[Cite as *State v. Kinney*, 2023-Ohio-2549.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MONROE COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

JASON KINNEY,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 22 MO 0002

Criminal Appeal from the
Court of Common Pleas of Monroe County, Ohio
Case No. 2021-180

BEFORE:
Cheryl L. Waite, Carol Ann Robb, Mark A. Hanni, Judges.

JUDGMENT:
Affirmed.

Atty. James L. Peters, Monroe County Prosecutor, 101 North Main Street, Room 15, P.O. Box 430, Woodsfield, Ohio 43793-0430, for Plaintiff-Appellee

Atty. Brian A. Smith, Brian A. Smith Law Firm, LLC, 123 South Miller Road, Suite 250, Fairlawn, Ohio 44333, for Defendant-Appellant

Dated: July 13, 2023

WAITE, J.

{¶1} Appellant Jason Kinney appeals the trial court's decision to overrule his motion to suppress in a possession of drugs case, as well as the denial of his motion to withdraw a no contest plea. The charges arose from an investigation by the Monroe County Sheriff's Department where a vehicle was stopped on the side of State Rt. 7 in Monroe County. Officers discovered Appellant unconscious in the driver's seat. A K-9 unit arrived shortly after the officers initially stopped, and the K-9 signaled that there were drugs in the vehicle. As a result, Appellant was charged with four narcotics offenses. He pleaded no contest to one of the charges. His motion to suppress was based on alleged irregularities in the initial investigation of the vehicle by the officers, and on appeal he also argues that he should have been permitted to withdraw his no contest plea due to a claim of mental incompetence.

{¶2} The record contains evidence justifying both the initial investigation of the vehicle under the community caretaking function of the police and the further criminal investigation that arose once the license plate was discovered to be fictitious. Although Appellant argues that once the traffic stop had begun it was unreasonably prolonged to allow the K-9 unit to arrive, in fact, the K-9 unit started its search only seven minutes after the start of the officers' investigation. As far as the presentence request to withdraw the plea is concerned, most of the factors used to make such a determination were not in Appellant's favor. Also, Appellant's claim that he was mentally incompetent during the change of plea hearing is not supported by the record. Both of Appellant's assignments of error are without merit, and the judgment of the trial court is affirmed.

Case History and Facts

{¶3} Shortly after midnight on March 20, 2021, Lieutenant Derek Anthony Norman of the Monroe County Sheriff's Department was on patrol on State Rt. 7 in Monroe County south of Clarington. Another officer, Lieutenant Yonley, was driving the cruiser. They noticed a Kia SUV parked behind the guardrail on the opposite side of the highway. The vehicle had not been there when they passed the area approximately thirty to forty minutes earlier. Wondering whether an accident may have occurred, Lt. Yonley turned the cruiser around and shined his flashlight into the car as they passed, but the windows were very heavily tinted and they could not see inside the vehicle. At this point, Lt. Yonley ran a search of the license plate, and it revealed that the plate was registered to a different vehicle, a 1997 Buick. (8/5/21 Tr., p. 10.) The officers were then concerned that the car may have been stolen, and began a further investigation. (8/5/21 Tr., p. 13.) They were also concerned that the SUV was trespassing on the mowed right of way of State Rt. 7. (8/5/21 Tr., p. 14.)

{¶4} In order to determine whether anyone was in the vehicle, the officers walked around the SUV to look inside. There was a small patch of tint missing, and with their flashlights they could see two people, a male and a female. The male was sitting in the driver's seat with his head slumped over. The female also seemed to be unconscious. They could see wires and electronic equipment torn apart inside the car, which Lt. Norman indicated was a sign of methamphetamine activity. (8/5/21 Tr., p. 15.)

{¶5} While the identification of the license plate was being double-checked, the officers tried to contact the passengers to see if they were all right. They knocked on the window a few times. (8/5/21 Tr., p. 11.) They could tell that Appellant was breathing, but

they could not initially see whether the passenger was breathing. (8/5/21/ Tr., p. 17.) However, Appellant opened the door and spoke with Lt. Yonley, who asked for identification. Appellant did not have a driver's license or identity card, but provided his name, birthday, and social security information. (8/5/21 Tr., p. 18.) His identity was eventually confirmed. He could not provide the car registration or insurance information. The female passenger gave fictitious information about her identity. The passenger was later identified as Alexandria Morton.

{¶6} Very shortly after the officers parked behind the Kia SUV, they called for a K-9 unit to do a drug sniff of the SUV. As the unit was engaged nearby in a traffic stop, it arrived within five minutes of the time Lt. Norman and Lt. Yonley first pulled behind the SUV. The sniff search started a minute or two later. (8/5/21 Tr., p. 22.) The K-9 indicated that drugs or narcotics were present in or on the vehicle. A subsequent search of the vehicle uncovered methamphetamines, drug paraphernalia including meth pipes, purple pills, “snorting” straws, a loaded syringe and needles, and a digital scale. The record does not reveal the actual owner of the vehicle, only that it was not owned by Appellant or Alexandria Morton.

{¶7} On May 20, 2021, Appellant was indicted on four counts: aggravated possession of drugs pursuant to R.C. 2925.11, a first degree felony; aggravated trafficking in drugs, R.C. 2925.03(A)(2), also a first degree felony; aggravated possession of morphine, R.C. 2925.11, a fifth degree felony; and possession of heroin pursuant to R.C. 2925.11, a fifth degree felony.

{¶8} On June 9, 2021, Appellant filed a motion to suppress. A hearing was held on the motion on August 5, 2021. On September 3, 2021, the court overruled the motion.

{¶9} On November 16, 2021, Appellant entered into a Crim.R. 11 plea agreement, pleading no contest to one count of aggravated possession of drugs pursuant to R.C. 2925.11, a first degree felony, in exchange for the dismissal of the remaining counts. Sentencing was scheduled for January 6, 2022.

{¶10} On December 28, 2021, Appellant filed a motion to withdraw his plea and on January 6, 2022, the court held a hearing on the motion. There were no witnesses at the hearing, and no evidence was submitted. Appellant's counsel spoke at length about a letter Appellant had supposedly sent to his counsel, in which counsel said Appellant claimed he was "dealing with psychological issues that he believes rendered his plea involuntary." (1/6/22 Tr., p. 14.) The letter itself was not introduced as evidence. The trial judge made it clear to Appellant's counsel that as no such letter was part of the record the court would consider only counsel's filings in ruling on the motion. (1/6/22 Tr., p. 23.)

{¶11} The court overruled the motion to withdraw Appellant's no contest plea on January 25, 2022.

{¶12} On February 9, 2022, the court held its sentencing hearing. Appellant was convicted on one count of aggravated possession of drugs, R.C. 2925.11, a first degree felony. The other charges were dismissed. The court sentenced Appellant to an indefinite term of four to six years in prison, with credit for 326 days of time served. The court also imposed court costs and sentenced Appellant to two to five years of post-release control. The sentencing entry was filed on February 10, 2022. The notice of appeal was filed on February 23, 2022. Appellant raises two assignments of error on appeal.

ASSIGNMENT OF ERROR NO. 1

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO SUPPRESS, IN VIOLATION OF APPELLANT'S RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURES UNDER THE FOURTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 14 OF THE OHIO CONSTITUTION.

{¶13} Appellant seeks on appeal to have us order suppression of the evidence of illegal drugs and drug paraphernalia that formed the basis of the charges against him in the trial court. Appellant contends that the officers' investigation of the vehicle was unreasonably extended beyond the time necessary to issue a traffic citation. Appellant argues that without reasonable suspicion of criminal activity, the traffic stop should have ended prior to the time the K-9 unit arrived. Thus, Appellant believes that the drug evidence found in the search of the SUV is the fruit of an illegal search and should have been suppressed.

{¶14} The Fourth Amendment to the United States Constitution and Ohio Constitution, Article I, Section 14, protect against unreasonable searches and seizures. Any evidence obtained in violation of these provisions is subject to the exclusionary rule. *Mapp v. Ohio*, 367 U.S. 643, 649, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961). Evidence obtained by the exploitation of an illegal search must be suppressed as the "fruits of the poisonous tree." *State v. Rapp*, 7th Dist. Mahoning No. 12 MA 117, 2013-Ohio-5384, ¶ 43, quoting *State v. Haslam*, 7th Dist. Monroe No. 08-MO-4, 2009-Ohio-696.

{¶15} A no contest plea, unlike a guilty plea, preserves the right to appeal an adverse ruling on a motion to suppress. *State v. Vaughn*, 7th Dist. Carroll No. 683, 2003-Ohio-7023, ¶ 24. The review of a ruling on a motion to suppress generally involves a mixed question of fact and law. *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8. In a hearing on a motion to suppress, the trial court sits as the trier of fact and is responsible for determining the credibility of the witnesses and weighing the importance of the evidence. *State v. Fanning*, 1 Ohio St.3d 19, 20, 437 N.E.2d 583 (1982). A reviewing court accepts the trial court's findings of fact if they are supported by competent and credible evidence. *Id.* at 20. With respect to the trial court's conclusions of law, however, a court of appeals applies a *de novo* standard of review and must determine whether the facts satisfy the applicable legal standards. *Burnside* at ¶ 8.

{¶16} "In evaluating the propriety of an investigative stop, a reviewing court must consider the totality of the circumstances surrounding the stop as 'viewed through the eyes of the reasonable and prudent police officer on the scene who must react to events as they unfold.' " *Village of Waite Hill v. Popovich*, 11th Dist. Lake No. 2001-L-227, 2003-Ohio-1587, ¶ 11, quoting *State v. Andrews*, 57 Ohio St.3d 86, 87-88, 565 N.E.2d 1271 (1991).

{¶17} Appellant does not contest that ultimately the officers engaged in a police stop of the vehicle nor does he contest the validity of the initial stop as part of the community caretaking function of the police. In *Cady v. Dombrowski*, 413 U.S. 433, 93 S.Ct. 2523, 37 L.Ed.2d 706 (1973), the United State Supreme Court recognized that police often investigate traffic incidents where there is no suspicion of illegal activity. Such encounters may reasonably result in the search of a vehicle, and that search does not

violate the Fourth Amendment. These types of incidents involve consensual encounters between the police and the public. *Florida v. Bostick*, 501 U.S. 429, 434, 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991); *State v. Starcher*, 7th Dist. Jefferson No. 13 JE 1, 2013-Ohio-5533, ¶ 22. One of the exceptions to the Fourth Amendment warrant requirement arises when the search is consensual. *Schneckloth v. Bustamonte*, 412 U.S. 218, 219, 36 L.Ed.2d 854, 93 S.Ct. 2041 (1973). Consensual searches are not considered to be traffic stops and do not require reasonable suspicion of criminal activity to justify the stop. *State v. Dunn*, 131 Ohio St.3d 325, 2012-Ohio-1008, 964 N.E.2d 1037, ¶ 17; see also, *State v. Hlinovsky*, 7th Dist. Belmont No. 09 BE 19, 2011-Ohio-6421. This type of exception to the Fourth Amendment is also referred to as the emergency-aid exception. *Michigan v. Fisher*, 558 U.S. 45, 130 S.Ct. 546, 175 L.Ed.2d 410 (2009).

{¶18} Nevertheless, even in community caretaking or emergency aid encounters, police officers must possess articulable facts explaining their presence at the scene and reasonably justifying the duration of the encounter. *Hlinovsky* at ¶ 62. Of course, if at some point the consensual encounter uncovers facts or circumstances which raise a reasonable suspicion criminal activity is occurring or has occurred, then the stop may be extended to investigate the criminal matter. *State v. Martin*, 9th Dist. Summit No. 28722, 2018-Ohio-1705; *State v. Saunders*, 5th Dist. Muskingum No. CT2017-0052, 2018-Ohio-2624.

{¶19} When detaining a motorist to investigate a traffic violation, an officer may take a reasonable amount of time to prepare and issue a ticket. *State v. Keathley*, 55 Ohio App.3d 130, 131, 562 N.E.2d 932 (2nd Dist.1988). “This time period also includes the period of time sufficient to run a computer check on the driver's license, registration,

and vehicle plates." *State v. Bolden*, 12th Dist. Preble No. CA2003-03-007, 2004-Ohio-184, ¶ 17.

{¶20} Lt. Norman testified that this investigation began with the appearance of a Kia SUV with very dark tinted windows pulled over and parked in the highway right of way. The vehicle had not been there 30 to 40 minutes earlier. This initial encounter was based on reasonable suspicion of criminal activity and was not a traditional traffic stop. There is no indication that the cruiser's flashing lights or siren had been activated. The officers simply pulled the cruiser up behind the SUV to see why it was there. Once there, they ran a license plate check. After the plates were reported as fictitious, though, the officers then possessed a reasonable belief criminal activity may be occurring and the criminal investigation in this matter began. The prosecutor asked Lt. Norman if, at that point, it was clear that he was now investigating a possible stolen vehicle. He answered "Yeah. Absolutely." (8/5/21 Tr., p. 13.)

{¶21} Appellant argues that mere speculation about illegal activity is not enough to form reasonable suspicion. *State v. Albright*, 7th Dist. Mahoning No. 14 MA 165, 2016-Ohio-7037, ¶ 34. Although Appellant characterizes the investigation into whether the car was stolen as mere speculation, it was based on the concrete evidence that the car had fictitious plates. Once the fictitious plates were confirmed, there was a basis for the officers' reasonable suspicion the situation involved criminal activity, calling for further investigation.

{¶22} Additionally, once the officers looked into the vehicle and saw two people slumped over, and observed what appeared to be drug production equipment in the back

seat, this additional set of circumstances also justified investigation into possible criminal activity.

{¶23} This record shows there was no extended detention of the vehicle. The time period between the officers pulling up behind the SUV and the arrival of the K-9 unit was about five minutes, and the sniff search started within another two minutes. In conducting a stop of a motor vehicle for a traffic violation, an "officer may detain an automobile for a time sufficient to investigate the reasonable, articulable suspicion for which the vehicle was initially stopped." *State v. Cahill*, 3rd Dist. Shelby No. 17-01-19, 2002-Ohio-4459, at ¶ 21, citing *State v. Smith*, 117 Ohio App.3d 278, 285, 690 N.E.2d 567 (1996). Detentions of 20 to 40 minutes are justifiable for purposes of issuing a traffic citation while a K-9 unit is called to conduct a sniff search. *Cahill*, *supra* (20 minutes); *State v. Bolden*, 12th Dist. Preble No. CA2003-03-007, 2004-Ohio-184 (20-30 minutes); *State v. French*, 104 Ohio App.3d 740, 744, 663 N.E.2d 367, 369 (12th Dist.1995) (45 minutes). We acknowledge that each case is decided on its own facts, but seven minutes is an extremely short amount of time to allow process of even the most routine of traffic tickets, much less to investigate the variety of circumstances that were under investigation in this case.

{¶24} The record is replete with facts supporting at least nine issues the officers were investigating prior to the K-9 sniff search: the mere presence of the SUV at the side of the road behind the guard rail; the condition and safety of the passengers; the concern as to the trespass; the vehicle's fictitious plates and issuing a citation relative to those plates; whether the car was stolen; the failure to provide insurance or car registration information; confirming Appellant's identification absent his driver's license; obtaining the

female passenger's identity; and determining whether impound of the vehicle was necessary.

{¶25} Appellant is correct that the extension of a traffic stop beyond the original purpose of the stop must be based on articulable facts giving rise to a suspicion of illegal activity. *State v. Latona*, 5th Dist. Richland No. 2010-CA-0072, 2011-Ohio-1253, ¶ 21. This record contains numerous facts to justify the investigation of the Kia SUV up to and including the point when the K-9 unit indicated the presence of drugs. Appellant does not challenge the search of the vehicle or seizure of evidence once the K-9 unit arrived and the dog alerted officers to the presence of drug activity. His argument is solely based on his erroneous belief that the initial stop was unreasonably prolonged. The record clearly shows it was not.

{¶26} Appellant has also not challenged the legality of the officers' action in calling for the K-9 unit, but we note that "if a vehicle is lawfully detained, an officer does not need a reasonable suspicion of drug-related activity in order to request that a drug dog be brought to the scene or to conduct a dog sniff of the vehicle." *State v. Carlson*, 102 Ohio App.3d 585, 594, 657 N.E.2d 591 (9th Dist.1995).

{¶27} Appellant's first assignment of error has no merit and is overruled.

ASSIGNMENT OF ERROR NO. 2

THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING APPELLANT'S MOTION TO WITHDRAW PLEA OF NO CONTEST, IN VIOLATION OF APPELLANT'S RIGHT TO DUE PROCESS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES

CONSTITUTION AND ARTICLE I, SECTION 16 OF THE OHIO CONSTITUTION.

{¶28} Appellant argues that he should have been permitted to withdraw his plea based on a letter he supposedly wrote to counsel where he raised issues regarding his competency to enter the plea. In a criminal case, a plea must be made "knowingly, intelligently, and voluntarily." *State v. Engle*, 74 Ohio St.3d 525, 527, 660 N.E.2d 450 (1996). Failure on any of these points "renders enforcement of the plea unconstitutional under both the United States Constitution and the Ohio Constitution." *Id.* Crim. R. 32.1 states: "A motion to withdraw a plea of guilty or no contest may be made only before sentence is imposed; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his or her plea."

{¶29} This rule provides a clear and demanding standard on which to decide a postsentence motion to withdraw a guilty plea, but gives no guidelines for deciding a presentence motion. *State v. Xie*, 62 Ohio St.3d 521, 526, 584 N.E.2d 715 (1992). It has been said that a presentence motion to withdraw a plea shall be freely and liberally granted. *Id.* at 527. Nevertheless, the trial court must determine "whether there is a reasonable and legitimate basis for the withdrawal of the plea." *Id.* Further, "a defendant does not have an absolute right to withdraw a plea prior to sentencing." *Id.*

{¶30} A decision on a presentence motion seeking to withdraw a plea is within the sound discretion of the trial court. *State v. Cuthbertson*, 139 Ohio App.3d 895, 898, 746 N.E.2d 197 (2000). An abuse of discretion entails more than an error of judgment; it implies a decision that is unreasonable, arbitrary, or unconscionable. *Xie* at 528.

"[U]nless it is shown that the trial court acted unjustly or unfairly, there is no abuse of discretion." *Id.* at 526.

{¶31} This court has adopted a non-exhaustive list of nine factors a trial court must weigh when considering a presentence motion to withdraw a plea: (1) whether the state will be prejudiced by withdrawal; (2) the representation afforded to the defendant by counsel; (3) the extent of the Crim.R. 11 plea hearing; (4) whether the defendant understood the nature of the charges and potential sentences; (5) the extent of the hearing on the motion to withdraw; (6) whether the trial court gave full and fair consideration to the motion; (7) whether the timing of the motion was reasonable; (8) the reasons for the motion; and (9) whether the accused was perhaps not guilty or had a complete defense to the charge. *State v. Scott*, 7th Dist. Mahoning No. 08 MA 12, 2008-Ohio-5043, ¶ 13, citing *State v. Fish*, 104 Ohio App.3d 236, 240, 661 N.E.2d 788 (1st Dist.1995). Consideration of these factors involves a balancing test, and no single factor is conclusive. *Id.* However, "[w]e have often held that mere change of heart forms an insufficient basis on which to withdraw a guilty plea." *State v. Perez*, 7th Dist. Mahoning No. 12 MA 110, 2013-Ohio-3587, ¶ 10.

{¶32} The alleged letter on which Appellant relies and which he claims supported his request to withdraw his plea is not in the record. The trial court made it clear at the change of plea hearing that only material filed into the record would be considered in ruling on the motion. Since there is no letter in the record, it must be presumed that any such document would have substantiated the trial court's decision. "[I]t will be presumed that omitted evidence supports the finding or conclusion" of the trial court. *State v. Roberts*, 66 Ohio App.3d 654, 657, 585 N.E.2d 934 (9th Dist.1991).

{¶33} Most of the *Fish* factors listed weigh against Appellant's request to withdraw his plea. He was represented by counsel at the change of plea hearing as well as the hearing on the motion to withdraw the plea. He had an extensive Crim.R. 11 plea hearing during which no questions of his competency arose. The record fully supports the conclusion that Appellant understood the nature of his charges and potential sentences. A full hearing was held on the motion to withdraw. The trial court gave ample consideration to the motion. The basis for the motion was not supported at the hearing and no evidence was entered, or even offered. There has been no suggestion of Appellant's innocence or that he may possess a complete defense to the charges.

{¶34} Although a few factors do weigh in Appellant's favor, the factors that weigh against granting the motion more than support the trial court's decision to overrule Appellant's motion and reflect no abuse of the court's discretion. Appellant's claim of incompetency at the time of the plea hearing is not supported by the record, leading to the conclusion that his desire to withdraw his plea stems from a mere change of heart, which is not a sufficient basis to allow withdrawal of the plea.

{¶35} Appellant's second assignment of error is also without merit and is overruled.

Conclusion

{¶36} Appellant presents two assignments of error on appeal. He first argues that his motion to suppress drug evidence should have been granted because the initial stop of the vehicle was unnecessarily prolonged and should have been completed prior to the arrival of the K-9 in this matter. The record contains ample evidence to justify the mere seven minutes that elapsed between the initial community caretaking stop and the arrival

of the K-9 unit. Appellant's second argument is that he should have been permitted to withdraw his plea due to his suggestion of mental incompetence. There is no evidence that Appellant was incompetent at the time he entered his plea, and the factors used by the trial court to rule on the motion to withdraw the plea weighed against Appellant. Both of Appellant's assignments of error are without merit, and the judgment of the trial court is affirmed.

Robb, J., concurs.

Hanni, J., dissents with dissenting opinion.

Hanni, J., dissenting.

{¶37} I respectfully dissent from the majority opinion regarding the resolution of Appellant's second assignment of error.

{¶38} I would conclude that the trial court abused its discretion in overruling Appellant's presentence motion to withdraw his no contest plea. Several of the *Fish* factors weigh heavily in favor of granting Appellant's motion to withdraw his plea.

{¶39} First, there was no prejudice to the State if the court would have granted the motion to withdraw the plea. The State did not put forth any specific prejudice it would suffer if the court granted the motion to withdraw the plea.

{¶40} Second, Appellant entered his plea on November 16, 2021. Sentencing was set for January 6, 2022. At the hearing on the motion to withdraw the plea, the evidence established that Appellant sent a letter to his counsel prior to entering his plea stating that although he was going to enter a plea, he was not doing it voluntarily. Counsel met with Appellant at the jail on December 18, 2021, where Appellant told counsel that he was dealing with psychological issues. Counsel filed Appellant's motion to withdraw his plea on December 28, 2022, well before the scheduled sentencing date. This was not a day-of-sentencing motion based on a change of heart. Thus, the timing of Appellant's motion weighs in his favor.

{¶41} Third, Appellant's reason for filing his motion involved his mental health. His counsel asserted that Appellant indicated to him by way of a letter Appellant wrote before the change of plea hearing that he was suffering from psychological issues that could affect his plea. Admittedly, Appellant stated at his change of plea hearing that he did not have any mental health problems that were affecting him at that time. But an individual

suffering from a mental health problem might not have the wherewithal to bring this to the court's attention when questioned.

{¶42} Finally, while Appellant did not assert his innocence at the change of plea hearing, he also did not admit his guilt. Appellant pleaded no contest, as opposed to guilty.

{¶43} The Ohio Supreme Court has explained that a presentence motion to withdraw a plea is to be freely allowed and treated with liberality. *State v. Xie*, 62 Ohio St.3d 521, 52, 584 N.E.2d 715 (1992). In this case, the motion to withdraw was timely made, the State would not have suffered any prejudice had the trial court permitted Appellant to withdraw his plea, the motion was based on mental health issues, and Appellant did not admit his guilt. I would conclude, under these circumstances, the trial court abused its discretion in not freely granting Appellant's motion to withdraw his plea.

For the reasons stated in the Opinion rendered herein, Appellant's assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Monroe County, Ohio, is affirmed. Costs waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.