at his mother's residence in Sandusky, Ohio, appellant was observed to have struck Steven Gore numerous times with two different baseball bats, kicked him repeatedly, and stomped on his hands. As a result, Mr. Gore suffered a cracked skull, a torn blood vessel in the brain, six fractures in his left arm, broken bones in his back, numerous blood clots in his leg, and massive bruising up and down his entire body. On April 17, 2009, appellant was indicted on one count of attempted murder and two counts of felonious assault. On June 11, 2009, the cause proceeded to trial by jury on all three charges and the following facts were generally adduced by the state.

{¶ 3} On the evening of April 4, 2009, Tim Crabtree was throwing a bachelor party for his son at the Mind Set on Route 20 outside of Woodville, Ohio, which was attended by his two sons-in-law and Steven Gore. Meanwhile, Mr. Crabtree's girlfriend,

Ronetta Cronin, who is also Mikell's mother and lives across the street from him on Route 20 in Woodville, was hosting a bachelorette party at her residence for the prospective bride. Mikell came across the street from his residence to see what was going on at his mother's house and ended up in a heated argument with Mr. Crabtree's youngest daughter, Tiffany.

{¶ 4} Tiffany called her father to report that Mikell had pushed her. Mr. Crabtree then left the Mind Set with his son and sons-in-law for Ronetta's house, allegedly telling Steven Gore to stay away from the house as it was a family matter. Although Steven and Mikell had been friends at one time, or at least enjoyed a magnanimous association, they had since become such antagonists that their mutual friends and associates endeavored to keep them apart. Mr. Crabtree subsequently telephoned Mikell and challenged him to a fight, which occurred off of Route 20 between the homes of Mikell and his mother. Mikell carried a baseball bat to that fight, but never used it.

{¶ 5} After the fight, Mr. Crabtree went to Ronetta's house while Mikell and his friend, Jeffrey Forbes, remained outside the residence. A short time later, Steven Gore came over to Ronetta's house and, upon seeing Mr. Crabtree bleeding from the head in Ronetta's kitchen, made some negative or threatening remarks about Mikell and ended up in a heated exchange with Ronetta. Mikell observed the exchange between his mother and Steven through a window on a side door that was bolted shut for the winter. Mikell came around the house with an aluminum baseball bat and entered the garage through the

overhead door, while Steven exited the house through the bay door leading from the kitchen to the garage. Both met in the garage and the altercation ensued.

{¶ 6} The state's witnesses varied somewhat in their specific accounts of the unfolding events that night. Steven testified that after Tim Crabtree and his family had left the bar, he called his friend Penny Davidson to pick him up. After being unable to reach Tim and the others by phone, Steven had Penny drop him off at Ronetta's house. When Steven saw Tim's head bleeding, he made the statement that Mikell was an animal and a sociopath. Ronetta then punched Steven in the face and Steven put his hands out to keep Ronetta away. He then left the house through the bay door to the garage, which was the only exit from the kitchen to the outside. When Steven turned the corner coming out of the bay door, Mikell was already waiting and started striking Steven with the bat in a downward arc directed at his head. Steven managed to deflect the first couple of blows with his arm, but the third blow caught his head and he ended up face down in the driveway. The next thing he remembered was being awakened the following morning in his bed by Penny Davidson and discovering that his clothes and cell phone had been taken and his truck rendered inoperable.

{¶ 7} Mr. Crabtree testified that when Steven arrived at Ronetta's house, he surmised that Mikell had "put his hands on you again" and stated that Mikell was sick and "needed to be put down like a rabid dog." Ronetta charged Steven and Steven pushed her off of him. Steven and Mikell then saw each other through the side-door window. Steven attempted unsuccessfully to open the side door and then headed out

through the garage. Mr. Crabtree was unclear in his testimony as to whether Steven was leaving in order to go after Mikell or get away from him. In any event, approximately 30 to 40 seconds later Mr. Crabtree heard a rapid succession of thumping sounds and went outside to see what was going on.

{¶ 8} At that point, Mr. Crabtree observed Steven lying face down on the ground motionless just outside of the garage as Mikell was striking him on the back with an aluminum baseball bat. Mr. Crabtree described the force of the blows as "overhead swings" as if Mikell was "chopping wood." After some prompting, Mikell relinquished the aluminum bat, but then proceeded to strike Steven 15 to 20 additional times in the legs with a smaller bat or "tire buddy," which is an oak shaft approximately 24 inches long with a two-inch steel cap on the end. Mikell then began kicking Steven, laughing, taking pictures of Steven on his cell phone, and going through his pockets.

{¶ 9} Jeffrey Forbes testified that after Mikell's fight with Mr. Crabtree, Steven went to Mikell's house, knocked on his door, and then went across the street to Ronetta's house. When Mikell saw Steven, he grabbed the aluminum bat and he and Jeffrey hid behind a barn. They waited behind the barn for Steven to either leave or stay so that they could leave. As they were watching the house, they saw Ronetta get shoved. Mikell ran to the side door, pounded on it, and ran into the garage. By the time Jeffrey caught up, Mikell and Steven were already engaged. Jeffrey did not witness the initial blows in the garage, but he heard the hollow hits of a bat connecting with flesh. When he did arrive, Mikell was swinging the bat from side to side and Steven was intermittently putting up

his hands in front of his face to defend himself, grabbing for the bat, and charging at Mikell. The combatants each respectively retreated and advanced until they were outside the garage. Finally, as Steven charged, Mikell's bat connected with Steven's head with the force of hitting a fast-pitched baseball and Steven fell straight to the ground. Mikell continued to strike Steven multiple times with the bat as he lay on the ground, while Mr. Forbes and the others were yelling for him to cease his attack out of fear that he was going to kill Mr. Gore. Mikell then retrieved a smaller bat, hit Steven once in the face or head, and also stomped on his hands, proclaiming "see if you can carve wood ever again." Afterwards, Mikell and Jeffrey went to Steven's house and removed the alternator and radiator from his truck.

{¶ 10} Penny Davidson testified that while she was checking on Steven the morning after his beating, Mikell called her and asked if she was taking Steven to the hospital. Penny responded in the affirmative and Mikell then said, "I'm on my way over. I'm going to tell him what to tell the police and the people at the hospital when they ask questions. And if he doesn't say what I tell him to say, this is going to happen again, only it's going to be worse, and it's not going to be me doing it."

{¶ 11} Finally, the state called Deputy Sheriff Brian McGrady, who works at the jail where Mikell was housed before trial. About a month earlier, Mikell asked McGrady how it could be that he was charged with two counts of felonious assault. McGrady answered that he was not sure, but maybe it was for each time he struck the victim.

Mikell then responded "no, if that's the case, it would be more like 40 counts" and laughed and walked away.

{¶ 12} Appellant introduced the testimony of two witnesses in support of his own defense, himself and his mother. Ronetta testified that Steve forced his way into her house, pushed her out of his way, threatened several times to kill her son, spotted Mikell at the side door, and went flying down her basement stairs out through the garage. Mikell testified that he saw Steven go after his mother and heard his death threats. Mikell banged on the side door and told Steven to leave his mother alone. He then saw a look in Steven's eyes that "I had never seen in a man's eyes before. * * * I was scared."

{¶ 13} Mikell went into the garage to protect his mother and told Steven repeatedly to stop, "I don't want this to happen." Steven kept charging and Mikell hit him several times with the bat. Eventually, Mikell unintentionally hit Steven in the head with the bat and Steven fell to the ground. Steven then got up and kept coming at Mikell. Mikell continued to hit Steve with the bat, pleading with Steven to just stay down because Mikell did not want to hurt him. Mikell then voluntarily gave up the aluminum bat, stating, "Here, take the bat before I kill this man." As Mikell walked away, Steven started to get back up again and Mikell, still in fear of his life, started hitting Steven in the legs with the smaller bat telling him to just stay on the ground. During this time, Mikell thought "I was going to die. I was in fear because of all the stories Steve's told me, that he was there to kill me."

{¶ 14} On June 12, 2009, the jury returned guilty verdicts on all three counts. On July 29, 2009, the trial court sentenced appellant to 16 years incarceration, imposing consecutive terms of ten years for attempted murder and six years for felonious assault under R.C. 2903.11(A)(1). In so doing, the trial court merged the felonious assault charge under R.C. 2903.11(A)(2) with the attempted murder charge as allied offenses of similar import, but found that the offense of felonious assault under R.C. 2903.11(A)(1) occurred with separate animus against the same victim.

{¶ 15} Appellant now appeals this judgment, raising six assignments of error.

II. INTENT TO MURDER

{¶ 16} Appellant's first and third assignments of error, although conceptually distinct, are interrelated and will be considered together.

{¶ 17} In his first assignment of error, appellant asserts:

{¶ 18} "The conviction of defendant-appellant on attempted murder charge was against the manifest weight of the evidence presented at trial."

{¶ 19} In his third assignment of error, appellant contends:

{¶ 20} "The evidence submitted to the jury was insufficient to support a conviction of attempted murder and felonious assault."

{¶ 21} Appellant argues that the state failed to present sufficient evidence of intent to murder and that the jury lost its way in determining that he had intended to murder Steven Gore. According to appellant, the record is replete with testimony that he continuously retreated or backed away from Mr. Gore after their initial meeting in the

garage, repeatedly told Mr. Gore to stand down and that he did not want this to happen, and handed over the bat once it appeared that Mr. Gore was no longer a threat. Appellant submits that if it were truly his intent and purpose to kill Mr. Gore, he would have continued to beat Mr. Gore with the larger aluminum bat while he was down on the ground, rather than use a smaller bat on non-lethal areas of his body.

{¶ 22} We disagree.

{¶ 23} Claims of sufficiency and weight of the evidence are conceptually distinct and invoke disparate standards of appellate review. While sufficiency of the evidence is essentially a test of adequacy, that is, whether the state has met its burden of production, a manifest weight challenge goes to the jury's evaluation of the evidence, that is, whether the state has met its burden of persuasion. See *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386; *In re J.O.*, 5th Dist. No. 09-CA-0135, 2010-Ohio-4296, ¶ 17; *State v. DeVaughn*, 8th Dist. No. 86896, 2006-Ohio-3359, ¶ 27; *Toledo v. Silvernail*, 6th Dist. No. L-05-1003, 2005-Ohio-5570, ¶ 9. Thus, a conviction supported by sufficient evidence may still be reversed and remanded for a new trial on the basis that it is against the manifest weight of the evidence. See *State v. McGhee*, 6th Dist. No. L-06-1210, 2007-Ohio-6527, ¶ 24.

{¶ 24} With respect to sufficiency of the evidence, the Supreme Court of Ohio has held:

{¶ 25} "An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence submitted 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." *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus, superseded by state constitutional amendment on other grounds as stated in *State v. Smith* (1997), 80 Ohio St.3d 89, 103, fn. 4.

{¶ 26} With respect to the issue of manifest weight, the Ohio Supreme Court explained:

{¶ 27} "'The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.'" *State v. Thompkins*, supra, at 387, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

{¶ 28} R.C. 2923.02(A) provides, "No person, purposely or knowingly, and when purpose or knowledge is sufficient culpability for the commission of an offense, shall engage in conduct that, if successful, would constitute or result in the offense." R.C. 2903.02(A) provides, "No person shall purposely cause the death of another * * *." A

person acts purposely when he or she specifically intends to cause a particular result. R.C. 2901.22(A).

{¶ 29} Under the circumstances of this case, the same facts and testimony that operate to defeat appellant's sufficiency-of-the-evidence argument also serve to overcome his manifest weight claim. Mr. Gore testified that appellant attempted several times to hit him full force in the head with a baseball bat. He managed to block the first couple of blows with his arm, sustaining multiple fractures in the process, but the third blow deflected off his arm and connected with his head, which Mr. Crabtree described as "an open melon." Mr. Forbes testified that when appellant first saw Mr. Gore on April 4, 2009, he grabbed the baseball bat, hid behind the barn, and then ran into the garage to confront Mr. Gore after observing the confrontation between Mr. Gore and his mother. Mr. Crabtree stated that shortly after Mr. Gore exited through the garage, he heard a rapid succession of thumping sounds. Mr. Forbes also testified that although he did not see the initial blows, he immediately heard the hollow hits of a bat connecting with flesh. He further testified that the blow connecting with Mr. Gore's head was administered with the comparable force of trying to hit a fastball.

{¶ 30} There was ample testimony that appellant continued to batter Mr. Gore with full-force overhead swings of the aluminum bat as he lay motionless on the ground, that Crabtree and Gore were yelling for appellant to stop his onslaught out of fear that appellant was going to kill Gore, and that appellant then struck Mr. Gore multiple times with a smaller bat, kicked him repeatedly, and stomped on his hands. The blows

administered with both bats were described as overhead swings like chopping wood with an axe.

{¶ 31} Appellant's assertions notwithstanding, the severity and protracted nature of the beating, the extent of Mr. Gore's injuries, the type of instrument used to inflict them, and the number and force of the blows, some of which were aimed at Mr. Gore's head, are unquestionably indicative of a purpose to kill. See, e.g., *State v. Phillips* (1995), 74 Ohio St.3d 72, 82; *State v. Young* (Sept. 20, 1999), 7th Dist. No. 96-BA-34; *State v. Martin* (Feb. 9, 1999), 9th Dist. No. 18715; *State v. Barber* (Feb. 16, 1994), 2d Dist. No. 13340; *State v. Sheppard* (1955), 100 Ohio App. 345, 365.

{¶ 32} Appellant's arguments ultimately reduce to the single contention that the jury lost its way because it did not believe his version of the events. Contrary to appellant's assertions, his account of the incident as being on the defensive was not corroborated by Jeffrey Forbes. Mr. Forbes did not verify appellant's testimony that he was continuously retreating from Mr. Gore or making an effort to avoid or prevent a confrontation. Instead, Mr. Forbes merely testified that both parties were intermittently advancing toward and retreating from one another. He also stated that both parties were yelling at each other, but he could not discern what they were saying. According to Mr. Forbes, appellant was swinging the bat from side to side at Mr. Gore, while Mr. Gore was alternating between putting his hand up to his face to defend the blows, trying to grab the bat away from appellant, and charging appellant. Critically, Mr. Forbes explained that he was not present when the altercation began and could not say who started it. As far as

Mr. Forbes' testimony goes, either one or both of the involved parties could have been the initial aggressor.

{¶ 33} Having reviewed the entire record, we find that the jury could reasonably have believed that appellant acted with the specific intent to kill. Nor can we say that the jury clearly lost its way or created a miscarriage of justice in concluding that appellant acted with the purpose of causing the death of Mr. Gore. Thus, we find further that appellant's conviction for attempted murder is not against the manifest weight of the evidence.

{¶ 34} Accordingly, appellant's first and third assignments of error are not well-taken.

III. SELF-DEFENSE

{¶ 35} In his second assignment of error, appellant asserts:

{¶ 36} "The conviction of defendant-appellant on attempted murder and felonious assault charges was against the manifest weight of the evidence presented at trial because the defense had shown, by a preponderance of the evidence, that Mr. Cronin had acted in self defense."

{¶ 37} Most of appellant's arguments under this assignment of error are repetitious of his arguments under the first and third assignments or error, and they fail for the reasons already discussed. Moreover, a claim of self-defense is inappropriate where the force used is so grossly disproportionate as to show revenge or criminal purpose. *State v. Hendrickson*, 4th Dist. No. 08CA12, 2009-Ohio-4416, ¶ 33. In a strikingly similar case,

this court in *State v. Johnson*, 6th Dist. No. L-08-1325, 2009-Ohio-3500, concluded that the jury clearly did not lose its way in rejecting a self-defense claim where the defendant continued to pummel the victim while he lay helpless on the ground. In fact, the jury in the present case had more evidence to rely upon in reaching its decision than the jury had in *Hendrickson*. In this case, there was testimony from several witnesses that appellant not only continued to beat a motionless Steven Gore, but made various statements and took certain actions before and after the altercation that belie his asserted state of mind.

{¶ 38} Appellant argues that this case "is distinguishable from the decision in *Johnson*, because unlike the case here, the jury in *Johnson* had only one felonious assault charge to decide." In this case, appellant contends, "Mr. Cronin was convicted on attempted murder for the actions that took place with the [aluminum] baseball bat and felonious assault for the strikes made with the smaller wooden bat." Seemingly, appellant is suggesting that his actions during the renewed attack with the smaller bat cannot be used to vitiate his claim of self-defense against the attempted murder charge, since those actions form the subject matter of the felonious assault charge.

{¶ 39} The problem with appellant's argument is that Mr. Crabtree and Mr. Forbes testified to watching appellant pummel Gore *with the larger bat* while he was either motionless or rolling around on the ground. Indeed, Mr. Forbes testified that it was during this time that he and Mr. Crabtree were afraid that appellant was going to kill Mr. Gore. Thus, even discounting the hits with the smaller bat, the subsequent kicks, and the finger stomping, this case is indistinguishable from our decision in *Johnson*.

{¶ 40} No miscarriage of justice was created in this case by the jury's findings that appellant either did not act in self-defense or employed unnecessary and excessive force against Steven Gore. Accordingly, appellant's second assignment of error is not well-taken.

IV. ALLIED OFFENSES

{¶ 41} In his fourth assignment of error, appellant alleges:

{¶ 42} "The trial court erred by sentencing defendant-appellant to both attempted murder and felonious assault without proof beyond a reasonable doubt of a separate animus."

{¶ 43} Appellant argues that felonious assault and attempted murder are allied offenses of similar import and that "the short period of time between the disposal of the first weapon [i.e., the larger aluminum bat] and the retrieval of the second [smaller bat] demonstrates that Mr. Cronin was not acting with another purpose or intention."

{¶ 44} Pursuant to R.C. 2941.25(A) and (B), a defendant may not be convicted of two or more crimes that constitute allied offenses of similar import unless the crimes were committed separately or with a separate animus as to each. In *State v. Williams*, 124 Ohio St.3d 381, 2010-Ohio-147, paragraph one of the syllabus, the Ohio Supreme Court held, "Felonious assault as defined in R.C. 2903.11(A)(1) is an allied offense of attempted murder as defined in R.C. 2903.02(B) and 2923.02."

{¶ 45} Courts have found a separate animus for both felonious assault and murder or attempted murder when a defendant shot a victim in the back as he attempted to flee

and then ran up to the victim as he lay on the ground and fired multiple shots into his head, *State v. Wilson*, 2d Dist. No. 22120, 2008-Ohio-4130, ¶ 43-44; when a defendant shot a victim inside a building, then followed him outside and attempted to shoot him again, *State v. Hines*, 8th Dist. No. 90125, 2008-Ohio-4236, ¶ 47; when a defendant severely beat a victim for a prolonged period of time, striking him between six and 12 times in the head and neck, *State v. Chaney*, 5th Dist. No. 2007CA00332, 2008-Ohio-5559, ¶ 33; and where a defendant stabbed a victim with a steak knife until the blade broke from the handle, then obtained a butcher knife from the kitchen, chased the victim down a hallway, and continued to stab her, *State v. Roberts*, 3d Dist. No. 9-08-31, 2009-Ohio-298, ¶ 17. In the latter case, the court explained, "The cessation in the attack during which Roberts obtained a second knife constitutes a line of distinction or break in the 'temporal continuum,' from which we conclude that separate and distinct crimes were committed." Id.

{¶ 46} Here, appellant struck Gore numerous times with an aluminum baseball bat and, after being persuaded by bystanders to relinquish the bat, resumed his beating of Gore with a smaller bat. Under these circumstances, we conclude that a separate animus existed for each offense and, therefore, the trial court did not err in sentencing appellant for each conviction.

{¶ 47} Accordingly, appellant's fourth assignment of error is not well-taken.

V. LESSER INCLUDED OFFENSES

{¶ 48} In his fifth assignment of error, appellant maintains:

{¶ 49} "The trial court committed plain error by failing to give instructions to the jury on the lesser included offenses and offenses of an inferior degree to attempted murder and felonious assault."

{¶ 50} In his sixth assignment of error, appellant contends:

{¶ 51} "Defendant-appellant's constitutional right to effective assistance of counsel was violated by counsel's failure to request instruction on lesser included and inferior degree offenses."

{¶ 52} Appellant argues that the trial court should have given, and trial counsel should have requested, instructions on voluntary manslaughter under R.C. 2903.03 and aggravated assault under R.C. 2903.12(A)(1). Both of these offenses require that the defendant be "under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force."

{¶ 53} Generally, however, an instruction on voluntary manslaughter or aggravated assault is incompatible with instructions on self-defense so that both cannot be given together. See *State v. Brown*, 8th Dist. No. 93007, 2010-Ohio-2460, ¶ 50-55; *State v. Krug*, 11th Dist. No. 2008-L-085, 2009-Ohio-3815, ¶ 86-87; *State v. Livingston*, 8th Dist. No. 88714, 2007-Ohio-3664, ¶ 8; *State v. Marcum*, 7th Dist. No. 04 CO 66, 2006-Ohio-7068, ¶ 46; *State v. Levett*, 1st Dist. No. C-040537, 2006-Ohio-2222, ¶ 29; *State v. Loyed*, 8th Dist. No. 83075, 2004-Ohio-3961, ¶14.

{¶ 54} This case is no exception. Appellant testified that he acted out of fear, not rage or passion, which is inconsistent with an instruction on voluntary manslaughter or aggravated assault. Whether Mr. Gore's purported actions toward appellant's mother would have been sufficient provocation to incite appellant to sudden passion or rage, as appellant alleges in his brief, is a purely theoretical question in this case, since that was not appellant's testimony. In fact, in addition to appellant's specific statements that he acted out of fear, the mainstay of his testimony was that he continuously backed away and repeatedly told Mr. Gore he did not want a confrontation. Additionally, appellant testified that the only reason he continued to strike Mr. Gore while he was on the ground was because Mr. Gore kept getting up to charge at him and he was afraid for his own life.

{¶ 55} As there was no evidence that appellant acted with a sudden passion or fit of rage, and since the offenses of voluntary manslaughter and aggravated assault are incompatible with appellant's claim of self-defense, the trial court did not err in failing to give instructions on those offenses and appellant's trial counsel was not ineffective for failing to request them. Accordingly, appellant's fifth and sixth assignments of error are not well-taken.

VI. CONCLUSION

{¶ 56} The judgment of the Sandusky County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Arlene Singer, J. _____

Thomas J. Osowik, P.J. _____

Keila D. Cosme, J. _____
CONCUR.

_____
JUDGE

_____
JUDGE

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JUDGE