[Cite as *In re L.W.*, 2009-Ohio-5543.]

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

IN RE: L. W.	C. A. No. 24632
	APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. DL 08-3-762

DECISION AND JOURNAL ENTRY

Dated: October 21, 2009

MOORE, Presiding Judge.

{¶1} Appellant, L.W., a minor, appeals from the judgment of the Summit County Court of Common Pleas, Juvenile Division overruling his objections to the magistrate's decision. This Court affirms.

I.

{¶2} On March 5, 2008, L.W. was charged with one count of robbery, in violation of R.C. 2911.02(A)(2), a felony of the second degree if committed by an adult. The complaint alleged that L.W., along with three others assaulted the juvenile victim, A.C., by jumping him, fighting him, taking his cell phone and keys and then fleeing the scene.

{¶3} On June 20, 2008, an adjudicatory hearing took place before a magistrate of the juvenile division of the Summit County Court of Common Pleas. At the hearing, A.C., who was 12 at the time of the event, testified that he was walking home from school on February 21, 2008 when four unknown teenagers approached him quietly from behind. He was able to hear them

and turned around in time to avoid an unannounced punch from L.W. The two moved from the sidewalk to the street and continued to fight. While A.C. was occupied with L.W., at least one of the others approached A.C. and pushed him to the ground from behind. The assailant attempted to take A.C.'s coat but was unsuccessful in removing it from A.C.'s person. The individual then took A.C.'s cell phone and key and threw the cell phone's case at A.C. A.C. could not identify the person who took the items. All four teenagers then fled the scene. A.C. was not physically injured during the altercation.

{¶4} A.C. immediately went home and contacted his parents. He provided a description of L.W. to his father. A.C. described L.W. as wearing a black hoody, black shirt, black pants and black and white athletic shoes, which he specified were "DC Urbans." A.C. acknowledged that he was only able to identify the face and clothing of L.W., as he only briefly saw the other three assailants. When A.C.'s father arrived home A.C. accurately repeated the description. Several of his family members got in a car and drove around the neighborhood in an attempt to locate the culprits.

{¶5} After a short period of driving, the group came upon L.W., whose clothes matched the description given by A.C. They slowed the vehicle and L.W. turned around. A.C. immediately recognized his face from earlier that afternoon. A.C.'s father exited the vehicle to speak with L.W., but L.W. attempted to flee. A.C.'s father and uncle caught L.W. and pinned him down until the police arrived.

{¶6} A.C. also positively identified L.W. at the adjudicatory hearing despite the fact that L.W.'s hair was styled differently than on the day of the incident.

{¶7} The parties stipulated that the attack on A.C. took place between 3:40 and 3:50 p.m. L.W. offered the testimony of his friends, L.T., A.G. and A.L., who provided alibi

testimony on his behalf that L.W. was with them at a friend's house during the time of the incident. However, A.L. testified that she did not see L.W. until 4 p.m.

{¶8} L.W. testified on his own behalf that he was elsewhere with friends at the time of incident. He also testified that he was injured when A.C.'s father pinned him to the ground. L.W. stated that A.C.'s father punched him, choked him, offered to kill him if A.C. wished and referenced the Hilltop gang. L.W. also stated that he sought medical treatment at a hospital the next day for a cut near his eye and bruises on his neck.

{¶9} Officer Williamson of the Akron Police Department testified that L.W. declined any medical treatment at the scene of the investigation, where L.W. was apprehended by A.C.'s father. He also noted that the cell phone and key were never located.

{¶10} At the adjudication hearing, the magistrate made an oral finding of delinquency by reason of robbery. On June 30, 2008, the magistrate recommended in writing that L.W. be adjudicated a delinquent child by reason of robbery. The court adopted the magistrate's recommendation by a virtually identical entry signed that same day. L.W objected to the magistrate's decision. On October 14, 2008, the court overruled L.W.'s objection and entered judgment adjudicating him delinquent for complicity to commit robbery, in violation of R.C. 2923.03(A)(2). The judgment entry referred the matter back to the magistrate for disposition. On November 18, 2008, the magistrate entered an order placing L.W. on probation for six months; ordering that he have no contact with the victim or the victim's family; ordering him to make restitution as determined by the court; ordering that he have no contact with any co-delinquents other than ancillary contact; ordering him to complete 20 hours of community service; ordering him to submit a DNA sample in accordance with R.C. 2152.74; and, if not already completed, ordering him to submit fingerprints to the sheriff or chief of police in

accordance with R.C. 109.60(A)(1) and (2). L.W. filed an objection to the sentencing order. On January 27, 2009, the court overruled the objection and adopted all aspects of the recommended disposition with the exception of the fingerprinting requirement, which the court's judgment entry omitted.

{¶11} L.W. timely filed a notice of appeal, raising two assignments of error for our review.

II.

ASSIGNMENT OF ERROR I

> "THE EVIDENCE AT TRIAL WAS INSUFFICIENT AS A MATTER OF LAW TO CONVICT [L.W.] OF COMPLICITY TO COMMIT ROBBERY IN VIOLATION OF [R.C.] 2923.03(A)(2) AND [R.C.] 2911.02(A)(2)."

{¶12} L.W.'s first assignment of error argues that the prosecution failed to produce sufficient evidence to support the finding that L.W. was a delinquent child by reason of complicity to commit robbery.

{¶13} L.W. argues that three credible witnesses testified that he was with them at the time of the incident and, therefore, could not have committed the offense in question. He further argues that there is no proof that any of the four individuals actually took A.C.'s key and phone and that even if one did, the State failed to prove beyond a reasonable doubt that L.W. shared the intent to commit the theft portion of the charge. We disagree.

{¶14} It is well established that proceedings in juvenile court are civil in nature. *In re Agler* (1969), 19 Ohio St.2d 70, 74. However, due to the inherent criminal aspects of delinquency proceedings, the state must prove juvenile delinquency beyond a reasonable doubt.

> "Whatever their label, juvenile delinquency laws feature inherently criminal aspects that we cannot ignore. See *In re Anderson* (2001), 92 Ohio St.3d 63, 65-66. For this reason, numerous constitutional safeguards normally reserved for criminal prosecutions are equally applicable to juvenile delinquency proceedings.

> Id. at 66, citing *In re Gault*, 387 U.S. 1, 31-57 (holding that various Fifth and Sixth Amendment protections apply to juvenile proceedings), and *In re Winship* (1970), 397 U.S. 358, 365-368 (holding that the state must prove juvenile delinquency beyond a reasonable doubt)." *State v. Walls*, 96 Ohio St.3d 437, 2002-Ohio-5059, at ¶26.

{¶15} Although not styled as such, this matter is an appeal from the trial court's judgment overruling L.W.'s objections and adjudicating L.W. as a delinquent child. In reviewing L.W.'s objections, the court below conducted an independent review of the record pursuant to Juv.R. 40. See Juv.R. 40(D)(4)(d) ("In ruling on objections, the court shall undertake an independent review as to the objected matters[.]"). This Court has previously set forth its standard of review in appeals from a trial court's independent review and adoption of a magistrate's decision.

{¶16} Generally, this Court reviews a trial court's action with respect to a magistrate's decision for an abuse of discretion. *Fields v. Cloyd*, 9th Dist. No. 24150, 2008-Ohio-5232, at ¶9. Under this standard, we must determine whether the trial court's decision was arbitrary, unreasonable, or unconscionable – not merely an error of law or judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶17} In so doing however, we consider the trial court's action with reference to the nature of the underlying matter. *Tabatabai v. Tabatabai*, 9th Dist. No. 08CA0049-M, 2009-Ohio-3139, at ¶18. Sufficiency of the evidence calls for a legal determination. As a result, abuse of discretion is not an appropriate standard to apply. *Med. Mut. of Ohio v. Schlotterer*, 122 Ohio St.3d 181, 2009-Ohio-2496, at ¶13. Rather, "[t]he relevant inquiry is whether, after viewing the evidence in the 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, at paragraph two of the syllabus; see, also, *State v. Thompkins* (1997), 78 Ohio

St. 3d 380, 386; accord, *In re D.P.*, 9th Dist. No. 24591, 2009-Ohio-4335, at ¶4 (observing that "[w]hen a juvenile argues that his adjudication of delinquency is supported by insufficient evidence, this Court's considerations are the same as those in reviewing the denial of a Crim.R. 29 motion in a criminal case.")

{¶18} The court adjudicated L.W. as delinquent by way of complicity to commit robbery. The robbery statute is codified in R.C. 2911.02 and provides, in pertinent part, that:

> "(A) No person, in attempting or committing a theft offense or in fleeing immediately after the attempt or offense, shall do any of the following:
>
> " ***
>
> "(2) Inflict, attempt to inflict, or threaten to inflict physical harm on another[.]"

Complicity is codified in R.C. 2923.03 and provides, in pertinent part, that:

> "(A) No person, acting with the kind of culpability required for the commission of an offense, shall do any of the following:
>
> " ***
>
> "(2) Aid or abet another in committing the offense[.]
>
> " ***
>
> "(F) Whoever violates this section is guilty of complicity in the commission of an offense, and shall be prosecuted and punished as if he were a principal offender. A charge of complicity may be stated in terms of this section, or in terms of the principal offense."

{¶19} Because we review sufficiency of the evidence in the light most favorable to the prosecution and the alibi evidence was not presented during the State's case in chief, L.W,'s argument with regard to the alibi evidence is, therefore, irrelevant to our analysis. *Jenks*, 61 Ohio St.3d at paragraph two of the syllabus.

{¶20} It is well established that to prove that a person aided and abetted the commission of a crime, "the [S]tate must show that the defendant incited, assisted, or encouraged the criminal

act." *State v. Miller* (Feb. 5, 1997), 9th Dist. No. 17776, citing *State v. Woods* (1988), 48 Ohio App.3d 1, 6. To aid and abet requires "that the defendant's conduct be directed-with the culpable mental state of the principal offense-towards accomplishing, assisting, inciting, or encouraging commission of the principal offense." *State v. Mendoza* (2000), 137 Ohio App.3d 336, 344.

{¶21} Therefore, the evidence must show that the defendant supported, assisted, encouraged, cooperated with, advised, or incited the principal in the commission of the crime, and that the defendant shared the criminal intent of the principal. *State v. Ward*, 9th Dist. No. 24105, 2008-Ohio-6133, at ¶17, citing *State v. Johnson* (2001), 93 Ohio St.3d 240, syllabus. Further, "'[p]articipation in criminal intent may be inferred from presence, companionship and conduct before and after the offense is committed.'" *Johnson*, 93 Ohio St.3d at 245, quoting *State v. Pruett* (1971), 28 Ohio App.2d 29, 34.

{¶22} As noted above, in order to support the conviction for complicity by aiding and abetting, the state was required to prove that L.W. shared the criminal intent of the principal. Robbery requires a culpable mental state of "recklessness" under R.C. 2901.21(B). *State v. Hardges*, 9th Dist. No. 24175, 2008-Ohio-5567, at ¶10 citing *State v. Colon*, 118 Ohio St.3d 26, 2008-Ohio-1624, at ¶14.

> "A person acts recklessly when, with heedless indifference to the consequences, he perversely disregards a known risk that his 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, he perversely disregards a known risk that such circumstances are likely to exist." R.C. 2901.22(C).

{¶23} Testimony introduced by the prosecution indicates that A.C. was approached silently from behind by a group of four young men with whom he was unfamiliar, including L.W. L.W. attempted to punch A.C. without any warning or provocation. As A.C. and L.W.

scuffled in the street, one or more of the other young men pushed A.C. to the ground from behind and attempted to pull A.C.'s coat off. The attempt was unsuccessful, but the individual did take A.C.'s cell phone and key and threw the cell phone's case at A.C. The four young men then fled.

{¶24} No words were spoken between the four young men during the altercation. The fact finder could have drawn an inference from that fact and from the fact that the group approached A.C. in silence to indicate that at the outset of the events, it was the intent of the four young men to rob A.C. L.W. also began a fight with A.C., whom he did not know, without any verbal interaction, provocation or warning. Although there were four young men, only one, L.W., engaged in combat with A.C. The only involvement with the others occurred when A.C. was pushed to the ground and one of the four attempted to steal his coat. Once L.W.'s accomplice took A.C.'s phone and key, L.W. fled.

{¶25} Each of the young men participated in the commission of the robbery offense. First, L.W. attempted to inflict physical harm upon A.C. by punching him. Then, one of L.W.'s accomplices attempted, without success, to take A.C.'s coat. One accomplice then took A.C.'s key and cell phone without permission – a theft offense. The other facts, taken together, allow the reasonable inference that L.W. shared the criminal intent of the principal to complete the robbery and, in fact, aided and abetted the principal in completing the robbery. Viewing the evidence in the light most favorable to the prosecution, we conclude that the prosecution submitted sufficient evidence for a rational trier of fact to find beyond a reasonable doubt that L.W. aided and abetted an accomplice in accomplishing the robbery. Accordingly, the assignment of error is not well taken to the extent that it addresses the trial court's ruling that there was sufficient evidence to support the finding of delinquency by reason of robbery.

ASSIGNMENT OF ERROR II

> "THE ADJUDICATION OF [L.W.] AS A DELINQUENT CHILD BY REASON OF COMMITTING THE OFFENSE OF COMPLICITY TO COMMIT ROBBERY IN VIOLATION OF [R.C.] 2923.02(A)(2) AND [R.C.] 2911.02(A)(2) IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶26} In L.W.'s second assignment of error he argues that his conviction was against the manifest weight of the evidence. L.W. argues that the court erred in relying upon eyewitness identification testimony due to its inherently untrustworthy nature. L.W. also reiterates his argument that three credible alibi witnesses testified that he was not present for the altercation. We disagree that the court erred.

{¶27} Even though civil, when reviewing whether a trial court's judgment is against the manifest weight of the evidence, we apply the criminal standard. *In re R.D.U.*, 9th Dist. No. 24225, 2008-Ohio-6131, at ¶6.

{¶28} "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." *State v. Gulley* (Mar. 15, 2000), 9th Dist. No. 19600, at *1, citing *Thompkins*, 78 Ohio St.3d at 390.

{¶29} A determination of whether a conviction is against the manifest weight of the evidence does not permit this court to view the evidence in the light most favorable to the State to determine whether the State has met its burden of persuasion. *State v. Love*, 9th Dist. No. 21654, 2004-Ohio-1422, at ¶11. Rather,

> "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.

{¶30} L.W.'s arguments regarding the credibility of his three alibi witnesses are relevant at this stage of the analysis. Thus, even though L.W. did present alibi witnesses who claimed that L.W. was with them, and not at the scene of the robbery, we conclude that the trier of fact could determine that L.W. and his alibi witnesses were not believable. We further note that one alibi witness did not testify that L.W. was with her at the time of the attack, rather, she could only testify as to L.W.'s whereabouts after the attack. Accordingly, the trial court did not abuse its discretion in adopting the magistrate's decision, which discounted the testimony of L.W.'s alibi witnesses and relied upon the testimony of A.C.

{¶31} Addressing A.C.'s identification of L.W., L.W. cites to *State v. Breedlove*, 7th Dist. No. 05 MA 110, 2008-Ohio-1550, for the proposition that eyewitness identification is the most suspect of all evidence. L.W. suggests that the magistrate ignored the fallibility of eyewitness identification entirely and should not have based L.W.'s conviction on such infirm evidence. We emphasize that on appeal we review the actions of the trial court, not the magistrate. *In re Woodburn* (Jan. 2, 2002), 9th Dist. No. 20715, at *2.

{¶32} The court in *Breedlove* observed that "'[i]t is common knowledge in the legal world that eyewitness testimony, contrary to common sense, is often unreliable.'" *Breedlove*, supra, at ¶75, quoting *State v. Weaver*, 2d Dist. No. CIV.A. 20549, 2004-Ohio-5986, at ¶18. However, *Breedlove* further notes that questions regarding the reliability of eyewitness testimony are best left for the fact-finder. *Breedlove*, supra, at ¶75, citing *State v. Tonn*, 2d Dist. Nos. 204-CA-36, 2004-CA-37, 2005-Ohio-2021, at ¶10. The trial court noted that at the adjudicatory hearing A.C. testified in specific detail regarding his assailant's attire. A.C.'s father testified that A.C. provided the same description to him on the phone that he provided when he returned home

from work that night. A.C. also identified L.W. as an assailant within hours after the altercation occurred. A.C. was then able to identify L.W. in court despite the fact that L.W.'s hair was different. A.C. also candidly admitted that he did not observe enough details to identify any other participant in the incident. After reviewing the entire record, weighing the evidence and all reasonable inferences, we conclude that it was not manifestly unjust to accept and rely upon A.C.'s testimony. Therefore, the trial court did not abuse its discretion in adopting the magistrate's decision.

{¶33} With regard to the robbery charge, L.W. focuses his argument on intent, arguing that the weight of the evidence demonstrated that he did not intend for his companion to steal A.C.'s cell phone and key. Rather than focus strictly on the culpable mental state to commit the theft portion of the offense, we look to the overarching act of robbery. As noted above, robbery requires a culpable mental state of "recklessness" under R.C. 2901.21(B). *State v. Hardges*, 9th Dist. No. 24175, 2008-Ohio-5567, at ¶10, citing *State v. Colon*, 118 Ohio St.3d 26, 2008-Ohio-1624, at ¶14.

> "A person acts recklessly when, with heedless indifference to the consequences, he perversely disregards a known risk that his 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, he perversely disregards a known risk that such circumstances are likely to exist." R.C. 2901.22(C).

{¶34} Intent need not be proved by direct evidence. *State v. Elwell*, 9th Dist. No. 06CA008923, 2007-Ohio-3122, at ¶26. This is because, "'[n]ot being ascertainable by the exercise of any or all of the senses, [intent] can never be proved by the direct testimony of a third person, and it need not be. It must be gathered from the surrounding facts and circumstances[.]'" *In re Washington* (1998), 81 Ohio St.3d 337, 340, quoting *State v. Huffman* (1936), 131 Ohio St. 27, paragraph four of the syllabus. "Furthermore, if the State relies on circumstantial evidence to

prove any essential element of an offense, it is not necessary for 'such evidence to be irreconcilable with any reasonable theory of innocence in order to support a conviction. (Internal quotations omitted.)'" *State v. Tran*, 9th Dist. No. 22911, 2006-Ohio-4349, at ¶13, quoting *State v. Daniels* (June 3, 1998), 9th Dist. No. 18761, at *2. Circumstantial evidence has the same probative value as direct evidence. See *Jenks*, 61 Ohio St.3d at paragraph one of the syllabus.

{¶35} The trial court focused especially closely on the fact that A.C.'s testimony was consistent, particularly the parts pertaining to identification of L.W., and that he was extremely articulate for a 13-year old[1]. A.C. testified that he was approached silently from behind by a group of teenagers who appeared to be older than 16 or 17. As they came very close to him he heard them and managed to turn around just in time to avoid an unannounced punch from L.W. No words were exchanged beforehand and A.C. was not familiar with any of the four. As A.C. and L.W. struggled in the street, one or more of L.W.'s companions knocked A.C. to the ground from behind and attempted to steal A.C.'s coat. The companion took A.C.'s key and cell phone and threw the cell phone case at A.C. L.W. and his companions then fled the scene.

{¶36} Analyzing this unique set of facts, circumstantial evidence allows for the reasonable inference that L.W. and his three companions acted in concert for the shared purpose of committing a theft offense during which physical harm was inflicted upon A.C. Four teenagers who are unfamiliar with a 12-year old have little reason to approach him silently from behind so one of them can attempt to punch him. Notably, the record does not reflect any provocation or exchange between the group and A.C. There is no evidence that the four had any reason to fight with A.C. other than to take his property. Neither A.C. nor L.W. testified that

[1] His age at the time of the hearing.

they knew each other. A.C. testified that he was not kicked or punched by anyone other than L.W. Instead, the evidence supports the finding that the group silently approached A.C, and worked together to accomplish the robbery with one or more of L.W.'s companions pushing A.C. to the ground and taking him by surprise so that the others could take his property. When the attempt to take A.C.'s jacket failed, his key and cell phone were taken. Then the group fled the scene.

{¶37} Taken together, these facts support the trial court's implicit finding that L.W. and his friends intended to commit a robbery. Such an inference explains why there was no need for the group to verbalize as they approached A.C. or while L.W. engaged in fighting him. L.W. aided and abetted the principal in the robbery by attempting to inflict physical harm on A.C., allowing the principal to take A.C.'s property. As a final note, even after he was apprehended, rather than name his friend and distance himself from the theft portion of the act, L.W. demonstrated his intent when he continued to maintain that he was elsewhere at the time of the event. *Johnson*, 93 Ohio St.3d at 245. After reviewing the entire record, and weighing the evidence and all reasonable inferences, we conclude that the trial court did not create a manifest miscarriage of justice when it found that L.W. had the requisite culpable mental state, recklessness.

{¶38} This case is factually similar to *McMorris v. Commonwealth*, a case in which the Supreme Court of Virginia overturned a man's conviction for the equivalent of complicity to commit robbery. (2008), 276 Va. 500, 666 S.E.2d 348. In *McMorris*, five young men attacked a man whom they believed called the police on them the night before. Id. at 503-04. During the attack, the victim's wallet and cell phone fell to the ground. Id. at 504. A young man other than McMorris took the cell phone. Id. The victim did not see what became of the wallet but it was

no longer on the ground after the attack. Id. That court overturned McMorris' conviction because the Commonwealth could not prove that McMorris saw the wallet and cell phone fall to the ground or that he shared the intent of the principal. Id. at 506. The citations to case law throughout *McMorris* demonstrate that Virginia law with regard to complicity is nearly identical to Ohio law. However, one significant difference applies. In Virginia, when the Commonwealth relies on circumstantial evidence, "*all circumstances proved must be consistent with guilt and inconsistent with innocence and exclude all reasonable conclusions inconsistent with guilt*." (Emphasis added.) Id.

{¶39} Ohio has a different standard for interpreting circumstantial evidence. In Ohio it is not necessary that circumstantial evidence be irreconcilable with any reasonable theory of innocence. *Tran*, at ¶13. In *McMorris* the young men were familiar with their victim and had a plausible motive other than robbery for the attack. In this case, the parties did not know each other and had no obvious motive other than robbery. It was not manifestly unjust for the Juvenile Court to draw reasonable inferences of L.W.'s intent to aid and abet the robbery without the prosecution disproving reasonable theories of innocence.

{¶40} Under the unique circumstances of this case, we hold that the circumstantial evidence demonstrates that L.W. shared the necessary intent, recklessness, to aid and abet the principal in accomplishing robbery by attempting to inflict harm on A.C during the commission of a theft offense. After reviewing all of the evidence and weighing the inferences, this Court cannot say that the trier of fact lost its way when it credited A.C.'s consistent identification testimony over that of L.W. and his alibi witnesses. The trier of fact could reasonably infer that L.W. aided and abetted an accomplice in accomplishing the robbery with the requisite culpable

mental state. Accordingly, the trial court's judgment was not against the manifest weight of the evidence in adjudicating L.W. as a delinquent child.

III.

{¶41} Appellant's assignments of error are overruled. The judgment of the Summit County Court of Common Pleas, Juvenile Division 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 Summit, 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.

CARLA MOORE
FOR THE COURT

WHITMORE, J.
BELFANCE, J.
CONCUR

APPEARANCES:

GARY L. HIMMEL, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and HEAVEN R. DIMARTINO, Assistant Prosecuting Attorney, for Appellee.