

STATE OF OHIO                    )  
  )ss:  
COUNTY OF SUMMIT            )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C. A. No.       24709

Appellee

v.

LATROY D. TURNER

Appellant

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF SUMMIT, OHIO  
CASE No.     CR 2008-08-2807(A)

DECISION AND JOURNAL ENTRY

Dated: December 16, 2009

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CARR, Presiding Judge.

{¶1} Appellant, Latroy Turner, appeals the judgment of the Summit County Court of Common Pleas. This Court affirms.

I.

{¶2} Latroy Turner was indicted by the Summit County Grand Jury on September 9, 2008. The vast majority of the charges stemmed from three separate incidents in which Turner allegedly entered a hotel room, instructed victims to remove their clothing, threatened their lives, and then robbed them at gunpoint. The first victim, Thomas Giere, was robbed at the Radisson hotel in Copley, Ohio at approximately 7:15 pm on August 19, 2008. The second victim, Jeffrey Scattergood, was robbed less than an hour later on the same night at the nearby Hilton hotel in Fairlawn, Ohio. J.S. and N.S. were robbed the next night at the Quality Inn hotel in Green, Ohio at approximately 9:00 pm. J.S. was allegedly raped during the course of the robbery. The

remaining charges in the indictment dealt with the circumstances surrounding Turner's arrest on August 21, 2008.

{¶3} On December 16, 2008, Turner was convicted by a jury of three counts of aggravated burglary with firearm specifications; four counts of aggravated robbery with firearm specifications; four counts of kidnapping with firearm specifications; one count of rape with a firearm specification; four counts of robbery with firearm specifications; four counts of having weapons while under disability; two counts of felonious assault with firearm specifications; and four counts of receiving stolen property. Turner was subsequently sentenced to a combined thirty-four year sentence. Turner has appealed his conviction to this Court and raises four assignments of error. This Court has rearranged his assignments of error to facilitate review.

## II.

### **ASSIGNMENT OF ERROR I**

“THE DEFENDANT MOVED TO SEVERE THE SEPARATE INCIDENTS IN THIS CASE IN TWO SEPARATE TRIALS. THE INCIDENTS IN THIS CASE OCCURRED IN DIFFERENT JURISDICTIONS, EACH INVOLVING A DIFFERENT MODE OF ENTRY INTO THE HOTEL ROOM, INVOLVED DIFFERENT VICTIMS AND ONE OF THE EVENTS OCCURRED ON A DIFFERENT DATE, INCLUDING AN ACCOMPLICE WHO WAS NOT INCLUDED IN THE OTHER EVENTS AND ALLEGATIONS OF RAPE. DID THE TRIAL COURT ABUSE ITS DISCRETION IN DENYING DEFENDANT’S MOTION TO SEVERE TRIALS WHEN THE VARIOUS COUNTS INCLUDED SEPARATE EVENTS.” (sic)

{¶4} Turner argues that the trial court erred in denying his motion to try the offenses in the indictment separately. Specifically, Turner argues that the charges stem from four separate incidents and that charges from separate incidents should not have been tried together. This Court disagrees.

{¶5} “The law favors joining multiple offenses in a single trial under Crim.R. 8(A) if the offenses charged ‘are of the same or similar character.’” *State v. Lott* (1990), 51 Ohio St.3d

160, 163, quoting Crim.R. 8(A). A defendant claiming the trial court erred in denying a motion to sever must affirmatively show that his rights were prejudiced and that the trial court abused its discretion in refusing separate trials. *State v. Torres* (1981), 66 Ohio St.2d 340, 343. An abuse of discretion is more than an error of judgment; it means that the trial court was unreasonable, arbitrary, or unconscionable in its ruling. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. An abuse of discretion demonstrates “perversity of will, passion, prejudice, partiality, or moral delinquency.” *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621. When applying the abuse of discretion standard, this Court may not substitute its judgment for that of the trial court. *Id.*

{¶6} On October 14, 2008, Turner moved to sever the charges in the indictment pursuant to Crim.R. 14. Turner renewed this motion to sever on the record at trial. The trial court denied Turner’s motions and all of the offenses charged in the indictment were tried together.

{¶7} Crim.R. 8(A) states:

“Two or more offenses may be charged in the same indictment, information or complaint in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character, or are based on the same act or transaction, or are based on two or more acts or transactions connected together or constituting parts of a common scheme or plan, or are part of a course of criminal conduct.”

{¶8} Crim.R. 14 provides, in part:

“If it appears that a defendant or the state is prejudiced by a joinder of offenses or of defendants in an indictment, information, or complaint, or by such joinder for trial together of indictments, informations or complaints, the court shall order an election or separate trial of counts, grant a severance of defendants, or provide such other relief as justice requires.”

{¶9} Three of the four incidents to which Turner refers occurred within approximately twenty-six hours. The first incident took place at the Radisson hotel in Copley, Ohio on August

19, 2008 at approximately 7:15 pm. The second incident took place at the Hilton hotel in Fairlawn on the same night when Jeffrey Scattergood finished eating dinner in his room. Dinner had been delivered to Scattergood's room by the room service staff at 7:15 pm. The third incident occurred the next day at the Quality Inn in Green, Ohio just prior to 9:00 pm. The record reveals that the modus operandi of the perpetrator was unmistakably similar and was consistent with a course of criminal conduct. Each incident took place in a hotel room. During each incident, the perpetrator entered the room of a hotel patron with a firearm and ordered the victims to take off their clothes. In all three incidents, the perpetrator threatened to take the lives of the victims if they did not comply with his demands. Likewise, in all three incidents, the victims were robbed. The glaring distinction between the two August 19 incidents and the incident which occurred the next day was that the August 20 incident involved an accomplice and one of victims was raped. However, this Court notes that the August 20 incident was the only incident which involved a female victim. The evidence in this case was direct and uncomplicated with regard to each count charged in the indictment. The similarities in the incidents show a course of criminal conduct. Therefore, the trial court did not abuse its discretion in denying Turner's motion to sever the charges and trying all of the charges which stemmed from the three robberies in a single trial.

{¶10} The fourth incident which was joined by the trial court involved the arrest of Turner at his home on August 21, 2008. Law enforcement went to the home of Turner with the intent of placing him under arrest for the crimes which had occurred on the previous days. Upon the arrival of law enforcement, Turner barricaded himself in a room and refused to surrender peacefully. After Turner had been apprehended, law enforcement officials were able to locate property which had been stolen during the previous incidents. The police also found that Turner

was in illegal possession of a firearm. Trying the charges of receiving stolen property and having weapons while under disability together with the charges stemming from the aforementioned incidents was permissible because all of the offenses were part of the same course of criminal conduct. If it had not been for the incidents that occurred on the previous days, law enforcement would not have had reason to be at Turner's apartment where they ultimately recovered property that had been stolen during the preceding offenses.

{¶11} It follows that Turner's first assignment of error is overruled.

### **ASSIGNMENT OF ERROR II**

"THE TRIAL COURT IN THIS CASE PERMITTED TESTIMONY REGARDING MR. TURNER'S ACTIONS WHILE HE WAS ARRESTED. IT WAS ALLEGED THAT MR. TURNER BARRICADED HIMSELF IN A ROOM AND REFUSED TO COME OUT AND SPEAK TO THE POLICE UNTIL THEY SHOT TEAR GAS INTO THE ROOM. WAS THE PROBATIVE VALUE OF THIS EVIDENCE OUTWEIGHED BY ITS PREJUDICIAL EFFECTS IN THIS CASE?"

### **ASSIGNMENT OF ERROR IV**

"THE TRIAL COURT ADMITTED PHOTOGRAPHS OF THE RAPE VICTIM'S VAGINA OVER OBJECTION. THE PHOTOGRAPHS SHOWED NO INJURY TO THE VICTIM AND THE NURSE WHO EXAMINED THE VICTIM WAS ABLE TO TESTIFY TO THE VICTIM'S CONDITION. WAS THE PROBATIVE VALUE OF THE PHOTOGRAPHS OF THE VICTIM OUTWEIGHED BY THEIR PREJUDICIAL EFFECT?"

{¶12} In his second and fourth assignments of error, Turner argues that the trial court erred in allowing the State to introduce two pieces of evidence on the basis that the probative value of the evidence was outweighed by its prejudicial effect. Turner argues the trial court erred in permitting testimony regarding his actions while he was arrested. Turner also contends the trial court erred in admitting photographs of the victim's vagina and cervix into evidence over the objection of defense counsel. This Court disagrees with both assertions.

{¶13} “The decision to admit or to exclude evidence is a matter left within the sound discretion of the trial court and will not be reversed absent an abuse of that discretion.” *Gamble v. Summit Cty. Dept. of Jobs and Family Servs.*, 9th Dist. No. 21450, 2004-Ohio-193, at ¶12. An abuse of discretion is more than an error of judgment; it means that the trial court was unreasonable, arbitrary, or unconscionable in its ruling. *Blakemore*, 5 Ohio St.3d at 219. An abuse of discretion demonstrates “perversity of will, passion, prejudice, partiality, or moral delinquency.” *Pons*, 66 Ohio St.3d at 621. When applying the abuse of discretion standard, this Court may not substitute its judgment for that of the trial court. *Id.*

{¶14} Evid.R. 401 states that “relevant evidence” is evidence “having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Evid.R. 403 states:

“(A) Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury.

“(B) Although relevant, evidence may be excluded if its probative value is substantially outweighed by considerations of undue delay, or needless presentation of cumulative evidence.”

### **Testimony**

{¶15} Turner argues the trial court erred in permitting testimony regarding the circumstances which unfolded during his arrest on August 21, 2008. Sergeant Michael Yohe of the Akron police department’s SWAT team testified as follows. The SWAT team responded to a call that a subject with outstanding felony arrest warrants had barricaded himself in a room and was possibly armed. Upon arriving at an apartment located at 864 Palmetto Street in Akron, Ohio, the team was able to confirm that Turner had barricaded himself in a back bedroom and he claimed to have a firearm. Turner informed law enforcement officials that he did not want to

spend the rest of his life in jail and that he intended to force a violent confrontation. Turner specifically indicated that he intended to charge the law enforcement officials in a manner which mimicked the strategy he employed when playing video games. After extended negotiations did not result in a peaceful surrender, law enforcement used a 37 millimeter gas gun to launch two rounds of tear gas through the window of the bedroom. Within a matter of seconds after the second round was launched into the room, Turner exited the room and surrendered to law enforcement.

{¶16} Turner contends that the aforementioned facts were inflammatory and prejudicial and caused the jury to unreasonably conclude that, because he did not want to cooperate with police, he was guilty. The events which occurred on August 21, 2008, at the Palmetto Street apartment were critical to the prosecution of the case. During the subsequent execution of the search warrant which ensued, law enforcement was able to recover J.S.'s driver's license and identification card, Thomas Giere's credit cards, GPS units, multiple laptop computers and cell phones, a laptop bag, a purse, a camera and a mouse. This evidence linked Turner to the three aforementioned incidents. When Turner refused to cooperate with law enforcement, he positioned himself in a room containing items which he had taken from his victims. He also made statements which indicated he was acutely aware that he might be facing a prison sentence. This circumstantial evidence tended to show consciousness of guilt on the part of Turner. The fact that Turner acted in a manner which is suggestive of consciousness of guilt does not mean that the evidence is unduly prejudicial. The mere fact that the evidence was incriminating does not mean that the trial court must exclude it because it is unfairly prejudicial. In light of the substantial probative value of the evidence, the trial court did not err in allowing law enforcement officials to testify on the topic of the circumstances surrounding Turner's arrest.

### **Photographs**

{¶17} Turner also argues that the trial court committed prejudicial error in allowing the State to introduce colposcope photographs of J.S.’s vagina and cervix. Turner argues that because a nurse testified regarding the results of the physical examination which took place on the night of the alleged rape, the introduction of the photographs was unnecessary and only served to prejudice the jury.

{¶18} Ms. Diane Shafer is a registered nurse who testified on behalf of the State at trial. Ms. Shafer serves on the Sexual Assault Nurse Examiners (“SANE”) Unit at Mercy Hospital and she treated J.S. on the night of the alleged rape. Ms. Shafer testified that J.S. sustained several injuries on her head including a laceration that had to be repaired with staples. J.S. also had significant bruising on her left lateral rib and left anterior leg. During the course of Ms. Shafer’s testimony, the State introduced the medical records from the rape kit which was performed on J.S. Ms. Shafer frequently referred to these records throughout her testimony. In addition to containing J.S.’s account of the incident, the records also contained the results of the “head-to-toe assessment” of the J.S.’s body. The trial court also allowed the State to introduce several photographs of Ms. J.S.’s vagina and cervix over the objection of Turner. These photographs were taken as part of the medical examination on the night of the alleged incident. Ms. Shafer testified that the photographs did not reveal any visible injuries. Ms. Shafer also testified that part of her training consisted of learning to take photographs for the purpose of evidence collection.

{¶19} As noted above, the decision to admit or to exclude evidence is a matter left within the sound discretion of the trial court.” *Gamble* at ¶12. The photographs had probative value in that they gave a more accurate depiction of J.S.’s physical state in the hours following



the alleged rape. Turner correctly notes that Ms. Shafer had already testified to the extent of J.S.'s injuries prior to the admission of the photographs. Turner also contends that the State had an improper motive in seeking to introduce the photographs. However, in light of the deferential standard of review we must accord to the trial court's decision, we cannot say that the admission of the photographs constituted an abuse of the trial court's discretion. The photographs showed no signs of forced penetration or injury, a fact that would arguably support Turner's defense that he did not commit the rape. Thus, the prejudicial effect of the photographs was minimal. Because the probative value of the photographs was not outweighed by the prejudicial effect, the trial court did not abuse its discretion by allowing the photographs to be admitted into evidence.

{¶20} The second and fourth assignments of error are overruled.

### **ASSIGNMENT OF ERROR III**

“DEFENDANT WAS CONVICTED ON ONE (1) COUNT OF RAPE. THE RAPE KIT IN THIS CASE DID NOT CORROBORATE THE ALLEGATIONS OF THE DEFENDANT. WHILE A FOURTH PERSON HAD BEEN PRESENT FOR THE ROBBERY THAT OCCURRED WITH THIS VICTIM, NO OTHER INDIVIDUAL TESTIFIED THEY SAW THE VICTIM BEING RAPED. IS MR. TURNER'S CONVICTION FOR RAPE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE?” (sic)

{¶21} Turner argues that his conviction for rape was against the manifest weight of the evidence. This Court disagrees.

“In determining whether a criminal conviction is against the manifest weight of the evidence, an appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.” *State v. Otten* (1986), 33 Ohio App.3d 339, 340.

“Weight of the evidence concerns the tendency of a greater amount of credible evidence to support one side of the issue more than the other. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387. Further, when reversing a conviction on the basis that it was against the manifest weight of the evidence, an appellate court sits as a

‘thirteenth juror,’ and disagrees with the factfinder’s resolution of the conflicting testimony. *Id.*” *State v. Tucker*, 9th Dist. No. 06CA0035-M, 2006-Ohio-6914, at ¶5.

This discretionary power should be exercised only in exceptional cases where the evidence presented weighs heavily in favor of the defendant and against conviction. *Otten*, 33 Ohio App.3d at 340.

{¶22} Turner was convicted of rape under R.C. 2907.02(A)(2), which provides, “[n]o person shall engage in sexual conduct with another when the offender purposely compels the other person to submit by force or threat of force.”

{¶23} R.C.2907.01(A) defines “sexual conduct” as “vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal opening of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.”

{¶24} Pursuant to R.C. 2901.22(A):

“A person acts purposely when it is his specific intention to cause a certain result, or, when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is his specific intention to engage in conduct of that nature.”

{¶25} R.C. 2901.01(A)(1) defines “force” as “any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing.”

{¶26} A review of all of the evidence presented in this case suggests that the weight of the evidence supported Turner’s rape conviction. At trial, J.S. testified as follows. On the night of August 20, 2008, she returned to her hotel room at the Quality Inn hotel in Green, Ohio, after she completed an evening modeling class at the Barbizon Modeling School. J.S.’s boyfriend, N. S., was also staying with her at the Quality Inn. Upon returning from her class which concluded

at 9:00 pm, J.S. knocked on the door to her hotel room. As the door opened, J.S. observed N.S. face down next to the bed with a woman standing over him. J.S. immediately asked, “What’s going on?” At that point, a man pushed her to the ground and placed a gun to the back of her head. The man then grabbed her purse and her GPS system which she brought with her into the hotel room. The man instructed her to remove all of her rings and slide them away from her body. The man then patted J.S. down and then located and removed her cell phone which she had placed in her pocket. The man then kicked J.S. in the side. When she made a sound in reaction to being kicked, the man told her to “Just shut the f\*\*\* up or I’m going to blow you head off.” At that point, the man struck her in the head with the gun.

{¶27} The man and women then proceeded to rummage through the items in the room. J.S. heard the two individuals whispering to each other but she could not hear what they were saying. The man then proceeded to ask J.S. to remove all of her clothing. J.S. remained face-down on the ground after she removed her clothing. The man then proceeded to place his fingers in her vagina. J.S. was not aware of whether the female assailant was in the room at this point. After the man removed his fingers from her vagina, he then unzipped his pants and dropped to his knees near J.S.’s head. He then pulled J.S.’s head up by her hair and placed his penis in her mouth. The man stopped orally raping J.S. prior to ejaculating. J.S. testified that the man may have been alarmed by a sound he heard. The man proceeded to zip up his pants and then again placed his fingers in J.S.’s vagina. At this point, the man then left the side of J.S. and went into the bathroom. J.S. testified that she heard the water running in the bathroom. The defendant then subsequently returned to J.S. and placed his fingers in her vagina for a third time. When the man had finished, he told J.S. and N.S. not to move for fifteen minutes. Prior to leaving, the man made both J.S. and N.S. repeat the phrase, “Don’t move for fifteen minutes.”

{¶28} Turner contends that the weight of the evidence presented to the jury in this case tends to show that J.S. was not raped. Turner specifically argues the evidence collected in the rape kit as well as the lack of eye-witness testimony from the people who were in the hotel room suggests that a rape did not occur during the August 20, 2008 incident at the Quality Inn.

{¶29} Turner correctly notes that the nurse who performed the rape kit, Ms. Shafer, testified that she found no signs of forced penetration of J.S.'s vagina. It is also true that the State did not produce any scientific evidence which suggested Turner's semen or DNA was found on J.S.'s person or clothing. However, it is important to note that Ms. Shafer testified that her findings with regard to injuries were "consistent with her report" as to what happened at the crime scene. J.S. had alleged that she had been digitally and orally raped. Ms. Shafer testified that rapes which occur by digital penetration of the vagina only "sometimes" result in physical injury to the victim. Ms. Shafer also noted that because "women's bodies are made to stretch, you may or may not find injury." The State's theory of the case did not entail an intense physical struggle which would have increased the likelihood of injury to the vaginal area. Turner allegedly struck J.S. in the head and then subsequently held a gun to her while he digitally penetrated her vagina. Therefore, the fact that there were no signs of forced penetration was consistent with J.S.'s testimony. Furthermore, the fact that Turner's bodily fluids were not found on J.S. was also consistent with the State's theory of the case. J.S. testified that Turner forced her to perform oral sex. However, J.S. specifically stated that Turner never ejaculated. Therefore, the fact that laboratory testing did not show any of Turner's bodily fluids on J.S. does not in anyway undermine the State's theory of the case.

{¶30} Turner also emphasizes that J.S.'s testimony regarding the alleged rape was not corroborated by the testimony of the other individuals in the hotel room. As noted above, J.S.

gave a detailed account of what occurred on the night of the alleged rape. Because of the nature of the attack, J.S. did not have the opportunity to observe the face of the assailant. Turner's accomplice, Ashley Butler testified that she did not see a rape occur while she was in the room. However, Butler testified that after she saw Turner hit J.S. in the back of the head and kick her in the side, she decided that she no longer wanted to play a role in the robbery and she left the room. Butler testified that she waited for Turner in his truck and she did not return to the hotel room. Therefore, according to her testimony, Butler would not have been in the room at the time the alleged rape took place.

{¶31} Turner correctly notes that N.S. testified that he did not see Turner digitally rape J.S. N.S. testified that he cracked open the door to the hotel room just minutes prior to the time he expected J.S. to return. J.S. had left the only key to the hotel room with N.S. while she attended her class. N.S. was sitting in the corner of the room using a laptop computer when a man walked into the room and pointed a gun at him. The man walked over to N.S. and slapped his hat off of his head. He then instructed N.S. not to look at him and he grabbed N.S. by the back of his neck. At this point, the man threw N.S. to the ground and ordered him to remove all of his clothing. After N.S. had removed all of his clothing, he laid face down on the floor with his eyes closed. The man kicked N.S. in the ribs. While N.S. did not see the man, he heard him rummaging through drawers in the room. The man subsequently kicked N.S. in the ribs again and ordered him not to move.

{¶32} When J.S. knocked on the door, the man ordered N.S. to say, "Who is it?" N.S. then heard J.S. say, "What's going on" and then he heard her scream. N.S. testified that he did not see much of what happened after this point because he kept his eyes closed. N.S. testified that after the man ordered J.S. to the ground, he ordered her to hand over all of her jewelry and

take off all of her clothes. The man then hit N.S. in the head with a hard object and told him not to move or else he would kill him. N.S. was not sure what the man did next but after a few minutes, N.S. opened his eyes because he heard the man unzip his pants. When N.S. looked up, the man was kneeling next to J.S.'s head and holding her by her hair while he forced her to perform oral sex. N.S. then put his head back down and again closed his eyes. He testified that the man hit him again in the head with the gun. N.S. also testified that prior to leaving, the man made him and J.S. repeat that they would not leave for fifteen minutes. N.S. testified that he had an idea that another person might be in the room but he never saw a woman aiding the man in the robbery. N.S. also clarified that while he did see the man orally raping J.S., he never saw the man digitally penetrate J.S. because his eyes were closed.

{¶33} This Court will not disturb the factual determinations of the triers of fact because they are in the best position to determine the credibility of the witnesses during trial. *State v. Crowe*, 9th Dist. No. 04CA0098-M, 2005-Ohio-4082, at ¶22. In addition, this Court will not overturn the trial court's verdict on a manifest weight of the evidence challenge only because the triers of fact chose to believe certain witness' testimony over the testimony of others. *Id.* The trier of fact was in the best position to evaluate the credibility of J.S.'s testimony regarding the alleged rape, as well as Ashley Butler's and N.S.'s accounts of what transpired in the hotel room. The evidence discussed above, namely the results of the medical examination and the testimony of Butler and N.S., does not directly contradict the testimony of J.S. The results of the medical examination were consistent with the account of the incident given by J.S. With regard to the testimony, Ashley Butler indicated that she left the scene prior to when the rape would have occurred. N.S. testified that he observed a man orally raping J.S. but, because his eyes were closed throughout much of the incident, he did not observe digital penetration. In light of this

evidence, this Court is compelled to hold that this is not the exceptional case where the jury lost its way.

{¶34} Turner's third assignment of error is overruled.

### III.

{¶35} Turner's assignments of error are overruled. The judgment of the Summit County Court of Common Pleas 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 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.

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DONNA J. CARR  
FOR THE COURT

WHITMORE, J.  
BELFANCE, J.  
CONCUR

APPEARANCES:

JASON T. WELLS, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD S. KASAY, Assistant Prosecuting Attorney, for Appellee.