[Cite as *State v. Moore*, 2023-Ohio-494.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ROSS COUNTY

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	Case No. 21CA3756
	:	
v.	:	DECISION AND JUDGMENT
KARISTEN H. MOORE,	:	ENTRY
	:	
Defendant-Appellant.	:	

APPEARANCES:

Timothy Young, Ohio Public Defender, Stephen P. Hardwick, Assistant Public Defender, Columbus, Ohio, for Appellant.

Anna Villarreal, City of Chillicothe Law Director, Michele R. Rout, Assistant Law Director, Chillicothe, Ohio, for Appellee.

Smith, P.J.

{¶1} Karisten H. Moore appeals the August 25, 2021 Entry of Sentence of the Chillicothe Municipal Court. Under two assignments of error, Moore challenges (1) the trial court's denial of her motion to dismiss; and (2) the trial court's evidentiary ruling made during Moore's suppression hearing. For the reasons which follow, we find no merit to the arguments raised herein. Accordingly, we overrule both assignments of error and affirm the judgment of the trial court.

FACTUAL AND PROCEDURAL BACKGROUND

{¶2} On January 3, 2021, Moore was cited by Trooper Josh McCarty of the Ohio State Highway Patrol for operating a vehicle under the influence of alcohol/drug of abuse, R.C. 4511.19(A)(1)(a), and driving in marked lanes, R.C. 4511.33. The alleged violations occurred on S.R. 327 in Liberty Township, Ross County, Ohio. Moore held a Tennessee driver's license.

{¶3} Moore was appointed counsel. She entered not guilty pleas and demanded a jury trial. Moore's counsel requested discovery and eventually filed a motion to suppress. The suppression hearing was conducted on May 21, 2021.

{¶4} Prior to the introduction of evidence, the parties stipulated that the issue was limited to the trooper's justification for the traffic stop, the marked lanes violation. State's Exhibit 1, a copy of a portion of the video recording from the trooper's cruiser prior to the traffic stop, was admitted into evidence. On May 27, 2021, the trial court overruled the motion to suppress. In the court's entry, the trial court concluded:

> The video evidence was reviewed by the court. The recording occurred near midnight on a dark and winding road. While the taillights of defendant's vehicle are visible on the video as are the lane markings, the angle and distance from the defendant's vehicle make it insufficient to overcome the trooper's testimony. The video is somewhat unclear and could be construed to reveal the defendant's vehicle committed a marked lanes violation.

> The Court finds the trooper's testimony in this case is credible and believes that he had a better perspective to observe the operation of defendant's vehicle on the night in question than may be observed by watching the video.

{¶5} On August 25, 2021, Moore changed her initial plea of not guilty to operating a vehicle under the influence of alcohol/drugs to a plea of no contest. The State moved to dismiss the marked lanes charge. The trial court granted the State's motion.

{¶6} Moore's sentence was a $375.00 fine, with court costs in the amount of $379.00. She was placed on one year of community control. She was also sentenced to complete 72 hours in a certified driver's intervention program by December 31, 2021. Her driver's license was suspended for one year, with credit, on the suspension.

{¶7} This timely appeal followed.

ASSIGNMENTS OF ERROR

I. THE TRIAL COURT ERRED BY DENYING MS. MOORE'S MOTION TO DISMISS.

II. THE TRIAL COURT ABUSED ITS DISCRETON BY REFUSING TO ALLOW MS. MOORE TO CROSS-EXAMINE THE TROOPER OVER POTENTIAL BIAS.

ASSIGNMENT OF ERROR ONE

1. Standard of Review

{¶8} Moore filed a motion to suppress all evidence and officer observation from the allegedly unlawful traffic stop. While Moore's first assignment of error references a "motion to dismiss," we believe this to be a scrivener's error as the record does not contain a filing of a motion to dismiss. Moore argues that the trooper's dashcam video demonstrates that her car was within the traffic lane at the time the trooper testified it had crossed the line. As a result, Moore asks this court to find that the trooper did not have probable cause to believe that she committed a marked lanes violation. Thus, she actually argues that the trial court erred by denying Moore's motion to suppress evidence resulting from the stop.

{¶9} Generally, "appellate review of a motion to suppress presents a mixed question of law and fact." *State v. Codeluppi*, 139 Ohio St.3d 165, 2014-Ohio-1574, 10 N.E.3d 691, ¶ 7, citing *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8. The Supreme Court of Ohio has explained as follows:

> When considering a motion to suppress, the trial court assumes the role of trier of fact and is therefore in the best position to resolve factual questions and evaluate the credibility of witnesses. Consequently, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. Accepting these facts as true, the appellate court must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard.

(Citations omitted.) *Burnside* at ¶ 8.

2. Legal Analysis

{¶10} "The Fourth Amendment to the United States Constitution and the Ohio Constitution, Article I, Section 14, prohibit unreasonable searches and seizures." *State v. Emerson*, 134 Ohio St.3d 191, 2012-Ohio-5047, 981 N.E.2d 787, ¶ 15. "This constitutional guarantee is protected by the exclusionary rule, which mandates the exclusion at trial of evidence obtained from an unreasonable search and seizure." *State v. Petty*, 4th Dist., 2019-Ohio-4241, 134 N.E.3d 222, ¶ 11. "An officer's temporary detention of an individual during a traffic stop constitutes a seizure of a person within the meaning of the Fourth Amendment * * *." *State v. Lewis*, 4th Dist. Scioto No. 08CA3226, 2008-Ohio-6691, ¶ 14; *see also State v. Eatmon*, 4th Dist. Scioto No. 12CA3498, 2013-Ohio-4812, ¶ 13 (quoting *Lewis*). "To be constitutionally valid, the detention must be reasonable under the circumstances." *Lewis* at ¶ 14. "While probable cause 'is certainly a complete justification for a traffic stop,' it is not required." *Eatmon* at ¶ 13, quoting *State v. Mays*, 119 Ohio St.3d 406, 2008-Ohio-4539, 894 N.E.2d 1204, ¶ 23. "So long as 'an officer's decision to stop a motorist for a criminal violation, including a traffic violation, is prompted by a reasonable and articulable suspicion considering all the circumstances, then the stop is

constitutionally valid.' " *Id.*, quoting *Mays* at ¶ 8. "Reasonable and articulable suspicion is a lower standard than probable cause." *Id.*, citing *Mays* at ¶ 23.

{¶11} Additionally, investigatory stops "must be supported by a reasonable, articulable suspicion that the driver has, is, or is about to commit a crime, including a minor traffic violation." *Petty* at ¶ 12, citing *State v. Hudson*, 4th Dist. Gallia No. 17CA19, 2018-Ohio-2717, at ¶ 14, and *State v. Fowler*, 4th Dist. Ross No. 17CA3599, 2018-Ohio-241, at ¶ 16, in turn citing *United States v. Williams*, 525 Fed.Appx. 330, 332 (6th Cir. 2013) and *Florida v. Royer*, 460 U.S. 491, 501-507, 103 S.Ct. 1319 (1983). In *Petty*, *supra*, we explained as follows:

> "To justify a traffic stop based upon reasonable suspicion, the officer must be able to articulate specific facts that would warrant a person of reasonable caution to believe that the driver has committed, or is committing, a crime, including a minor traffic violation." *State v. Taylor*, 2016-Ohio-1231, 62 N.E.3d 591, ¶ 18 (4th Dist.). The existence of reasonable suspicion depends on whether an objectively reasonable police officer would believe that the driver's conduct constituted a traffic violation based on the totality of the circumstances known to the officer at the time of the stop. *Id*.

{¶12} "Once a defendant demonstrates that he or she was subjected to a warrantless search or seizure, the burden shifts to the state to establish that

the warrantless search or seizure was constitutionally permissible." *State v. Dorsey*, 4th Dist. Scioto No. 19CA3874, 2019-Ohio-3478, at ¶ 13.

{¶13} Here, Trooper McCarty initiated an investigatory traffic stop and detained Moore. At the suppression hearing, Trooper McCarty testified that he had worked in law enforcement since 2007. He completed training at the Ohio State Patrol in 2018. Since that time, he had made 1000 or more traffic stops.

{¶14} Trooper McCarty testified he was working in the Londonderry area of Ross County near the intersection of S.R. 50 and S.R. 327. He was wearing his uniform and driving a marked vehicle. He initially saw Moore's vehicle crossing Route 50 onto Route 327 and traveling north. During his first visual observation, Moore's vehicle was "across the center line, the dotted line." As Trooper McCarty turned onto Route 50, he lost sight of Moore's vehicle but caught up with it a couple of miles later on S.R. 327. Trooper McCarty testified that the road was a two-lane rural road which was very curvy.

{¶15} When Trooper McCarty caught up with the vehicle, Moore was operating it so as to drive on the dotted line. The trooper initiated a traffic stop and found Ms. Moore driving the car. Trooper McCarty identified Ms. Moore in the courtroom.

{¶16} Trooper McCarty further testified that his cruiser was equipped with video recording equipment which was working and recording on the night of the stop. He provided a copy of the video recording to the law director's office. At this point, the video was played during the suppression hearing.

{¶17} Trooper McCarty testified that sometimes there is a difference between what the camera is recording and what he can observe with his own eyes. Trooper McCarty acknowledged that it is difficult to see where the violation occurred on the video. He clarified that he was not saying that the video was wrong, just that it is common to actually observe something that does not necessarily show up on the video recording from the cruiser dashcam.[1]

{¶18} " ' "[T]he propriety of an investigative stop by a police officer must be viewed in light of the totality of the surrounding circumstances." ' " *State v. Strong*, 4th Dist. Ross No. 18CA3663, 2019-Ohio-2888, at ¶ 19, quoting *State v. Eatmon*, 4th Dist. Scioto No. 12CA3498, 2013-Ohio-4812, at ¶ 13, in turn quoting *State v. Freeman*, 64 Ohio St.2d 291, 414 N.E.2d 1044, paragraph one of the syllabus (1980). The totality of the

[1] We have reviewed the video recording of the traffic stop. We agree that it is difficult to see any marked lanes violation.

circumstances approach " 'allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that "might well elude an untrained person." ' " *Strong* at ¶ 19, quoting *United States v. Arvizu*, 534 U.S. 266, 273, 122 S.Ct. 744 (2002) (overruled in part on separate grounds by *Davis v. Washington*, 547 U.S. 813, 126 S.Ct. 2266 (2006), in turn quoting *U.S. v. Cortez*, 449 U.S. 411, 418, 101 S.Ct. 690 (1981).

{¶19} We believe that competent credible evidence supports the trial court's finding that Trooper McCarty's testimony was believable and that the trooper had a better perspective to observe the operation of Moore's vehicle on the night in question than was observed by watching the dashcam video. Trooper McCarty explained that he received training at the Ohio State Highway Patrol in 2018. Since that time, he had conducted over 1000 investigatory stops. Trooper McCarty was not a novice law enforcement officer but drew on his experience as a police officer from 2007 and his trooper training in 2018.

{¶20} During his testimony, Trooper McCarty also explained that during his first visual observation of Moore's vehicle, it was "across the center line, the dotted line." He then lost sight of Moore's vehicle for a couple of miles. When he did see the car again, he observed Moore driving

on the center line. Trooper McCarty testified his video recording apparatus was working properly on the night in question but also admitted it was difficult to see where the violation occurred on the video. He testified as follows:

> Q: Now is there sometimes a difference between what the camera is recording and what you can see with your own eyes?
>
> A: Correct.
>
> Q: Which provides you a better view, do you believe?
>
> A: My personal experience on the scene is what the best depiction of that would be.
>
> Q: Because when you're watching this video, it is hard to see where the violation occurs; wouldn't you agree?
>
> A: I agree.
>
> Q: Yeah, but when you're driving, when you're in your cruiser, is it more apparent?
>
> A: Correct.
>
> Q: And that video, was it an accurate description of what you saw that night?
>
> A: Correct.

{¶21} As noted above, the trial court, sitting as the trier of fact, is in the best position to evaluate witnesses' credibility during a suppression hearing. *See State v. Jones*, 2022-Ohio-561, 185 N.E.3d 131, at ¶ 31 (4th

Dist.). *See also State v. Brandau*, 4th Dist. Jackson No. 19CA8, 2021-Ohio-368, at ¶ 16 (appellate court not permitted to second guess the credibility determinations of the trial court- suppression hearing).

{¶22} Based on Trooper McCarty's testimony, there was reasonable suspicion to believe that Moore had committed a traffic infraction. The trial court was in the best position to hear the trooper's voice inflections and to observe his physical demeanor while testifying. The court found credible Trooper Moore's testimony which acknowledged a discrepancy between what the video dashcam recording showed and the trooper's visual observation, while maintaining that indeed Moore did commit a marked lanes violation. While in our view, observing Moore cross the center line one time likely constitutes a de minimis violation, it is well-established that a police officer may stop the driver of a vehicle after observing even a de minimis violation of traffic laws. *See State v. Meadows*, 2022-Ohio-287, 184 N.E.3d 169, at ¶ 12 (4th Dist.); *Petty*, *supra,* at ¶ 12-13; *State v. Williams*, 4th Dist. Ross No. 14CA3436, 2014-Ohio-4897, at ¶ 9, citing *Whren v. United States*, 517 U.S. 806, 116 S.Ct. 1769 (1996), and *Dayton v. Erickson*, 76 Ohio St.3d 3, 665 N.E.2d 1091 (1996), syllabus.

{¶23} Based on the foregoing, we find the trial court's factual findings were based on competent, credible evidence. Therefore, the trial

court did not err when it overruled Moore's motion to suppress based on a supposed lack of probable cause. Accordingly, we find no merit to the first assignment of error and it is hereby overruled.

ASSIGNMENT OF ERROR TWO

1. Standard of Review

{¶24} Under the second assignment of error, Moore asserts that the trial court's refusal to let her attorney question Trooper McCarty about potential bias violated her right to have a fair hearing on the motion to suppress. " '[A] trial court is vested with broad discretion in determining the admissibility of evidence in any particular case, so long as such discretion is exercised in line with the rules of procedure and evidence.' " *State v. Jackson*, 5th Dist. Delaware No. 19CAC050034, 2020-Ohio-5339, at ¶ 21, quoting *Rigby v. Lake Cty.*, 58 Ohio St.3d 269, 271, 569 N.E.2d 1056 (1991). "Absent an abuse of discretion, this court may not reverse a trial court's decision with respect to the scope of cross-examination." *Calderon v. Sharkey*, 70 Ohio St.2d 218, 436 N.E.2d 1008 (1982), syllabus; *State v. Dines*, 8th Dist. Cuyahoga No. 57661, 1990 WL 166452 (Nov. 1, 1990). " 'An abuse of discretion is more than an error, it means that the trial court acted in an "unreasonable, arbitrary, or unconscionable" manner.' " *Matter of J.M.*, 4th Dist. Pickaway No. 20CA11, 20CA12, 20CA13, and 20CA14,

2021-Ohio-1415, at ¶ 39, quoting *State v. Kister*, 4th Dist. Athens Nos. 18CA10, 18CA11, 18CA12, 2019-Ohio-3583, ¶ 46, quoting *State v. Reed*, 110 Ohio App.3d 749, 752, 675 N.E.2d 77 (4th Dist.1996), citing *State v. Adams*, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980).

2. Legal Analysis

{¶25} The alleged error in exclusion of evidence occurred when Moore's attorney attempted cross-examination of Trooper McCarty as follows:

> Q: Now. Does the highway patrol maintain statistics of traffic stops?
>
> A: Absolutely.
>
> Q: Is there any- - are you subject to any kind of sanction or disciplining if - - wait - - let me back up. Are you - - does the patrol ever discipline or comment upon an officer not making enough traffic stops?

{¶26} At this point, the State objected on the basis of relevance. Moore's attorney responded "potential bias." The trial court sustained the objection. Moore asserts that she was permissibly attempting to cast doubt on the credibility of the trooper's testimony, which was central to the trial court's decision not to suppress the evidence resulting from the traffic stop.

{¶27} As a general rule, all relevant evidence is admissible. Evid.R. 402; *State v. Russell*, 4th Dist. Ross No. 21CA3750, 2022-Ohio-1746, at

¶77. Evid.R. 401 defines relevant evidence as "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. 401 and Evid.R. 402. Evid.R. 611(B) provides that "Cross-examination shall be permitted on all relevant matters and on matters affecting credibility." Furthermore, the exposure of a witness's motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination. *See State v. Rapp*, 67 Ohio App.3d 33, 36, 585 N.E.2d 965 (4th Dist.1990); *Delaware v. Van Arsdall*, 475 U.S. 673, 106 S.Ct. 1431 (1986).[2] A trial judge retains wide latitude to impose reasonable limits on cross-examination based on concerns about harassment, prejudice, confusion of the issues, the witness's safety, or interrogation that is repetitive or only marginally relevant. *Id.*

{¶28} However, Moore premises her arguments regarding exclusion of evidence upon the operation of the Ohio Rules of Evidence during a suppression hearing. It is well-established that the rules of evidence are not applicable to hearings on motions to suppress. *See State v. Boczar,* 113

[2] Rapp argued he had been deprived of his Sixth Amendment right to confrontation. Moore does not challenge the trial court's evidentiary ruling in this context. Instead, Moore argues only that the trial court abused its discretion by refusing to let her question the trooper about potential bias and thus violated her right to a fair hearing. We decline to make a Confrontation Clause argument on Moore's behalf. *See State v. Depetro*, 9th Dist. Medina No. 21CA0053-M, 2022-Ohio-2249, at ¶ 15.

Ohio St.3d 148, 151, 2007-Ohio-1241, 863 N.E.2d 155. *See also State v. Ulmer*, 4th Dist. Scioto No. 09CA3283, 2010-Ohio-695, at ¶ 10; *State v. Littlefield*, 4th Dist. Ross No. 11CA3247, 2013-Ohio-481, at ¶ 22. In *Boczar*, the Supreme Court of Ohio pointed out:

> Evid.R. 101(C)(1) provides that the Rules of Evidence do not apply to "[d]eterminations prerequisite to rulings on the admissibility of evidence when the issue is to be determined by the court under Evid.R. 104." Further, Evid.R. 104(A) provides that "[p]reliminary questions concerning * * * the admissibility of evidence shall be determined by the court * * *. In making its determination it is not bound by the rules of evidence except those with respect to privileges." Therefore, the Rules of Evidence do not apply to suppression hearings.

Boczar, at ¶ 47; *See also State v. Scrivens*, 11th Dist. No. 2009-T-0072, 2010-Ohio-712, at ¶ 13.

{¶29} Moore has directed us to several cases favorable to her involving a trial court's refusal to hear witnesses at a suppression hearing who could have cast doubt on an officer's testimony about how a photographic lineup was conducted. In *State v. Rivera*, 2d Dist. Montgomery No. 18845, 2002 WL 91296 (Jan. 25, 2002), the appellate court held that the trial court "abused its discretion when it denied [Rivera's] request to call two eyewitnesses to testify at the suppression hearing in which he was contending that an unduly suggestive photographic identification procedure was used." *Id*. at *1. (Court noted that

eyewitnesses "would have been the best witnesses on [the] issue and would not have shared bias of the police officer who testified at the suppression hearing and presumably would have been interested in avoiding a finding that his police work was flawed.") *Id*.[3]

{¶30} Similarly, the Eighth District held in *State v. Glover,* 8th Dist. Cuyahoga No. 84413, 2005-Ohio-1984, that the trial court erred in precluding defense counsel from calling three witnesses to whom a photospread had been shown (and who were present to testify at the suppression hearing). The appellate court reasoned that:

> By refusing to hear testimony from anyone other than the police officers, the trial court denied appellant the opportunity to present testimony that may have conflicted with that of the police officers regarding the procedures employed in presenting the photo array to the victims.

The 8th District Court reversed Glover's conviction. *Glover* at ¶ 20.

{¶31} In *State v. Dewberry,* 2d Dist. Montgomery No. 27434, 2020-Ohio-691, the appellate court found that there was no reasonable basis to preclude Dewberry from calling Castro, his victim, to testify at the suppression hearing. Castro did not initially identify Dewberry to officers who interviewed her at the hospital or in a first photographic lineup. Then,

[3] However, the appellate court found that the trial court's error in Rivera was harmless beyond a reasonable doubt.

at a second photographic lineup Castro did identify Dewberry. The appellate court concluded that Castro was in the best position to testify whether an officer emphasized a particular photo to select or otherwise influenced her identification (or lack thereof), or that she perceived the officer's conduct in that manner and trial court denied defense counsel the opportunity to attempt to establish that identification procedures were unduly suggestive.[4]

{¶32} By contrast, in *State v. Thornton*, 8th Dist. Cuyahoga No. 59312, 1991 WL 221942, during cross-examination of a detective, the appellant attempted to inquire into matters which allegedly involved the basis or motive for the appellant's arrest. Thornton attempted to inquire into such areas as: 1) the racial composition of the detective's past arrests; 2) the possibility of a civil lawsuit based upon the tort of false arrest; 3) the records of the detective's past arrests; and 4) the detective's performance evaluations. *Id.* at *4. The *Thornton* court, however, opined that the attempted cross-examination of the detective was not relevant to the case-in-chief and was thus prohibited by the application of Evid.R. 402 and Evid.R. 403. *Id.* There, the appellate court found no error in its limitation of the detective's cross-examination.

[4] Nevertheless, the error in *Dewberry* was also found to be harmless beyond a reasonable doubt.

{¶33} Admittedly, *Thornton* is not a suppression case. Yet, as in *Thornton*, we construe Moore's attempted cross-examination at the suppression hearing as attempting to uncover an ulterior or pretextual motive for the traffic stop. " '[A] traffic stop with the proper standard of evidence is valid regardless of the officer's underlying ulterior motives as the test is merely whether the officer "could" have performed the act complained of; pretext is irrelevant if the action complained of was permissible.' " *State v. Meadows,* 184 N.E.3d 168, 2022-Ohio-287, at ¶ 12 (4th Dist.), quoting *State v. Koczwara,* 7th Dist. Mahoning No. 13MA149, 2014-Ohio-1946, ¶ 22 (Internal citations omitted.) A pretextual stop is not an unreasonable seizure within the meaning of the Ohio or United States constitutions. *See Dayton v. Erickson*, 76 Ohio St. 3d 3, 665 N.E.2d 1091 (1996) syllabus; *Whren v. United States,* 517 U.S. 806, 814, 116 S. Ct. 1769 (1996). *See also State v. Robinson,* 4th Dist. Lawrence No. 14CA24, 2016-Ohio-905, at ¶ 18, (because trooper observed traffic violations, initial traffic stop was lawful, regardless of the trooper's real intent in effectuating the stop); *State v. Dennewitz,* 4th Dist. Ross No. 99CA2491, 1999 WL 1001109, *3 (Nov. 5, 1999) (rejecting notion that pretextual traffic stops are unconstitutional).

{¶34} Based upon our review and the foregoing case law, we find the trial court did not abuse its discretion by sustaining the State's relevancy

objection and not permitting Moore's question regarding whether or not Trooper McCarty was subject to discipline for failure to make enough traffic stops to be answered. Had the trooper indicated that he was under a dictate to initiate as many traffic stops as possible or face discipline, it would indicate evidence of pretext instead of "potential bias." A pretextual stop is not unlawful. Furthermore, whether or not Trooper McCarty was under such pressure from his employer would be only marginally relevant to assessing his credibility.

{¶35} For the foregoing reasons we find no merit to Moore's second assignment of error. Accordingly, it is hereby overruled.

{¶36} Having found no merit to either of Appellant's assignments of error, the judgment of the trial court is affirmed.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and costs be assessed to Appellant.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Chillicothe Municipal Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed 60 days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the 60-day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the 45-day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of 60 days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Hess, J. and Wilkin, J. concur in Judgment and Opinion.

For the Court,

_____

Jason P. Smith
Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.