[Cite as *In re C.G.S.*, 2015-Ohio-2386.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101554

IN RE: C.G.S.
A Minor Child

JUDGMENT:
AFFIRMED IN PART, REVERSED IN PART,
AND REMANDED FOR RESENTENCING

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. DL 13105513

BEFORE: Celebrezze, A.J., E.T. Gallagher, J., and Laster Mays, J.

RELEASED AND JOURNALIZED: June 18, 2015

ATTORNEY FOR APPELLANT

Timothy Young
Ohio Public Defender
By: Charlyn Bohland
Assistant Ohio Public Defender
250 East Broad Street
Suite 1400
Columbus, Ohio 43215

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor
By: Owen M. Patton
Norman Schroth
Assistant Prosecuting Attorneys
Justice Center, 9th Floor.
1200 Ontario Street
Cleveland, Ohio 44113

FRANK D. CELEBREZZE, JR., A.J.:

{¶1} Appellant, C.G.S., a juvenile at the time of the incident described below, appeals her delinquency adjudication for aggravated vehicular homicide and vehicular homicide, and the resultant dispositional penalty. Appellant claims her adjudications are unsupported by sufficient evidence, are against the manifest weight of the evidence, and the court imposed improper penalties. After a thorough review of the record and law, we affirm in part, reverse in part, and remand for a new dispositional hearing.

I. Factual and Procedural History

{¶2} On January 9, 2013, a few minutes before 7:50 a.m., Maxine Lobins, age 81, finished her breakfast at the Steak 'n Shake restaurant on Lorain Avenue in Cleveland, Ohio. She exited the building and proceeded to walk across the street to the Marc's parking lot aided by her wheeled walker. Kenneth Gibbons was having breakfast at the same restaurant and left at the same time. He testified that Maxine was going to walk directly across the street from the restaurant, but he advised her it was a bad idea. After indicating to him that she did not need anyone's help, she turned and walked down the street toward the crosswalk to the west. Gibbons testified Maxine walked in the street because the sidewalks were covered in ice and would have been impassible for her. Gibbons walked the same direction using the sidewalks. He testified they were quite treacherous. Gibbons said he and Maxine got to the crosswalk at about the same time. He continued west, while she turned north to cross the street in the crosswalk demarcated

by a brick path, reflective paint, and flashing signs warning drivers of pedestrians. After a few seconds, Gibbons heard a terrible noise and turned to see what he described as a dark-colored van or large vehicle, which he estimated was traveling at 35 m.p.h., hit Maxine and send her flying through the air. She landed near the curb. Gibbons rushed to Maxine to attempt to aid her. He also flagged down a vehicle and urged the driver to call 9-1-1. Medical professionals on their way to work at nearby Fairview Hospital stopped to render aid, and emergency services were on scene within minutes. These efforts could not save Maxine, who died as a result of injuries sustained in the collision.

{¶3} Brian Long testified he was driving east on Lorain Avenue toward Rocky River Drive. He stated it was raining and road conditions were not good. He was traveling slowly as this area was usually pretty busy and because of the road conditions. He stopped when he saw a pedestrian crossing the street. He could not remember whether the pedestrian was within the crosswalk. Long looked over to see a dark-colored large sport utility vehicle ("SUV") to his left speeding past him in the second lane of travel. Long honked his horn in an attempt to warn the speeding driver of the pedestrian crossing the street. Long saw the car strike the woman as she crossed into the second eastbound lane of travel. The dark-colored SUV did not stop at the scene of the collision.

{¶4} Joanna Galla was on her way to work that morning traveling eastbound on Lorain Avenue. She was in the curb lane behind a bus. She observed a pedestrian walking down the road near the curb. She observed the bus go around the pedestrian by

changing lanes, and she did the same. The bus stopped to pick up passengers near the corner of Rocky River Drive and Lorain Avenue. Galla testified she was turning right on Rocky River Drive so she waited behind the bus. She looked in her mirrors and watched the pedestrian begin to cross the street at or near the brick crosswalk. She saw the pedestrian walk to the second or left lane of eastbound travel and be hit by a car traveling faster than the posted speed limit of 25 m.p.h. Gallo testified that she saw a black SUV strike the pedestrian and saw the pedestrian fly up into the air and land in the right-hand lane. The vehicle did not stop, and Gallo was not able to get a license plate number.

{¶5} In the weeks following Maxine's death, significant police resources were expended looking for clues as to the identity of the person driving the dark-colored vehicle involved. No vehicle debris was found at the collision site, so police initially had only eyewitness accounts with which to develop a suspect vehicle description. Cleveland police officers obtained video footage from security cameras from multiple businesses located near the scene of the collision. Police were able to refine a description of the suspect vehicle based on video from two locations. The vehicle was determined to be a black or dark-colored mid-sized to large SUV with chrome door handles and tail lights that wrapped around the sides of the vehicle. Following the investigation of several leads that proved fruitless, diligent police work paid off. Fairview Park police lieutenant Paul Shepard stopped a vehicle that matched the description of the suspect vehicle. He observed damage to the front of the SUV consistent with a front-end collision. He

obtained the name of the vehicle owner and the name of the person that was driving the vehicle when the front-end damage occurred.

{¶6} Lieutenant James O'Malley and Detective Richard Cerny with the Cleveland Police Department later observed the vehicle stopped by Lieutenant Shepard traverse the same route at about the same time as witnesses stated the suspect vehicle traveled on January 9, 2013. The officers followed the vehicle to a nearby school. After students entered the building at the start of classes, the officers inspected the vehicle. Detective Cerny observed damage to the front of the vehicle consistent with a pedestrian collision. Officers obtained permission from the owner to tow the vehicle and it was inspected by trace evidence personnel with the Cuyahoga County Medical Examiner's Office.

{¶7} As a result of the investigation, a complaint was filed in the juvenile court in Cuyahoga County alleging appellant was a delinquent minor. The complaint alleged appellant violated six criminal statutes that constitute the following offenses: Aggravated vehicular homicide in violation of R.C. 2903.06(A)(2)(a), a third-degree felony if committed by an adult; failure to stop after an accident in violation of R.C. 4549.02(A), a third-degree felony if committed by an adult; vehicular homicide in violation of R.C. 2903.06(A)(3)(a), a first-degree misdemeanor if committed by an adult; two counts of falsification in violation of R.C. 2921.13(A)(5), first-degree misdemeanors if committed by an adult; and two counts of engaging in certain prohibited acts in violation of R.C. 4507.30(E), first-degree misdemeanors if committed by an adult.

{¶8} A seven-day trial began on March 24, 2014. At the conclusion of the state's case, the trial court granted appellant's Crim.R. 29 motion in part and dismissed the charges of falsification and engaging in certain prohibited acts. It denied the motion as to the remaining charges. After appellant rested, the court denied her renewed motion for acquittal, heard closing arguments, and took some time to deliberate the matter. On April 1, 2014, the court found appellant delinquent of aggravated vehicular homicide and vehicular homicide. The court found that appellant did not knowingly leave the scene of an accident and found that charge unproven.

{¶9} At a dispositional hearing held on May 13, 2014, the court imposed and suspended a 90-day commitment to the Department of Youth Services and $1,000 fine for vehicular homicide. The court also imposed and then suspended a period of commitment to the Department of Youth Services for between six months and until appellant attained the age of 21. A fine of $5,000 was also imposed with $2,000 suspended. The court ordered two years of community control and instructed that appellant be under house arrest until a week before she reports to college. A lifetime driver's license suspension was also imposed. However, the court instructed that she be able to petition the court for limited driving privileges after three years and for a lifting of the lifetime ban after ten years. Finally, the court imposed 400 hours of community service.

{¶10} From this adjudication and disposition, appellant appeals raising six assignments of error:

> I. The juvenile court violated C.G.S.'s right to due process of law when it adjudicated her delinquent of aggravated vehicular homicide in the absence

of sufficient, credible, and competent evidence, in violation of the Fifth and Fourteenth Amendments to the U.S. Constitution; Article I, Section 16, Ohio Constitution; and Juv.R. 29(e)(4).

II. The juvenile court violated C.G.S.'s right to due process when it adjudicated her delinquent of aggravated vehicular homicide and vehicular homicide when the evidence was contradictory, inconsistent, and illogical, in violation of the Fifth and Fourteenth Amendments to the U.S. Constitution; and, Article I, Section 16, Ohio Constitution.

III. The juvenile court erred when it failed to merge C.G.S.'s adjudications for aggravated vehicular homicide and vehicular homicide, in violation of the Fifth and Fourteenth Amendments to the U.S. Constitution; and, Article I, Sections 10 and 16, Ohio Constitution.

IV. The juvenile court abused its discretion when it ordered a lifetime driving suspension, in violation of R.C. 2152.19; R.C. 2152.02(C)(6); the Fourteenth Amendment to the U.S. Constitution; and, Article I, Section 16, Ohio Constitution.

V. The juvenile court exceeded its statutory authority when it ordered C.G.S. to pay fines in excess of the statutory limits, a violation of R.C. 2152.20(A)(1).

VI. Trial counsel rendered ineffective assistance by failing to object to C.G.S.'s adjudications for allied offenses of similar import and dispositions imposed in excess of statutory limits, in violation of the Sixth and Fourteenth Amendments to the U.S. Constitution; and, Article I, Sections 10 and 16, Ohio Constitution.

II. Law and Analysis

A. Sufficiency

{¶11} Appellant's first assignment of error claims that the court erred in adjudicating her delinquent of aggravated vehicular homicide where there was insufficient evidence of recklessness to sustain such a decision.

{¶12} The Ohio Supreme Court has explained the standard for sufficiency of the evidence:

> Raising the question of whether the evidence is legally sufficient to support the jury verdict as a matter of law invokes a due process concern. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541. In reviewing such a challenge, "[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. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus, following *Jackson v. Virginia* (1979), 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560.

State v. Diar, 120 Ohio St.3d 460, 2008-Ohio-6266, 900 N.E.2d 565, ¶ 113.

{¶13} Aggravated vehicular homicide, as it relates to this case, is defined in R.C. 2903.06(A)(2)(a). This statute provides, in pertinent part, that no person, while operating a motor vehicle, shall recklessly cause the death of another. Recklessness is statutorily defined:

> A person acts recklessly when, with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that the person's conduct is likely to cause a certain result or is likely to be of a certain nature. A person is reckless with respect to circumstances when, with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that such circumstances are likely to exist.

R.C. 2901.22(C).

{¶14} In the present case, appellant was driving in inclement weather, in the dark, in a high-traffic area. According to eyewitness estimates of speed, she was traveling faster than the posted 25 m.p.h. speed limit and much faster than the speed of other drivers. For instance, Mr. Long testified he was going 10 to 15 m.p.h. when appellant accelerated past him. According to Long, appellant accelerated around him and ignored him honking his horn in an attempt to warn her of the pedestrian in the road. Further, appellant's own statement to police indicated she was looking out the side window of her car when she may have hit something. This would have been as she sped past Long and entered a busy pedestrian crossing marked by flashing signs and a brick crosswalk. These factors, when taken together, offer a sufficient basis for finding that appellant was reckless.

{¶15} Appellant argues that Maxine was walking in the roadway, not the crosswalk, and therefore, she was supposed to yield the right of way to any vehicle. Appellant uses this to argue that she did not ignore a known risk, but at most acted negligently. This is contrary to the evidence adduced at the hearing viewed in a light most favorable to the state. Both Gibbons and Gallo testified that Maxine was walking in the crosswalk when she was hit by a car. Long testified he did not know if Maxine was within the crosswalk or not. However, he testified she may have crossed the street diagonally, meaning she began outside of the crosswalk. Further, on cross-examination, Gallo acknowledged that Maxine may have been outside of the crosswalk. Appellant

argues that, at most, the evidence adduced by the state tends to show that she acted negligently. Appellant argues that other cases that have dealt with aggravated vehicular assault have required more than just excessive speed to indicate a driver acted recklessly. *State v. Burrell*, 11th Dist. Portage No. 2009-P-0060, 2011-Ohio-2091, ¶ 42; *In re Gilbert*, 12th Dist. Butler No. CA86-10-144, 1987 Ohio App. LEXIS 8876, * 7 (Sept. 28, 1987), citing *Morrow v. Hume*, 131 Ohio St. 319, 323, 3 N.E.2d 39 (1936) and *Akers v. Stirn*, 136 Ohio St. 245, 25 N.E.2d 286, 1940 Ohio LEXIS 598 (1940). Indeed, the law in Ohio generally does require more than speeding to establish recklessness.

{¶16} This court addressed that question previously in *State v. Rashad*, 8th Dist. Cuyahoga No. 79051, 2001 Ohio App. LEXIS 4995 (Nov. 8, 2001). There, this court found that a driver acted recklessly in traveling roughly 55 m.p.h. in a 35 m.p.h. zone, driving through a red light, and colliding with another vehicle. After the collision the driver exited the vehicle and fled. This court found the acts constituted recklessness. The fact that the driver was speeding and never attempted to slow down or stop despite the fact that the light was red was significant. *Id*. at *11.

{¶17} Here, despite the fact that the area of the pedestrian crossing was demarcated with flashing signs, appellant did not slow, did not heed the warnings of other drivers, and focused her attention elsewhere at the time of the collision. Speed alone is generally not sufficient to show recklessness. However, the additional factors that are present in this case establish that appellant acted recklessly in speeding past a driver that was traveling at a slow rate of speed due to hazardous road conditions in a heavily used

and well delineated pedestrian crossing. Based on these factors, appellant's delinquency adjudication for aggravated vehicular homicide is supported by sufficient evidence.

B. Manifest Weight

{¶18} Appellant claims in her second assignment of error that her convictions for aggravated vehicular homicide and vehicular homicide are against the manifest weight of the evidence.

{¶19} When addressing a claim that a verdict is against the manifest weight of the evidence, this court examines the entire record, weighs the evidence and all reasonable inferences, and considers the credibility of the witnesses to determine whether, in resolving conflicts in the evidence, the jury clearly lost its way and created a manifest miscarriage of justice. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). A new trial should be granted only in an exceptional case in which the evidence weighs heavily against the conviction. *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). This court must be mindful that the trier of fact is in a better position to observe the witnesses' demeanor and weigh their credibility. *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967). If the verdict is supported by sufficient competent and credible evidence going to each essential element of the crime charged, this court may not reverse. *Id*.

{¶20} Appellant was found delinquent on charges of aggravated vehicular homicide and vehicular homicide. Both are defined in R.C. 2903.06(A). Aggravated vehicular homicide is committed in this case when a person, while operating a motor

vehicle, recklessly causes the death of another. R.C. 2903.06(A)(2)(a). Vehicular homicide is committed in this case when a person, while operating a motor vehicle, negligently causes the death of another. R.C. 2903.06(A)(3)(a).

{¶21} Appellant starts off by reiterating that there was insufficient evidence to prove recklessness. That argument was rejected above, and analyzing the weight of the evidence presented on recklessness does not lead to the conclusion that a manifest injustice occurred in this case. The greater amount of credible evidence in the record weighs in favor of guilt.

{¶22} There is conflicting evidence on appellant's speed and on Maxine's location at the time of the collision. Officer Cerny testified that, in his estimation based on the damage to the vehicle, it was traveling less than 30 m.p.h. However, the eyewitnesses all classified the speed of the vehicle as above the posted speed limit of 25 m.p.h. Additionally, Gibbons and Galla both placed Maxine within the crosswalk or very near to it. Long stated he could not remember her location but thought she may have started to cross the street before the crosswalk and traveled diagonally across the street toward the crosswalk. This conflicting testimony does not lead to the conclusion that the trial court lost its way in this case. The evidence in this case creates sufficient belief in this panel that appellant was speeding through a highly traveled, well-marked pedestrian crossing when road conditions were hazardous while her attention was focused elsewhere, and did not yield the right-of-way to a pedestrian crossing the street.

{¶23} Appellant also argues that the evidence adduced does not establish that she struck and killed Maxine. Appellant points out that no witness identified appellant as the driver of the car that struck Maxine, or positively identified the 2010 GMC Acadia that appellant was driving as the vehicle that struck Maxine. Further, appellant argues the forensic evidence that the state used to tie the vehicle to Maxine's death was inconclusive.

{¶24} Tackling the forensic evidence first, Daniel Mabel, a forensic scientist in the trace evidence department of the Cuyahoga County Medical Examiner's Office, examined samples of fabric taken from the red jacket Maxine was wearing at the time of the collision. Mabel compared it to samples taken from a roughly eight-inch by one-half inch reddish smear found on the hood of the vehicle driven by appellant. Mabel opined that the smear consisted of nylon and polyester; the same materials that made up the jacket. Mabel also testified the smear and the jacket materials appeared consistent in all the tests he conducted.

{¶25} Chris Bommarito, an experienced forensic trace evidence expert, testified for the defense. He opined that the nylon found in the smear was consistent with the nylon observed in the jacket, but that it was very common and not altogether helpful in determining whether the smear on the hood came from the jacket. Bommarito also opined that, based on his analysis, the second material present in the smear was not polyester. Further, Bommarito conducted a test that Mabel did not, UV-VIZ microspectrophotometry. This test is able to accurately determine the color of a given

sample. He opined that the jacket and the smear were of the same color family but not the same color based on the results of this test. He, however, could not exclude the jacket as a possible source of the smear on the hood of appellant's vehicle. He opined that there were insufficient tests or results to affirmatively establish the smear came from the jacket based on a number of factors. He opined that at most, there was a weak association between the two.

{¶26} As the trial court stated when rendering its decision, no single piece of evidence established appellant's guilt. But all the pieces of evidence offered by the state, when taken together, showed beyond a reasonable doubt that the car appellant was driving collided with Maxine. Maxine was struck on the route that appellant traveled to school at the time appellant would have been on her way to school. Appellant was late to school the day Maxine was killed and Maxine was struck at approximately 7:50 a.m. The car appellant was driving matched the description given by the eyewitnesses and the vehicle observed in the videos. The damage to the front end of the Acadia was consistent with striking a non-fixed object like a pedestrian. Detective Richard Cerny, trained in accident reconstruction, testified the rippled dent on the hood where the smear was found and the damage to the front bumper were consistent with hitting a person. The bumper impacted the legs, causing the torso to slam into the hood. This created a rippled dent in the hood. The accident resulted in no debris left at the scene, and the damage observed on the Acadia was consistent with that result. The vehicle had a cracked headlight housing and dents to the hood and bumper. Appellant admitted that

she may have struck something on January 9, 2013, on her way to school, but she thought it was a pot hole. The roadway was surveyed and no pot holes existed in the road at the time of the accident. Mabel testified that the smear he examined was consistent with the jacket Maxine was wearing.

{¶27} This evidence, in its totality, establishes that the trial court did not lose its way in finding that appellant was the driver of the car that struck and killed Maxine. Appellant's second assignment of error is overruled.

C. Allied Offenses

{¶28} Appellant was adjudicated delinquent of aggravated vehicular homicide and vehicular homicide. The two offenses are the same except for the requisite mens rea. *See* R.C. 2903.06(A). Vehicular homicide employs a negligent mental state, while aggravated vehicular homicide requires reckless action. The state concedes that these offenses are based on the same conduct and that the offenses are allied as a finding of recklessness encompasses a finding of negligence. The state also concedes that the Double Jeopardy Clause applies equally to juveniles and adults. This court has recently reached the same conclusion. *In re A.G.*, 8th Dist. Cuyahoga No. 101010, 2014-Ohio-4927, citing *In re Cross*, 96 Ohio St.3d 328, 2002-Ohio-4183, 774 N.E.2d 258, ¶ 21,23. Under *In re A.G.*, this court uses the test set forth by the United States Supreme Court in *Blockburger v. United States*, 284 U.S. 299, 304, 52 S.Ct. 180, 76 L.Ed. 306 (1932), to determine whether two offenses should merge in the context of a juvenile adjudication. "Where the same act or transaction constitutes a violation of two

distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not." *Id.* at paragraph three of the syllabus. The state conceded the necessary elements under *Blockburger* to find that the offenses are allied and should merge. In fact, the state concedes that the trial court erred in imposing punishment on both charges as the two should have merged. Therefore, the case must be remanded to the trial court for a new dispositional hearing where the court will merge the offenses and impose sentence on only one charge as elected by the state. Appellant's third assignment of error is sustained.

D. Sentencing Errors

{¶29} Appellant also argues in her fourth and fifth assigned errors that the court erred when it imposed a lifetime driver's license suspension and a $5,000 fine. As conceded by the state, both actions are beyond the court's jurisdiction.

{¶30} This court reviews a trial court's dispositional order for an abuse of discretion. *In re D.B.*, 8th Dist. Cuyahoga No. 87196, 2006-Ohio-2891, ¶ 11. Such a decision connotes the court's actions are arbitrary, unreasonable, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶31} "In a delinquency action, the juvenile court has jurisdiction over any person adjudicated a delinquent child until that person attains 21 years of age." *In re E.B.*, 8th Dist. Cuyahoga No. 100505, 2014-Ohio-2276, ¶ 5, citing R.C. 2152.02(C)(6). R.C. 2152.19 gives the court authority to impose a driver's license suspension for a period set

by the court as a condition of community control. R.C. 2152.19(A)(4)(l). However, that period is limited by its general jurisdictional grant in R.C. 2151.38: With limited exception as set forth in the statute, "all dispositional orders made by the court under this chapter shall be temporary and shall continue for a period that is designated by the court in its order, until terminated or modified by the court or until the child attains twenty-one years of age." *See also* R.C. 2152.02. Therefore, the court does not have jurisdiction to impose a driver's license suspension outside of this period. The state concedes that the court may only suspend appellant's driver's license until she reaches age 21. This is in agreement with this court's prior determination in *In re R.K.*, 8th Dist. Cuyahoga No. 84948, 2004-Ohio-6918, ¶ 15. Therefore, appellant's fourth assignment of error is sustained.

{¶32} Next, the court may only impose fines in the amounts listed in R.C. 2152.20(A)(1). As appellant points out and the state concedes, the maximum fine for aggravated vehicular homicide, a third-degree felony if committed by an adult, is $750. R.C. 2152.20(A)(1)(h). The maximum fine for vehicular homicide, a first-degree misdemeanor if committed by an adult, is $250. R.C. 2152.20(A)(1)(e). The fines imposed, and for the most part suspended, by the trial court are far in excess of these amounts. Therefore, appellant's fifth assignment of error is sustained.

F. Ineffective Assistance of Counsel

{¶33} Appellant argues in her sixth assignment of error that trial counsel was ineffective for failing to object to the imposition of punishment on allied offenses and for

failing to object to the punishment imposed. The above holdings render this assigned error moot.

III. Conclusion

{¶34} Appellant's adjudications as a delinquent youth for aggravated vehicular homicide and vehicular homicide are supported in the record and are not against the manifest weight of the evidence. However, the court erred in its dispensation of the case and a new dispositional hearing is required where the court will merge these two offenses and impose a statutorily authorized dispensation on whichever offense the state elects.

{¶35} Affirmed in part, cause reversed in part, and remanded to the lower court for resentencing consistent with this opinion.

It is ordered that appellant and appellee share the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court, juvenile division, to carry this judgment into execution. The finding of delinquency having been affirmed, any bail or stay of execution pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

FRANK D. CELEBREZZE, JR., ADMINISTRATIVE JUDGE

EILEEN T. GALLAGHER, J., and
ANITA LASTER MAYS, J., CONCUR