[Cite as *State v. Brownlee*, 2015-Ohio-2616.]

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

STATE OF OHIO	C.A. No. 27255
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
CHARLES BROWNLEE	COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO
Appellant	CASE No. CR 12 11 3084

DECISION AND JOURNAL ENTRY

Dated: June 30, 2015

WHITMORE, Judge.

{¶1} Appellant, Charles Brownlee, appeals from the judgment of the Summit County Court of Common Pleas. This Court affirms.

I

{¶2} At 3:00 a.m. on October 22, 2012, a man walked out of the Walmart in Macedonia with a cart full of merchandise that he had not paid for. The man loaded the items into a car and got into the passenger's seat. When the man did not respond to repeated requests from the manager to provide proof of payment, the manager called the police. The manager provided the police with the make, model, and license plate number of the car. About that same time, a second man exited the store and approached the car. The manager twice asked the second man for a receipt for the items. The man ignored the manager, got into the driver's seat of the car, and sped away.

{¶3} Officer Michael Plesz of the Macedonia Police Department was responding to the theft call when he witnessed a car perform an illegal U-turn. Officer Plesz positioned his cruiser behind the car and activated his lights and sirens to effectuate a traffic stop. The car did not stop, and a high-speed chase ensued. While in pursuit, Officer Plesz was informed that the car he was chasing was the same car involved in the Walmart theft. The car was eventually stopped with the assistance of other officers. Brownlee was identified as the driver.

{¶4} Brownlee was arrested and charged with: (1) failure to comply with order or signal of a police officer, in violation of R.C. 2921.331(B), a felony of the third degree; and (2) petty theft, in violation of R.C. 2913.02(A)(1), a misdemeanor of the first degree. After arraignment, Brownlee was released on bail. When he failed to appear at a January 3, 2013 pretrial hearing, the court revoked his bond and issued a warrant for his arrest. The case was placed on the inactive docket until Brownlee could be located.

{¶5} On July 30, 2013, Brownlee filed a "Notice of Availability," in which he notified the court that he was being held in the Cuyahoga County Jail. Brownlee was subsequently returned to Summit County and appeared before the court on November 7, 2013. A jury trial was held on January 6, 2014, and Brownlee was found guilty on both counts. Brownlee now appeals and raises three assignments of error for our review. To facilitate the analysis, we rearrange his assignments of error.

II

Assignment of Error Number Two

> THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT DENIED APPELLANT'S MOTION TO DISMISS FOR VIOLATING HIS RIGHT TO A SPEEDY TRIAL.

{¶6} In his second assignment of error, Brownlee argues that the court erred in denying his motion to dismiss based on a violation of his right to a speedy trial.

{¶7} The Sixth Amendment to the United States Constitution guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy * * * trial * * *." *Accord* Article 1, Section 10 of the Ohio Constitution. An individual's fundamental right to a speedy trial is applicable to the states through the Fourteenth Amendment. *Klopfer v. North Carolina*, 386 U.S. 213, 223 (1967). The issue of whether an accused's constitutional right to a speedy trial has been violated is analyzed under a reasonableness standard. *See State v. Hull*, 110 Ohio St.3d 183, 2006-Ohio-4252, ¶ 14, citing *State v. Fanning*, 1 Ohio St.3d 19, 21 (1982). "In *Barker v. Wingo*, 407 U.S. 514 (1972), the [C]ourt identified four factors to be assessed in determining whether an accused had been constitutionally denied a speedy trial: (1) the length of the delay, (2) the reason for the delay, (3) the defendant's assertion of his right to a speedy trial, and (4) the prejudice to the defendant." *Hull* at ¶ 22, citing *Wingo* at 530.

{¶8} In Ohio, an accused's right to a speedy trial is also protected by statute. *See* R.C. 2945.71 et seq. A person accused of a felony "[s]hall be brought to trial within two hundred seventy days after the person's arrest." R.C. 2945.71(C)(2). If the accused is held in jail solely on the pending charge, each day in jail shall count as three days for speedy trial purposes. R.C. 2945.71(E); *State v. Sanchez*, 110 Ohio St.3d 274, 2006-Ohio-4478, ¶ 7. The speedy trial statute "must be strictly adhered to by the state." *State v. Butcher*, 27 Ohio St.3d 28, 31 (1986). "An accused presents a prima facie case for discharge due to a speedy trial violation by demonstrating that his case was pending for a time exceeding the statutory limits in R.C. 2945.71." *State v. Mitchell*, 2d Dist. Montgomery No. 24743, 2012-Ohio-2107, ¶ 17, citing *Butcher* at 31. If the accused makes a prima facie showing, the burden then shifts to the State to show that a tolling

event has extended the time for trial. *State v. Gaines*, 9th Dist. Lorain No. 00CA008298, 2004-Ohio-3407, ¶ 12.

{¶9} A trial court's determination of speedy trial issues presents a mixed question of law and fact. *State v. Fields*, 9th Dist. Wayne No. 12CA0045, 2013-Ohio-4970, ¶ 8. "When reviewing an appellant's claim that he was denied his right to a speedy trial, this Court applies the de novo standard of review to questions of law and the clearly erroneous standard of review to questions of fact." *Id*., quoting *State v. Downing*, 9th Dist. Summit No. 22012, 2004-Ohio-5952, ¶ 36.

{¶10} Brownlee's argument rests solely on his statutory right to a speedy trial. He makes no argument that his constitutional speedy trial right has been violated under the factors articulated in *Wingo*. Therefore, we limit our analysis accordingly. *See State v. Stokes*, 193 Ohio App.3d 549, 2011-Ohio-2104, ¶ 9 (12th Dist.).

{¶11} Brownlee argues that the court erred in resetting his speedy trial clock when he failed to show for a pretrial conference. However, even if we were to accept Brownlee's argument that his speedy trial time does not reset after his failure to appear at a pretrial, the record does not support his assertion that his speedy trial right was violated.

{¶12} Brownlee was arrested on October 23, 2012, and released on bond on December 21, 2012. This period of 59 days totals 177 days for speedy trial purposes. *See* R.C. 2945.71(E). The court scheduled a pretrial hearing for January 3, 2013. December 21, 2012 to January 3, 2013 is 13 days. This brought Brownlee's speedy trial time to 190 days. Brownlee failed to appear for the pretrial hearing. The court issued a warrant for his arrest and revoked his bond.

{¶13} Brownlee did not reappear in the Summit County Court of Common Pleas until November 7, 2013. No time between January 3, 2013 and November 7, 2013 counts toward his

speedy trial time.[1] At the November 7, 2013 hearing, Brownlee's attorney requested a continuance until November 21, 2013. Therefore, no time between November 7, 2013 and November 21, 2013 counts toward his speedy trial time. Brownlee's speedy trial clock remained at 190 days.

{¶14} At the November 21, 2013 hearing, the court set a February 5, 2014 trial date. The court went on to say that its "schedule is such that [it is] jam packed full in December and January." Another pretrial hearing was held on December 2, 2013, to discuss concerns about Brownlee's speedy trial. The court noted that it was not possible to schedule a trial in December; "We're not going to be able to get the trial in before Christmas. We have too many other trials set between now and then." The court further explained that it had a capital case set for a jury trial on January 13th, "[s]o really, the only available trial date in the month of January is the first full week of January starting the 6th." Brownlee's attorney agreed to the January 6th trial date.

> [Prosectuor]: And it's very clear, I think, on the record at this point that the defense is okay with that January 6th trial date?
>
> [Defense Counsel]: Yes, I am. The defense indicates that we are, correct.

[1] At some point between January 3rd and November 7th, Brownlee was being held in the Cuyahoga County Jail for a case pending in that jurisdiction. It is unclear from the record when Brownlee's case in Cuyahoga County was resolved and when he was first available to appear in the Summit County Court of Common Pleas. At the November 7, 2013 hearing, the State informed the court that Brownlee had been returned to Summit County on August 22, 2013, but that he failed to appear at the September 5, 2013 hearing because he was back in Cuyahoga County. Defense counsel noted that there was a final pretrial in Cuyahoga County on August 28, 2013, but that he did not know what happened after that. Brownlee bears the burden on appeal and has failed to show that he was available to the court prior to November 7th. Thus, we use that date in our calculation.

{¶15} Brownlee agreed to the January 6th trial date prior to the expiration of his speedy trial time.[2] Further, January 6th, approximately one month from the pre-trial hearing, was the earliest available date on the court's docket, making the extension of time for trial reasonable. Therefore, even assuming Brownlee's speedy trial clock did not reset, there was no violation of Brownlee's statutory right to a speedy trial. *See State v. Ramey*, 132 Ohio St.3d 309, 2012-Ohio-2904, ¶ 31 (when defense counsel acquiesces to a trial date beyond the statutory speedy trial time, "the court has discretion to extend the trial date beyond the statutory time limit" provided the continuance is reasonable.). *Accord State v. Davis*, 46 Ohio St.2d 444, 448-449 (1976).

{¶16} Brownlee argues, in the alternative, that he was not brought to trial within 180 days of his Notice of Availability as required by R.C. 2941.401. However, Brownlee did not properly file his request for a final disposition nor is there any evidence in the record that R.C. 2941.401 was applicable to him.

{¶17} A person who has "entered upon a term of imprisonment in a correctional institution" may file a request for the State to proceed with any pending indictments against him. R.C. 2941.401. There is no evidence in the record that Brownlee was ordered to serve a term of imprisonment in Cuyahoga County. Instead, at the November 7, 2013 hearing Brownlee informed the court that the Cuyahoga County case had been dismissed. Therefore, it is unclear if R.C. 2941.401 would even be available to Brownlee. *See State v. Boone*, 9th Dist. Summit No. 26104, 2012-Ohio-3142, ¶ 17, *vacated on other grounds, State v. Boone*, 2013-Ohio-2664.

{¶18} However, even assuming R.C. 2941.401 was applicable, there is no evidence in the record that the statute was properly invoked. R.C. 2941.401 requires the request for final

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[2] On December 2, 2013, Brownlee's speedy trial clock was at 223 days. November 21, 2013 to December 2, 2013 is 11 days or 33 days for speedy trial purposes. 190 days (October 23, 2012 to January 3, 2013) plus 33 days totals 223 days.

disposition be "delivered to the prosecuting attorney and the appropriate court." Additionally, the request "shall be accompanied by a certificate of the warden or superintendent having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time served and remaining to be served on the sentence * * * ." There is no evidence in the record that Brownlee served the prosecution and there is no certificate of the warden attached. Because Brownlee did not properly invoke the request for final disposition, the 180 day speedy trial clock under R.C. 2941.401 never began to run.

{¶19} Brownlee's second assignment of error is overruled.

Assignment of Error Number One

APPELLANT'S CONVICTIONS WERE AGAINST THE SUFFICIENCY AND MANIFEST WEIGHT OF THE EVIDENCE.

{¶20} In his first assignment of error, Brownlee argues that his convictions are not supported sufficient evidence and are against the manifest weight of the evidence.

Sufficiency

{¶21} "'[S]ufficiency' is a term of art meaning that legal standard which is applied to determine whether the case may go to the jury or whether the evidence is legally sufficient to support the jury verdict as a matter of law." *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997), quoting *Black's Law Dictionary* 1433 (6th Ed.1990). "In essence, sufficiency is a test of adequacy." *Thompkins* at 386. When reviewing a conviction for sufficiency, evidence must be viewed in a light most favorable to the prosecution. *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus. The pertinent question is whether "any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *Id*.

{¶22} "Whether the evidence is legally sufficient to sustain a verdict is a question of law." *Thompkins* at 386, citing *State v. Robinson*, 162 Ohio St. 486 (1955). This Court,

therefore, reviews questions of sufficiency de novo. *State v. Salupo*, 177 Ohio App.3d 354, 2008-Ohio-3721, ¶ 4 (9th Dist.).

a. Theft

{¶23} R.C. 2913.02(A)(1), in relevant part, provides that "[n]o person, with the purpose to deprive the owner of property * * *, shall knowingly obtain or exert control over [ ] the property * * * [w]ithout the consent of the owner or person authorized to give consent[.]" "A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist." R.C. 2901.22(B).

{¶24} Brownlee argues that there is insufficient evidence to support his theft conviction because the State presented no evidence that he "had [any] knowledge of any merchandise being stolen from Walmart." We disagree.

{¶25} Mark Hall was working as the Assistant Manager at Walmart in Macedonia at the time of the incident. Hall testified that because the store was very slow at that hour he only had one checkout line open. Hall said the cashier on duty notified him that she saw a man exit the store with a cart full of store merchandise. The man had not come through the cashier's checkout line. Hall ran out into the parking lot to confront the man. Hall testified that he only saw one person in the parking lot. That man matched the description provided by the cashier and he was pushing a cart full of merchandise toward a gray car. As Hall approached the car, the man was loading the merchandise into the car's trunk and backseat. According to Hall, he twice called out to the man and requested proof of payment. When the man ignored him and got into the car's passenger seat, Hall called the police. Hall provided the police with the car's make, model, and license plate number.

{¶26} About that time, a second man exited the store and approached the car. Hall said he was standing about 15 to 20 feet from the second man when he called out and requested to see a receipt for the merchandise. Hall called out twice before the second man got into the driver's seat and the car sped off "at a high rate of speed." Officer Plesz, after a high-speed chase, was able to pull the vehicle over and identify Brownlee as the driver. Officer Plesz testified that he had been provided a description of the merchandise stolen from Walmart, and he located the described items in the trunk and backseat of the car.

{¶27} Viewing the evidence in a light most favorable to the State, there is sufficient evidence to support a finding that Brownlee knew the items in the car had not been paid for. Hall testified that he was standing 15 to 20 feet from Brownlee when he twice requested proof of payment for the merchandise in the car. Brownlee ignored Hall, climbed into the driver's seat, and sped away. A rational juror could have found the essential elements of theft proven beyond a reasonable doubt. *See Jenks*, 61 Ohio St.3d at paragraph two of the syllabus.

b. Failure to Comply

{¶28} R.C. 2921.331(B) provides that "[n]o person shall operate a motor vehicle so as willfully to elude or flee a police officer after receiving a visible or audible signal from a police officer to bring the person's motor vehicle to a stop." The offense is elevated to a felony of the third degree if the State proves beyond a reasonable doubt that "[t]he operation of the motor vehicle by the offender caused a substantial risk of serious physical harm to persons or property." R.C. 2921.331(C)(5)(ii).

{¶29} Brownlee argues that his conviction for failure to comply is not supported by sufficient evidence because the State failed to prove that "[his] driving posed a substantial risk of serious physical harm to persons or property."

{¶30} Officer Plesz testified that he was responding to a theft call from Walmart when he witnessed a car execute an illegal U-turn. Officer Plesz positioned his cruiser behind the car and activated his lights and sirens to conduct a traffic stop. The car did not stop. Instead, the car led Officer Plesz on a high-speed chase north on I-271, then west on I-480. The chase was recorded on Officer Plesz's dashcam and admitted into evidence. The chase lasted approximately seven minutes and covered 10.4 miles. During a majority of the chase the cars were traveling over 100 m.p.h.

{¶31} Officer Plesz testified that he was concerned because Brownlee was unable to maintain a specific lane and was passing cars a high rate of speed. Officer Plesz explained that he was particularly concerned because Brownlee was passing cars on the right side and when motorists see emergency lights "they tend to pull to the right." He was worried that motorists would not see Brownlee's speeding car and might pull in front of him. Officer Plesz described "one incident where a car moved from the left lane to the right lane in front of Mr. Brownlee and [Brownlee] came very close to the rear end of that vehicle. [Officer Plesz] wasn't sure if [Brownlee would] be able to correct and get to the left lane."

{¶32} While Officer Plesz testified that it was not unusual for drivers to change lanes without signaling or to pass other drivers on the right, it is very unusual for a driver to do those things while traveling at 110 m.p.h. The uncertainty of how the other motorists on the roadway would react and the very high rate of speed that they were traveling caused Officer Plesz to feel that his safety was in danger. Additionally, Officer Plesz testified that other vehicles had to maneuver out of Brownlee's way and that those maneuvers placed those drivers in harm's way. Viewing the evidence in a light most favorable to the State, there is sufficient evidence to

support a finding that Brownlee's driving caused a substantial risk of serious physical harm to persons or property.

{¶33} Brownlee's second assignment of error, as it relates to the sufficiency of the evidence, is overruled.

Manifest Weight

{¶34} 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. "Weight of the evidence concerns 'the inclination of the *greater amount of credible evidence*, offered in a trial, to support one side of the issue rather than the other.'" (Emphasis sic.) *Thompkins* at 387, quoting *Black's* at 1594.

> 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). An appellate court should exercise the power to reverse a judgment as against the manifest weight of the evidence only in exceptional cases. *Otten* at 340.

{¶35} While Brownlee's captioned assignment of error asserts that his convictions are against the manifest weight of the evidence, he has failed to develop that argument. Brownlee states that his manifest weight argument is "identical to the argument set forth under the prior section concerning the sufficiency of the evidence." However, "[a] review of the sufficiency of

the State's evidence and the manifest weight of the evidence adduced at trial are separate and legally distinct determinations." *State v. Thomas*, 9th Dist. Summit No. 26893, 2014-Ohio-2920, ¶ 7. Brownlee has not articulated a manifest weight argument, and we decline to make one for him. *See Cardone v. Cardone*, 9th Dist. Summit No. 18349, 1998 WL 224934, *8 (May 6, 1998) ("If an argument exists that can support this assignment of error, it is not this [C]ourt's duty to root it out.").

{¶36} Brownlee's second assignment of error, as it relates to the manifest weight of the evidence, is overruled.

Assignment of Error Number Three

THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT SENTENCED APPELLANT TO A MAXIMUM SENTENCE.

{¶37} In his third assignment of error, Brownlee argues that the court erred when it imposed a maximum prison sentence on his failure to comply conviction. Specifically, Brownlee argues that the court imposed the maximum sentence to punish him for asserting his right to a jury trial. Brownlee further argues that the court abused its discretion and failed to consider the purposes and principles of sentencing.

{¶38} "[A] defendant is guaranteed the right to a trial and should never be punished for exercising that right or for refusing to enter a plea agreement." *State v. O'Dell*, 45 Ohio St.3d. 140 (1989), paragraph two of the syllabus. Brownlee directs our attention to the following statement made by the trial judge prior to opening statements: "You're being offered the two years, but I don't think the prosecutor's going to keep the offer open forever because we're already here." According to Brownlee, the trial court's reference to the plea offer "implie[d] that the court was willing to adopt the offer and that it may disappear after trial."

{¶39} Standing alone, "the fact that the sentence imposed after trial is greater than the sentence the State offered to recommend in exchange for a guilty plea does not demonstrate that the trial court acted improperly." *State v. Mayle*, 7th Dist. Carroll No. 04 CA 808, 2005-Ohio-1346, ¶ 46. During a trial the court learns more details about the facts of the case, which it may properly consider when imposing sentence. *See id.*

{¶40} At Brownlee's sentencing, the trial judge remarked on what she "observed and heard" during his trial. She noted that, following the theft, Brownlee fled first from the store's loss prevention officer and then from police. After the police officer activated his lights and sirens, Brownlee refused to stop and led the officer on a high speed chase. The judge observed that Brownlee's high rate of speed endangered the lives of many people, including himself, his passenger, the officer, and everyone on the roadway. She further noted that his "highly reckless and dangerous" flight continued for seven minutes. For his part, Brownlee apologized stating that he "panicked," "made a mistake," and "didn't think it was a serious as it was." The judge expressed concern that Brownlee "just do[es]n't think it's that big of a deal." Brownlee responded that, after he saw the tape, he realized it was because of the speed. The judge did not believe that his apology was sincere.

{¶41} Nonetheless, Brownlee argues that "the trial court failed to articulate, during the sentencing hearing, any reason why [he] deserved the maximum sentence." A sentencing judge must consider the principles and purposes of sentencing when imposing a sentence, but is not required to make findings or give reasons before imposing a maximum sentence. *State v. Henderson*, 9th Dist. Summit No. 27078, 2014-Ohio-5782, ¶ 44. "Unless the record shows that the court failed to consider the factors, or that the sentence is 'strikingly inconsistent' with the factors, the court is presumed to have considered the statutory factors if the sentence is within the

statutory range." *Id.*, quoting *State v. Fernandez*, 9th Dist. Medina No. 13CA0054-M, 2014-Ohio-3651, ¶ 8.

{¶42} Brownlee has not indicated which factors he alleges the court failed to consider, and he concedes that his sentence is within the statutory range. Our review of the record does not indicate that Brownlee's sentence is "strikingly inconsistent" with any sentencing factor. *See id.* At the sentencing hearing, the prosecutor noted that Brownlee had a lengthy criminal record including seventeen prior felonies, two of which were for failure to comply. *See* R.C. 2929.12(D)(2). In addition, the judge, who had the opportunity to observe Brownlee's demeanor, found that his apology was not sincere. *See* R.C. 2929.12 (D)(5).

{¶43} The jury found Brownlee guilty of failure to comply with an order or signal of a police officer and that he did cause a substantial risk of serious physical harm to persons or property. Under those circumstances, R.C. 2929.331(C)(5)(b) sets forth additional factors for a court to consider in determining the seriousness of the offender's conduct for purposes of sentencing. Among those factors are the duration of the pursuit, the distance of the pursuit, the offender's speed during the pursuit, whether the offender committed any moving violations during the pursuit and the number of moving violations. R.C. 2929.331(C)(5)(b).

{¶44} Contrary to Brownlee's assertion, the trial judge referenced these factors during sentencing, particularly his speed and the duration of the pursuit. In addition, having presided over the jury trial, she was familiar with the evidence presented. Officer Plesz's testimony and his dashcham video showed that Brownlee committed multiple moving violations while covering 10.4 miles at speeds exceeding 100 m.p.h. *See* R.C. 2929.331(C)(5)(b). Although the trial judge did not specifically enumerate each factor during the sentencing hearing, such a recitation is not

required and it is presumed that she considered them when imposing sentence. *See Henderson*, 2014-Ohio-5782, at ¶ 44.

{¶45} Brownlee's third assignment of error is overruled.

III

{¶46} Brownlee'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.

BETH WHITMORE
FOR THE COURT

HENSAL, P. J.
CANNON, J.
CONCUR.

(Cannon, J., of the Eleventh District Court of Appeals, sitting by assignment.)

APPEARANCES:

WILLIAM A. VASILIOU II, Attorney at Law, for Appellant.

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