[Cite as *State v. Christian*, 2015-Ohio-1720.]

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

STATE OF OHIO Appellee v. ALAN D. CHRISTIAN Appellant	C.A. No. 27205 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. CR 12 02 0553

DECISION AND JOURNAL ENTRY

Dated: May 6, 2015

CARR, Judge.

{¶1} Defendant-Appellant, Alan Christian, appeals from his convictions in the Summit County Court of Common Pleas. This Court affirms.

I.

{¶2} In March 2010, investigators received a tip that a certain IP address was sharing files containing child pornography with other users over the internet. Investigator David Frattare connected to the target IP address and was able to download several video files that contained child pornography. The IP address was later linked to Christian, and the police executed a search warrant at his home. During the search, the police seized a computer tower from Christian's bedroom. The computer tower was found to contain multiple videos depicting child pornography. Christian admitted ownership of the computer tower and was arrested in connection with the child pornography that was found on it.

{¶3} A grand jury indicted Christian on twelve counts of pandering sexually oriented matter involving a minor; six counts for violations of R.C. 2907.322(A)(1) and six counts for violations of R.C. 2907.322(A)(5). The State dismissed four counts before trial, leaving four violations of subsection (A)(1) and four violations of subsection (A)(5). The jury found Christian guilty on all eight counts, and the trial court sentenced him to a total of three years in prison.

{¶4} Christian now appeals from his convictions and raises three assignments of error for our review.

II.

ASSIGNMENT OF ERROR I

> THE STATE OF OHIO FAILED TO INTRODUCE SUFFI[CI]ENT EVIDENCE TO SUSTAIN THE CONVICTIONS IN THIS CASE.

{¶5} In his first assignment of error, Christian argues that his convictions are based on insufficient evidence. Specifically, he argues that the State failed to prove that he (1) had knowledge of the character of the illicit files on his computer, or (2) created, recorded, photographed, filmed, developed, reproduced, or published the files. We disagree.

{¶6} "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. Diar*, 120 Ohio St.3d 460, 2008-Ohio-6266, ¶ 113, citing *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997).

> 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 the crime proven beyond a reasonable doubt.

State v. Jenks, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus. "The test for sufficiency requires a determination of whether the State has met its burden of production at trial." *State v. Edwards*, 9th Dist. Summit No. 25679, 2012-Ohio-901, ¶ 7.

{¶7} R.C. 2907.322 defines the offense of pandering sexually oriented matter involving a minor. Subsection (A)(1) of the statute provides that "[n]o person, with knowledge of the character of the material or performance involved, shall * * * [c]reate, record, photograph, film, develop, reproduce, or publish any material that shows a minor participating or engaging in sexual activity * * *." R.C. 2907.322(A)(1). Under subsection (A)(1), a person need not knowingly reproduce or publish illicit material. *State v. Butler*, 9th Dist. Summit No. 24446, 2009-Ohio-1866, ¶ 21-22. The subsection only requires the State to prove that the person recklessly reproduced or published the material with knowledge of its character. *Id.*

> 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). A violation of R.C. 2907.322(A)(1) is a second-degree felony. R.C. 2907.322(C).

{¶8} R.C. 2907.322(A)(5) provides that "[n]o person, with knowledge of the character of the material or performance involved, shall * * * [k]nowingly solicit, receive, purchase, exchange, possess, or control any material that shows a minor participating or engaging in sexual activity * * *." Possession is "'a voluntary act if the possessor knowingly procured or received the thing possessed, or was aware of the possessor's control of the thing possessed for a sufficient time to have ended possession.'" *Butler*, 2009-Ohio-1866, at ¶ 18, quoting R.C. 2901.21(D)(1). "A person acts knowingly, regardless of purpose, when the person is aware that

the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist." R.C. 2901.22(B). A violation of R.C. 2907.322(A)(5) is a fourth-degree felony. R.C. 2907.322(C).

{¶9} David Frattare testified that he is the lead investigator for the federally-funded task force, Internet Crimes Against Children. Peer to peer file sharing networks are one particular source that the task force regularly investigates for evidence of child pornography. Investigator Frattare explained that peer to peer sharing networks are decentralized networks that allow users to connect from their own computers via the internet and share files with each other remotely. A user must download a file sharing program before he or she is able to download or upload items to the file sharing network. LimeWire is a one type of file sharing program that users can download in order to participate in a peer to peer sharing network. For the software to work, LimeWire must be activated and the computer on which it has been downloaded must be connected to the internet.

{¶10} Investigator Frattare testified that his office maintains computer programs that are designed to seek out child pornography on peer to peer networks and identify a target user's IP address. He explained that an IP address is a string of numbers that an internet service provider assigns to an authorized user. Because internet service providers keep track of the IP addresses they assign, a known IP addresses can be used to identify an authorized user. In March 2010, Investigator Frattare received a tip that a specific IP address was sharing child pornography over a peer to peer network. The IP address was later traced to Christian at his home address.

{¶11} Investigator Frattare used the equipment at his office to connect to Christian's IP address and browse through all of the files that he was sharing on LimeWire. Investigator Frattare was able to uncover 1,164 files in Christian's shared folder. Of those 1,164 shared files, Investigator Frattare's software flagged nine as possible child pornography. He selected three of the files and successfully downloaded them from Christian's shared folder. The first file was entitled "9yo littlegirl displays her sweet yng cunt – PART 2 – Pussy licking now (2min7sec) (Orig duogi11) – reelkiddymov lolita preteen young incest kiddie porno sex XXX ddoggprn.mpg." It depicted one prepubescent girl performing oral sex on another prepubescent girl. The second file was entitled "X-Illegal (underage xxx r@ygold pedo nude fuck tiny babyj lolita sister incest girl).mpg." It depicted an adult male engaged in vaginal intercourse with a prepubescent female. The third file was entitled "(pthc) Family2 – ReelFamilySex – entire clip -- Hot Mother licks her 8yo Daughters sweet pussy as her brother fucks her – r@ygold -- ddoggprn – incest REELKIDDYMOV.mpg." It depicted an adult female aiding an adult male in having vaginal intercourse with a child. After he viewed the files, Investigator Frattare subpoenaed Christian's internet service provider.

{¶12} While Investigator Frattare was waiting for a response from Christian's internet service provider, Christian's IP address reappeared on the network and caused Investigator Frattare to further investigate Christian's shared files. Investigator Frattare browsed Christian's shared files for a second time in June 2010 and uncovered additional files that were indicative of child pornography. He testified that the fact that he was able to uncover additional files in June allowed him to conclude that someone was actively using the program between March and June. When Investigator Frattare received Christian's name and address from Christian's internet service provider, he referred the matter to the Twinsburg Police Department.

{¶13} Richard Warner testified that he is an agent for the Ohio Bureau of Criminal Investigation ("BCI") and belongs to its Cyber Crimes Unit as well as its Crimes Against Children Unit. After the Twinsburg Police Department contacted him for assistance, Warner began investigating Christian and ultimately secured a search warrant for his residence. He executed the warrant in October 2010 and seized two computers from Christian's bedroom. Specifically, he seized a laptop that he found on Christian's desk and a computer tower and monitor that he found inside a cabinet. Christian admitted that he owned both computers, but told Warner that he had not used the computer tower in several months because it was broken. Warner later analyzed the laptop and computer tower to determine whether either contained evidence of child pornography. Although the laptop did not contain any child pornography, the computer tower did.

{¶14} Warner's initial search of Christian's computer tower uncovered 15 video files whose titles were consistent with child pornography. Of those 15 files, Warner identified seven that actually contained child pornography. Three of the files were the same files that Investigator Frattare had downloaded from Christian's shared folder and viewed. The fourth file was entitled "-Best Vicky BJ & handjob with sound (r@ygold pedo reelkiddymov underage illegal lolita daughter incest XXX oral handjob) – Copy.mpg." It depicted a prepubescent female performing oral sex on an adult male. The fifth file was entitled "Taboo PTHC Incest Pedo – Mom Fondles Son.mpg." It depicted a prepubescent, naked male straddling an adult female while the female touched the child's penis, masturbated, and exposed her breasts. The sixth file was entitled "NOBULL_family fun dad teaches bro and sis abt 9, 10, kid sex incest pedophilia boy girl 12.38.mpg." It depicted an adult male attempting to have intercourse with a prepubescent female and then masturbating. The seventh file was entitled "Babysitter and Girl 8yo – Having Sex

With Older Sister (Anal Toys!!!) Incest – Pedo Mom Helps Dad Fuck His Tiny Daughter (B) (Pthc – 20m15s).mpg." It depicted an adult female removing her own clothing and the clothing of child before engaging in sexual activity with the child.

{¶15} Warner testified that, while it was not possible to know who downloaded child pornography onto Christian's computer, he was able to uncover several pieces of information about the files. First, he was able to identify the dates and times when all of the foregoing files were created, last written, and last accessed. Those dates and times were as follows:

- "9yo littlegirl displays her sweet yng cunt – PART 2 – Pussy licking now (2min7sec) (Orig duogi11) – reelkiddymov lolita preteen young incest kiddie porno sex XXX ddoggprn.mpg" was created on November 4, 2008, at 12:03 a.m., last written on the same date at 12:26 a.m., and last accessed on June 28, 2010, at 6:26 p.m.
- "X-Illegal (underage xxx r@ygold pedo nude fuck tiny babyj lolita sister incest girl).mpg" was created on May 6, 2009, at 6:58 p.m., last written on the same date at 7:26 p.m., and last accessed on June 27, 2010, at 9:27 p.m.
- "(pthc) Family2 – ReelFamilySex – entire clip -- Hot Mother licks her 8yo Daughters sweet pussy as her brother fucks her – r@ygold -- ddoggprn – incest REELKIDDYMOV.mpg" was created on January 21, 2009, at 2:39 a.m., last written on the same date at 3:02 a.m., and last accessed on June 28, 2010, at 2:46 p.m.
- "-Best Vicky BJ & handjob with sound (r@ygold pedo reelkiddymov underage illegal lolita daughter incest XXX oral handjob) – Copy.mpg" was created on November 4, 2008, at 12:04 a.m., last written on the same date at 1:47 a.m., and last accessed on June 28, 2010, at 1:49 p.m.

- "Taboo PTHC Incest Pedo – Mom Fondles Son.mpg" was created on August 26, 2008, at 11:11 a.m., last written on the same date at 11:17 a.m., and last accessed on May 26, 2010, at 2:08 a.m.
- "NOBULL_family fun dad teaches bro and sis abt 9, 10, kid sex incest pedophilia boy girl 12.38.mpg" was created November 4, 2008, at 12:02 a.m., last written on the same date at 1:56 a.m., and last accessed on May 8, 2010, at 11:52 a.m.
- "Babysitter and Girl 8yo – Having Sex With Older Sister (Anal Toys!!!) Incest – Pedo Mom Helps Dad Fuck His Tiny Daughter (B) (Pthc – 20m15s).mpg" was created July 2, 2009, at 1:40 a.m., last written on the same date at 2:31 a.m., and last accessed on May 30, 2010, at 1:50 a.m.

Warner explained that a file's creation date is the date that it is first introduced to the computer. Assuming no further changes are made to the file, a file's last written date is typically the date when the file finishes downloading to the computer. Finally, a file's last accessed date is the last date that the file was touched by either a user or program. The last accessed date includes instances where a user sits down and views the file, but also includes instances where a remote user on a peer to peer network accesses the shared file.

{¶16} In addition to identifying relevant dates and times for the foregoing files, Warner testified that all of the files would have displayed on Christian's computer with their quoted titles. That is, anyone who viewed the files on the computer would have seen the exact names of the files quoted above. Warner testified that the "Best Vicky" video also displayed a thumbnail image next to its file name. He explained that a thumbnail image is a still image that a computer pulls from a file to allow for easier browsing, so that a user can gauge the content of the file based on both its name and the image. Warner testified that the thumbnail image for the "Best

Vicky" video was consistent with its content, meaning that it displayed a prepubescent female engaged in sexual activity with an adult male. Warner confirmed that the title of the "Best Vicky" file and its thumbnail image populated when he opened the Windows Media Player on Christian's computer. He testified that Christian would have seen that file and its image when opening Windows Media Player.

{¶17} In analyzing Christian's computer, Warner also compiled a list of search terms that had been entered into the computer to search for information by way of Internet Explorer (e.g., through search engines such as Google and Yahoo). He explained that a computer maintains a registry on which it records search terms and sorts the terms by date, according to the date on which the user stopped entering search terms. State's Exhibit 25 was a 41-page document that displayed the list of search terms that Warner had compiled. The list spanned numerous search strings from 2008 and 2009. The following terms were included on the list of search terms that Warner uncovered on Christian's computer: "Preteen Nudists," "young kid sex," "lil kids fucking," and "pthc," which Warner defined as an abbreviation for "preteen hardcore." The list also contained a great deal of search terms related to adult pornography and music.

{¶18} When Warner spoke to Christian, Christian admitted that he had used the LimeWire program on his computer to download music, videos, and adult pornography. He told Warner that he had noticed the "Best Vicky" file in his Media Player, but that he would skip past it to access other files. According to Christian, he never bothered to delete anything in his LimeWire folder. Warner testified that the LimeWire program on Christian's computer had never been changed from its default settings. Accordingly, any downloaded LimeWire files were automatically sent to a shared folder where other users could download them. Warner

explained that LimeWire allows its users to change their settings and make downloaded files unavailable to other users, but that Christian had not done so.

{¶19} Christian first argues that his convictions are based on insufficient evidence because the State failed to prove that he had any knowledge of the character of the videos on his computer. *See* R.C. 2907.322(A). He argues that there was no evidence that he was the one to download the files or that the videos had ever been viewed after they were downloaded. Because someone else could have downloaded the files or the files could have been downloaded accidentally, Christian argues that his convictions are based on insufficient evidence.

{¶20} Viewing the evidence in a light most favorable to the State, we must conclude that the State presented evidence from which a rational trier of fact could have concluded that Christian had knowledge of the character of the videos on his computer. *See Jenks*, 61 Ohio St.3d 259 at paragraph two of the syllabus. All of the videos at issue had extremely graphic file names, and there was testimony that those file names would have been on display for anyone who browsed through the shared files on the computer. One video in particular, the "Best Vicky" video, also had a thumbnail image that displayed next to the file name. Christian admitted that he had noticed the "Best Vicky" video. He also admitted that the computer at issue belonged to him. There was evidence that the seven videos Warner found on Christian's computer had been downloaded and accessed at different times from August 2008 to June 2010. Moreover, there was evidence that Christian's computer contained numerous search terms related to pornography and music. Christian admitted that he used his computer to view adult pornography and music, and the search terms for adult pornography and music were intermixed with search terms related to child pornography. Although the evidence against Christian was circumstantial in nature, "[c]ircumstantial evidence and direct evidence inherently possess the

same probative value." *Id.* at paragraph one of the syllabus. All of the evidence here, when viewed collectively, was such that a rational trier of fact could have concluded that Christian had knowledge of the character of the illicit videos on his computer.

{¶21} Next, Christian argues that his convictions under R.C. 2907.322(A)(1) are based on insufficient evidence because there was no evidence that he created, recorded, photographed, filmed, developed, reproduced, or published the videos on his computer. Christian's four counts under subsection (A)(1) pertain to the three videos that Investigator Frattare was able to remotely download from Christian's IP address through LimeWire and the "Best Vicky" video that Christian admitted he had in his shared folder library. Investigator Frattare testified that peer to peer networks such as LimeWire make it possible for remote users to download files that another user has chosen to share. Warner explained that the default setting on LimeWire is for all downloaded files to be stored in a shared folder where they will be available for others to download. He testified that, while Christian could have changed the settings on his LimeWire program to make certain files unavailable to other users, he did not do so. This Court has held that for the State to prove that an offender published materials under R.C. 2907.322(A)(1), the State need only show "that a third party *could have* accessed the files." *Butler*, 2009-Ohio-1866, at ¶ 25. That is because subsection (A)(1) only requires an offender to have acted recklessly in publishing material depicting child pornography. *Id.* at ¶ 22. Because Investigator Frattare actually downloaded three of the files at issue from Christian's shared folder and because Christian admitted that he had the fourth file in his shared folder, we must conclude that the State produced evidence from which a rationale trier of fact could have concluded that Christian recklessly published the videos. *See id.* at ¶ 26. As such, Christian's first assignment of error is overruled.

ASSIGNMENT OF ERROR II

MR. CHRISTIAN'S CONVICTIONS ARE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶22} In his second assignment of error, Christian argues that his convictions are against the manifest weight of the evidence. We disagree.

{¶23} A conviction that is supported by sufficient evidence may still be found to be against the manifest weight of the evidence. *Thompkins*, 78 Ohio St.3d at 387.

> 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, 33 Ohio App.3d 339, 340 (9th Dist.1986). "When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a 'thirteenth juror' and disagrees with the fact[-]finder's resolution of the conflicting testimony." *Thompkins* at 387, quoting *Tibbs v. Florida*, 457 U.S. 31, 42 (1982). This discretionary power should be exercised only in exceptional cases where the evidence presented weighs heavily in favor of the defendant and against conviction. *Thompkins*, 78 Ohio St.3d at 387. *Accord Otten* at 340.

{¶24} Christian argues that his convictions are against the manifest weight of the evidence because neither of the State's experts could say whether he was the individual who downloaded the child pornography files onto his computer or whether the files had ever been viewed. He argues that numerous individuals had access to his computer, which was not password protected, so anyone could have downloaded the files. He further argues that, had he downloaded the illicit files for himself, logic dictates that he would have moved them to a

separate folder or some other location where another user would not have seen them. He notes that the laptop the police found in his bedroom did not contain any child pornography. He also notes that the seven files that resulted in his convictions represented a very small portion of the 1,164 files that he had on the computer, such that it would have been easy for him to overlook them.

{¶25} Mark Vassel, the owner of a computer forensic consulting firm, testified as an expert for the defense. Vassel agreed that Christian's computer had child pornography on it, but noted that the computer did not have a password. Based on information Vassel received from the defense, it was his understanding that as many as 30 people had access to the computer. He testified that, without a password, anyone could have sat down and downloaded the illicit files. Moreover, he noted that it was impossible to know whether the files had ever been viewed. He explained that a file's last accessed date could simply be the date that a remote user downloaded the file over LimeWire.

{¶26} Anthony Christian, Christian's father, testified that Christian kept the computer at issue in the basement during 2008 and 2009. He testified that Christian and his friends were interested in a career in the music industry, so they spent a lot of time downloading music on the computer. According to Anthony Christian, his son was not always in the basement when his friends were using the computer and he frequently had friends stay over for the night. It was his belief that the illicit files on the computer had been downloaded inadvertently.

{¶27} Having reviewed the record, we cannot conclude that Christian's convictions are against the manifest weight of the evidence. Christian's eight convictions only required the jury to find that he: (1) had knowledge of the character of the seven videos on his computer; (2) recklessly published the videos by making them available to others for download; and (3)

knowingly possessed or controlled the videos. *See* R.C. 2097.322(A)(1), (5). *See also Butler*, 2009-Ohio-1866, at ¶ 7-27. While the evidence against Christian was circumstantial in nature, it does not weigh heavily against his convictions. *See Thompkins*, 78 Ohio St.3d at 387.

{¶28} Investigator Frattare testified that he conducted two investigations into Christian's IP address; one in March 2010 and one in June 2010. Because the June 2010 investigation uncovered additional files of child pornography, Investigator Frattare was able to conclude that Christian's computer was being actively used to download child pornography between March and June 2010. Although Warner could not say whether Christian was the one to download the illicit files on his computer, Warner was able to provide the jury with a detailed list of the dates and times when each file was created, last written, and last accessed. The foregoing dates and times spanned a period of two years and often occurred during the early morning hours. Accordingly, the jury reasonably could have concluded that the person downloading the files was a resident of Christian's home and not a guest.

{¶29} Warner testified that he found several viruses on Christian's computer, but that none of the viruses were the type that would have downloaded child pornography onto the computer. Rather, a user had to have downloaded the illicit files from LimeWire. As previously set forth, Christian admitted that he used LimeWire to download videos, music, and adult pornography. He also admitted that he recognized at least one of the illicit videos. Christian told Warner that he would see the "Best Vicky" video when he opened his Media Player, but that he would skip past the video instead of watching it. Warner testified that the "Best Vicky" video had a thumbnail image next to its file name that was consistent with child pornography.

{¶30} Each of the seven illicit videos on Christian's computer had extremely graphic file names. As a frequent user of the computer, Christian would have been in a position to see the

explicit file names associated with the videos and realize that they were in his shared folder. Warner also determined that graphic search terms had been entered on Christian's computer over the course of two years. Those search terms appeared alongside search terms for music and adult pornography, both of which Christian admitted accessing on his computer. Although Christian's laptop computer did not contain any child pornography, Christian told Warner that he had only procured the laptop a short time before the police executed their warrant. Accordingly, Christian did not own the laptop when the illicit files at issue were downloaded.

{¶31} This Court has carefully reviewed all of the evidence in the record. Having done so, we are unable to conclude that this is the exceptional case where the jury lost its way by convicting Christian. *See Otten*, 33 Ohio App.3d at 340. As such, Christian's convictions are not against the manifest weight of the evidence. His second assignment of error is overruled.

ASSIGNMENT OF ERROR III

> MR. CHRISTIAN'S RIGHT TO A FAIR TRIAL AND RIGHT TO DUE PROCESS OF LAW, AS GUARANTEED BY THE UNITED STATES CONSTITUTION AND THE OHIO CONSTITUTION, WERE VIOLATED BY THE INTRODUCTION OF IRRELEVANT AND UNFAIRLY PREJUDICIAL ALLEGED OTHER ACT EVIDENCE.

{¶32} In his third assignment of error, Christian argues that the trial court erred by admitting irrelevant and highly prejudicial other acts evidence. Specifically, he argues that the court should have ordered the redaction of State's Exhibit 1 to remove any references to marijuana and adult pornography.

{¶33} Even assuming that the court erred by admitting an unredacted version of State's Exhibit 1, we must conclude that the error was harmless. *See* Crim.R. 52(A) (errors that do not affect substantial rights "shall be disregarded"). State's Exhibit 1 was the full investigative report that Warner completed in conjunction with his analysis of Christian's computer. The

exhibit included the list of search terms that Warner found on the computer. Warner testified about several of the pornographic search terms on the list, and Christian did not object to his testimony. *See State v. Hartney*, 9th Dist. Summit No. 25078, 2010-Ohio-4331, ¶ 27 (harmless error in actual admission of report where report was cumulative of the testimony presented at trial). More importantly, the entirety of the search term list included in State's Exhibit 1 was duplicative of State's Exhibit 25. Exhibit 1 contained more information that just the search term list, but Exhibit 25 was strictly limited to the list. Exhibit 25 also contained a larger list than State's Exhibit 1 because it encompassed a larger time frame. Christian did not object to either Warner's testimony about the contents of State's Exhibit 25 or to the actual admission of the exhibit. Because State's Exhibit 1 was merely cumulative of the other evidence presented at trial, any error in its admission was harmless. *See State v. Caldwell*, 9th Dist. No. 26306, 2013-Ohio-1417, ¶ 11, citing *State v. Conway*, 109 Ohio St.3d 412, 2006-Ohio-2815, ¶ 59. *Accord Hartney* at ¶ 27. Thus, Christian's third assignment of error is overruled.

III.

{¶34} Christian's assignments of error are overruled. The judgment of the Summit 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 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(C). 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.

DONNA J. CARR
FOR THE COURT

HENSAL, P. J.
WHITMORE, J.
CONCUR.

APPEARANCES:

RONALD L. FREY, Attorney at Law, for Appellant.

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