[Cite as *State v. Blue*, 2011-Ohio-511.]

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

STATE OF OHIO	C. A. No. 10CA009765
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
MELVIN J. BLUE	COURT OF COMMON PLEAS COUNTY OF LORAIN, OHIO
Appellant	CASE No. 09CR079213

DECISION AND JOURNAL ENTRY

Dated: February 7, 2011

MOORE, Judge.

{¶1} Appellant, Melvin Blue, appeals the judgment of the Lorain County Court of Common Pleas. This Court affirms.

I.

{¶2} Blue was arrested on September 25, 2009, based on an incident that occurred at the home of Donald Fulton. As a result of the incident, on October 29, 2009, Blue was indicted on a host of charges: one count of burglary in violation of R.C. 2911.12(A)(3), a felony of the third degree, with a one year firearm specification, one count of theft in violation of R.C. 2913.02(A)(1), a felony of the third degree, with a one year firearm specification, one count of having weapons under disability in violation of R.C. 2923.13(a)(2), a felony of the third degree, with a one year firearm specification, one count of having weapons under disability in violation of R.C. 2923.13(a)(3), a felony of the third degree, with a one year firearm specification, falsification in violation of R.C. 2921.13(A)(3), a misdemeanor of the first degree, and

obstructing official business in violation of R.C. 2921.31(A), a misdemeanor of the second degree. He pleaded not guilty on November 5, 2009, and the matter proceeded to a jury trial. The jury found Blue guilty on all counts. The trial court sentenced him to nine years of incarceration.

{¶3} Blue timely filed a notice of appeal. He raises three assignments of error for our review.

II.

ASSIGNMENT OF ERROR I

> "THE EVIDENCE WAS INSUFFICIENT AS A MATTER OF LAW TO SUPPORT A FINDING BEYOND A REASONABLE DOUBT THAT [BLUE] WAS GUILTY."

{¶4} In his first assignment of error, Blue contends that his convictions for having weapons under disability, the firearm specifications, and for burglary, were not supported by sufficient evidence. We do not agree.

{¶5} When considering a challenge to the sufficiency of the evidence, the court must determine whether the prosecution has met its burden of production. To determine whether the evidence in a criminal case was sufficient to sustain a conviction, an appellate court must view that evidence in a light most favorable to the prosecution:

> "An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted 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 crime proven beyond a reasonable doubt." *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus.

Burglary

{¶6} Blue was convicted of burglary in violation of R.C. 2911.12(A)(3). That section states, in pertinent part:

> "(A) No person, by force, stealth, or deception, shall do any of the following:
>
> "(3) Trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure, with purpose to commit in the structure or separately secured or separately occupied portion of the structure any criminal offense." R.C. 2911.12(A)(3).

{¶7} Blue contends that the State failed to present sufficient evidence that he trespassed. Blue's then-girlfriend, Kelly Anderson, worked as a prostitute. Donald Fulton had been a client of hers for more than three years. Anderson, Blue, and a mutual friend, Todd Michael, were living together in a hotel in Lorain and were in need of money. Anderson testified that she, Blue and Michael had come up with a plan to steal a gun from Fulton's house in order to obtain money to buy drugs. Anderson called Fulton from the hotel and asked if she could see him and he said yes. Because the group did not have a ride from the hotel to Elyria, Anderson called a friend, Paul Bansek, for a ride. Bansek drove Anderson, Michael, and Blue to 485 Cleveland Street. Bansek pulled into Fulton's driveway, let Anderson out of the car and parked down the street.

{¶8} Anderson knocked at the back door, and Fulton let her in the house. Anderson told Fulton that she could not stay long because she needed a ride to Lorain County Community College. After Anderson and Fulton engaged in oral sex, Fulton drove her to the college area. The plan was for Blue and Michael to enter Fulton's house while he was away and afterwards Anderson would be waiting for them at the college.

{¶9} Fulton's neighbor, David Grooms, testified that he had borrowed a lawnmower from Fulton on September 25, 2009. While he was mowing his lawn, he saw a red car pull up in

Fulton's driveway and saw someone get out of the car. The red car then pulled out of the driveway, drove to the end of the street, turned around and parked. About two minutes later, Grooms saw Fulton leave in his white van. As Grooms was finishing mowing his lawn, he saw a white male, who he later learned was Michael, walking up the street with a black male, who he later learned was Blue. As Blue and Michael were walking up the street, Grooms felt something was "fishy" because Michael kept turning his head and looking back over his shoulder. Blue and Michael were the only people Grooms saw in the area.

{¶10} When Grooms went back to Fulton's house to return the lawn mower, he noticed that the window in the back door to the house was broken. He also heard noise inside Fulton's house that sounded like banging, as if something was being moved. Grooms knew that Fulton was not home, so Grooms went across the street to Stewart's Appliances and called the police. After Grooms talked to police on the telephone, Grooms went back outside and saw police officers chasing Blue toward Cleveland Street.

{¶11} Joseph Figula, Jr., a patrolman employed by the Elyria Police Department, testified that on September 25, 2009, he responded to the 911 call regarding a burglary in progress at 485 Cleveland Street. He was advised by dispatch that the complainant had observed a black male and a white male near a residence, and a red vehicle parked on Edgewood that the complainant also felt was involved. The complainant reported seeing a broken window at the rear of the residence.

{¶12} When Officer Figula arrived, he observed a male, later identified as Blue, coming off the back porch area of the residence. Officer Figula identified himself as a police officer and yelled for Blue to come over to him. Blue turned and ran from the area on foot. Officer Figula began chasing Blue while continuing to yell for him to stop. At the same time, he tried to advise

dispatch over his portable radio of the direction of the pursuit. Officer Figula pursued Blue through multiple backyards and into the back parking area of a factory. When Blue was apprehended, Officer Figula searched his pockets and found jewelry, trinkets, cuff links and watches that were later identified by Fulton as having been taken from his residence. There was also a calculator, labeled with Donald Fulton's name, in Blue's pockets. Officers Figula and Nicholas Eichenlaub testified that as they were walking Blue back to their police cruiser, Blue stated that he had broken into the home because Anderson knew Fulton and had planned the crime.

{¶13} Todd Straub, a patrolman employed by the Elyria Police Department, also responded to the burglary in progress. He testified that he also observed a male, later identified as Blue, coming off the back porch area of the residence. After Blue fled, Officer Straub observed that the back door was open three to four inches and noticed that the glass in the door window was broken and lying on the kitchen floor. He also observed a couple of sheets or blankets rolled up into piles in the yard. When Officer Straub unrolled the blankets, he found numerous guns inside. The blankets containing the guns were lying about ten feet from the back door, which appeared to be the point of entry and was also the point from which Blue initially fled.

{¶14} While the evidence of trespass is circumstantial in that no one saw Blue enter the residence, circumstantial and direct evidence "possess the same probative value[.]" *Jenks*, 61 Ohio St.3d at paragraph one 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. Accordingly, we conclude that the jury could reasonably infer from both the direct and circumstantial evidence, that Blue entered Fulton's house in order to steal a gun and various other items. Accordingly, this portion of Blue's assignment of error is overruled.

Weapons Under Disability

{¶15} Blue was convicted of having weapons under disability in violation of R.C. 2923.13(A)(2) and R.C. 2923.13(A)(3). These sections state, in pertinent part:

> "(A) Unless relieved from disability as provided in section 2923.14 of the Revised Code, no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance, if any of the following apply:
>
> "(2) The person is under indictment for or has been convicted of any felony offense of violence or has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been a felony offense of violence.
>
> "(3) The person is under indictment for or has been convicted of any offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse or has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been an offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse." 2923.13(A)(2) and (3).

{¶16} With regard to the conviction for having weapons under disability as well as the firearms specifications, Blue claims that the State failed to present sufficient evidence that he acquired or had at any point a firearm in his possession. Blue bases this claim on the fact that he was never seen with any firearms in his possession and his contention that officers never located firearms on his person or in the area where he was arrested.

{¶17} "Possession may be actual or constructive." *State v. Kobi* (1997), 122 Ohio App.3d 160, 174. Constructive possession has been defined as "knowingly [exercising] dominion and control over an object, even though that object may not be within his immediate physical possession." *State v. Hankerson* (1982), 70 Ohio St.2d 87, syllabus; see also, *State v.*

Wolery (1976), 46 Ohio St.2d 316, 329. Furthermore, ownership need not be proven to establish constructive possession. *State v. Mann* (1993), 93 Ohio App.3d 301, 308. Circumstantial evidence is sufficient to support the elements of constructive possession. See *Jenks*, 61 Ohio St.3d at 272-73.

{¶18} Anderson testified that she, Blue and Michael had come up with a plan to steal a gun from Fulton's house in order to obtain money to buy drugs. Officers Figula and Straub testified that when they responded to the suspected burglary in progress, they observed Blue on the back porch area of the residence. Blue subsequently fled from the area on foot. Officer Straub testified that at the residence he observed a couple of sheets or blankets rolled up into piles in the back yard. When he unrolled the blankets, he found numerous guns inside. The blankets containing the guns were lying about ten feet from the back door, which appeared to be the point of entry and was also the point from which Blue initially fled.

{¶19} The firearms included a German Luger 9mm, a Garand M-1, a .22 revolver seven-shot, a Carbine 30 mm, a Navy Arms .38 caliber lever action, a U.S. Carbine 30, a .22 Winchester pump, and a Sheraton air rifle. Officer Straub also located a box of 380 rounds. Fulton identified the firearms as being his and indicated that they had been taken from his home. Officer Straub took photographs of the recovered firearms, completed a property sheet, and returned the firearms to the owner, Fulton.

{¶20} Bansek testified that while he, Blue, and Michael were in a holding cell at the police station, Blue and Michael were "talking about a bunch of guns and that they took too long."

{¶21} Given the above facts and the witnesses' corroborating testimony, a reasonable juror could conclude beyond a reasonable doubt that Blue had knowingly exercised control over the firearms. Accordingly, this portion of Blue's assignment of error is overruled.

Firearm Specifications

{¶22} Blue was charged with firearm specifications as to each felony count of the indictment. Pursuant to R.C. 2941.141, the indictment indicated that Blue had a firearm on or about his person or under his control while committing the offenses.

{¶23} Blue contends that the State failed to present sufficient evidence that the firearms were operable on September 25, 2009. To be convicted of a firearm specification, the state must prove "that the firearm was operable or could readily have been rendered operable at the time of the offense." *State v. Murphy* (1990), 49 Ohio St.3d 206, 208, quoting *State v. Gaines* (1989), 46 Ohio St.3d 65, at the syllabus.

{¶24} The definition of a firearm is found in R.C. 2923.11(B):

> "(1) 'Firearm' means any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant. 'Firearm' includes an unloaded firearm, and any firearm that is inoperable but that can readily be rendered operable.
>
> "(2) When determining whether a firearm is capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant, the trier of fact may rely upon circumstantial evidence, including, but not limited to, the representations and actions of the individual exercising control over the firearm."

{¶25} In determining whether an individual was in possession of a firearm and whether the firearm was operable or capable of being readily rendered operable at the time of the offense, the trier of fact may consider all relevant facts and circumstances surrounding the crime. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 385. The specification can be proven beyond a reasonable doubt by circumstantial evidence. Id.

{¶26} Fulton testified that the guns were operable on September 25, 2009. He had fired the guns about one year prior to the burglary. On December 4, 2009, Fulton turned the guns over to Detective Peter Hans Van Wormer so that the firearms could be test-fired. Detective Van Wormer obtained eight firearms from Fulton, including a 9mm Luger semi-automatic, a .22 revolver, two M1 Carbines, an M1 Garand, a .22 pump rifle, a Navy Arms .38 caliber repeating rifle, and a twelve-gauge shotgun. Detective Van Wormer took the eight firearms and conducted operability testing. Detective Van Wormer visually inspected and then dry-fired each of the firearms. Two rounds were loaded into each of the firearms and each firearm was fired twice. All of the firearms were found to be operable with the exception of the .22 pump rifle, which was not operable. Given the above testimony and the test-fires performed on the firearms, a reasonable juror could conclude beyond a reasonable doubt that the firearms, with the exception of the .22 pump rifle, were operable on September 25, 2009. Accordingly, this portion of Blue's assignment of error is overruled.

{¶27} We conclude that after viewing the evidence in the light most favorable to the State, the trier of fact could reasonably find that the State met its burden of production and presented sufficient evidence that Blue was in possession of the firearms, that the firearms were operable, and that Blue trespassed upon the victim's home. *Jenks*, 61 Ohio St.3d at paragraph two of the syllabus. Blue's first assignment of error is overruled.

ASSIGNMENT OF ERROR II

> "[BLUE'S] CONVICTION IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶28} In his second assignment of error, Blue contends that his convictions are against the manifest weight of the evidence because the State's witnesses were not credible and because police did not conduct certain tests. We do not agree.

{¶29} When a defendant asserts that his 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.

This discretionary power should be invoked only in extraordinary circumstances when the evidence presented weighs heavily in favor of the defendant. Id.

{¶30} Blue contends that Anderson, who is an admitted prostitute, and Grooms, who is a convicted felon, were not credible witnesses and thus the conviction is against the manifest weight of the evidence.

{¶31} Blue testified in his own behalf and admitted to being in the hotel room with Anderson and Michael. He denied that the three of them ever discussed a burglary. He claimed that Anderson had previously taken $150 from him. When she arrived at the hotel in Lorain she repaid him $75 of that money. Blue claimed that Anderson then asked him and Michael to come to Elyria with her so she could get the rest of the money she owed to him. He claimed to have encountered Grooms in the driveway of 485 Cleveland Street. He claimed that Grooms, whom he did not know, pulled out jewelry and coins and handed them to him and said that they were from Anderson. According to Blue, Grooms said that he was going to give him some more money in a few minutes. He claimed that Grooms pulled up his shirt and showed him guns that Grooms had stuffed down his pants. Grooms was supposedly going to get the money by selling the guns. Blue claimed that while he was waiting for Grooms to return with the money, the police pulled up. He claimed that he ran from police because he always instinctively runs from

police. Blue denied ever telling officers that he broke into the house because Anderson knew Fulton and had planned the crime.

{¶32} During Anderson's testimony, she admitted that she was a prostitute and that she exchanged sex for money so that she could buy drugs. Grooms testified that he has previously been convicted of three counts of assault on a police officer as well as eleven counts of gross sexual imposition and that he has been on parole since July of 2008. The evidence essentially created a question of credibility between Grooms' and Anderson's testimony and Blue's testimony. "The weight to be given the evidence and the credibility of the witness[es] are primarily for the trier of the facts[;]" in this case, the jury. *State v. Jackson* (1993), 86 Ohio App.3d 29, 32, citing *State v. Richey* (1992), 64 Ohio St.3d 353, 363. "'The jury did not lose its way simply because it chose to believe the State's version of the events, which it had a right to do.'" *State v. Feliciano*, 9th Dist. No. 09CA009595, 2010-Ohio-2809, at ¶50, quoting, *State v. Morten*, 2d Dist. No. 23103, 2010-Ohio-117, at ¶28.

{¶33} Blue also contends that investigators failed to perform necessary tests which may have revealed important physical evidence. Officer Straub testified that the firearms were not tested for fingerprints and neither Blue nor Michael was tested for gunshot residue. Officer Straub indicated that the decision whether to test an item for fingerprints depends on whether or not there are suspects. Based on the investigation, Blue, Michael, and Bansek were clearly suspects in the burglary of 485 Cleveland Street. No gunshot residue tests were conducted because it did not appear that the guns had been fired.

{¶34} Accordingly, upon review of the record, we do not conclude that "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." *Otten*, 33 Ohio App. 3d at 340. Blue's second assignment of error is overruled.

ASSIGNMENT OF ERROR III

> "[BLUE] WAS NOT AFFORDED THE EFFECTIVE ASSISTANCE OF TRIAL COUNSEL IN VIOLATION OF THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 10 OF THE OHIO CONSTITUTION."

{¶35} In his third assignment of error, Blue contends that he was not afforded effective assistance of trial counsel in violation of the Sixth Amendment to the United States Constitution and Article I, Section 10 of the Ohio Constitution. Specifically, he contends his trial counsel was ineffective because trial counsel failed to sufficiently advise him of his right to a speedy trial, made few objections, and seemed to lack basic knowledge of trial advocacy and the Rules of Evidence. We do not agree.

{¶36} In order to show ineffective assistance of counsel, Blue must satisfy a two-prong test. *Strickland v. Washington* (1984), 466 U.S. 668, 669. First, the court must determine whether there was a "substantial violation of any of defense counsel's essential duties to his client." *State v. Bradley* (1989), 42 Ohio St.3d 136, 141, quoting *State v. Lytle* (1976), 48 Ohio St.2d 391, 396, vacated in part on other grounds. Second, the court must determine if prejudice resulted to the defendant from counsel's ineffectiveness. *Bradley*, 42 Ohio St.3d at 141-142, quoting *Lytle*, 48 Ohio St.2d at 396-397, vacated in part on other grounds. "Prejudice exists where there is a reasonable probability that the trial result would have been different but for the alleged deficiencies of counsel." *State v. Velez*, 9th Dist. No. 06CA008997, 2007-Ohio-5122, at ¶37, citing *Bradley*, 42 Ohio St.3d at paragraph three of the syllabus. This Court need not address both *Strickland* prongs if Blue fails to prove either one. *State v. Ray*, 9th Dist. No. 22459, 2005-Ohio-4941, at ¶10. Blue bears the burden of proof, and must show that "counsel's

errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *State v. Colon*, 9th Dist. No. 20949, 2002-Ohio-3985, at ¶48, quoting *Strickland*, 446 U.S. at 687.

{¶37} Blue first asserts that trial counsel was ineffective because he was not adequately advised of his right to a speedy trial. Resolution of this issue rests upon advice provided by counsel outside of the trial and that would not be apparent on the face of the record. Where an ineffective assistance of counsel claim requires consideration of materials outside the record of proceedings in the trial court, the claim is not of the type that can be considered on direct appeal. *State v. Carter* (2000), 89 Ohio St.3d 593, 606. Blue's first claim of ineffective assistance of counsel is not properly raised in a direct appeal.

{¶38} Blue's next assertion is that trial counsel was ineffective because he seemed to lack basic knowledge of trial advocacy and the Rules of Evidence. Specifically, he claims that trial counsel made few objections and that the objections that were raised were untimely. Under App.R. 16(A)(7), Blue was required to identify any instances in the record in which there was objectionable material that defense counsel failed to object to. Blue cites one instance in the trial transcript in support of this argument. The prosecutor asked a question which the witness answered and after the prosecutor's next question the defense counsel objected. The trial judge sustained the objection and instructed the jury to disregard the last answer. "It is well established that a jury is presumed to follow a curative instruction given it by a trial judge." *Perillo v. Fricke*, 9th Dist. No. 08CA0044-M, 2009-Ohio-1130, at ¶15, citing *State v. Garner* (1995), 74 Ohio St.3d 49, 59. Accordingly, we conclude that Blue has failed to demonstrate that the single incident established counsel's performance at trial was deficient. Likewise, Blue did not

demonstrate how he was prejudiced by the untimely objection and has thus failed to establish ineffective assistance of counsel. *Strickland,* 466 U.S. at 669.

{¶39} Blue also cites two instances where the trial court offered explanations to defense counsel regarding a particular ruling. In the first instance, defense counsel was attempting to impeach a witness with prior testimony given by that witness. The prosecutor objected and at a side bar conference the trial judge instructed counsel to ask the witness if he had made the prior statement, and if the witness denied making the statement, then defense counsel could show him the transcript of the prior statement.

{¶40} In the second instance, defense counsel, in an effort to contradict the testimony of other police officers who testified to an incriminating statement made by Blue, called another police officer to testify to an exculpatory statement allegedly made by Blue to the officer. The trial court perceived this effort as an attempt to improperly elicit an admission of a party opponent. Defense counsel made a tactical decision to try to neutralize the incriminating statement. We have stated that "'debatable trial tactics do not give rise to a claim for ineffective assistance of counsel.'" *State v. Williams*, 9th Dist. No. 24169, 2009-Ohio-3162, at ¶37, quoting *State v. Hoehn*, 9th Dist. No. 03CA0076-M, 2004-Ohio-1419 at ¶45, quoting *In re Simon* (June 13, 2001), 9th Dist. No. 00CA0072, at *2. Moreover, "the end result of tactical trial decisions need not be positive in order for counsel to be considered 'effective.'" *State v. Awkal* (1996), 76 Ohio St.3d 324, 337. In addition, Blue has failed to demonstrate how prejudice resulted in relation to this event.

{¶41} The above isolated incidents argued by Blue must be considered in light of the entire three-day trial. The record indicates that defense counsel raised appropriate and timely objections throughout the trial. When the isolated incidents are considered in light of the entire

trial transcript, defense counsel's conduct did not fall below an objective standard of reasonable representation.

{¶42} Blue has failed to demonstrate that his counsel engaged in a substantial violation of any essential duties. Moreover, Blue has failed to demonstrate how prejudice resulted from counsel's alleged ineffectiveness. Even if we determined that Blue's counsel's actions were deficient under the first prong of *Strickland*, the alleged errors would not reasonably alter the result of the trial. Blue was linked to these crimes by overwhelming evidence. His girlfriend testified that the group had devised a plan to steal a gun from Fulton's home. Police observed Blue on the back porch area near the broken window and the blankets containing the guns. He fled the scene. When he was apprehended, police recovered on his person various items from Fulton's home including a calculator engraved with Fulton's name. Finally, Blue made a statement to police that he had broken into the home because his girlfriend knew Fulton and had arranged the entire thing. Given the overwhelming evidence, Blue has failed to demonstrate that he was prejudiced by counsel making too few objections, and by having received explanations from the trial judge. Blue has failed to demonstrate that his counsel engaged in a substantial violation of any essential duties or that prejudice resulted from counsel's ineffectiveness. *Strickland*, 466 U.S. at 669. Blue's third assignment of error is overruled.

III.

{¶43} Blue's assignments of error are overruled. The judgment of the Lorain County Court of Common Pleas 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 Lorain, 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.
DICKINSON, P. J.
CONCUR

APPEARANCES:

DAVID W. NEHR, Attorney at Law, for Appellant.

DENNIS WILL, Prosecuting Attorney, and MARY R. SLANCZKA, Assistant Prosecuting Attorney, for Appellee.