No. _____

-

IN THE

SUPREME COURT OF THE UNITED STATES

TIZAZU F. AREGA - PETITIONER

VS.

STATE OF OHIO - RESPONDENT

INDEX TO APPENDICES

Appendix A

The Supreme Court of Ohio

State ex rel. Tizazu F. Arega

v.

Judge Lisa L. Sadler, et al.

Case No. 2020-0274

IN PROCEDENDO

ENTRY

This cause originated in this court on the filing of a complaint for a writ of procedendo.

Upon consideration of respondent's motion to dismiss, it is ordered by the court that the motion to dismiss is granted. Accordingly, this cause is dismissed.

It is further ordered that relator's motion for leave to file an amended complaint case name on the caption and adding the party counsel pursuant to Civ. Rule 15 is denied.

It is further ordered that relator's motion for leave to file relator's memorandum in response to the respondent motion to dismiss is granted.

Maureen O'Connor
Chief Justice

Appendix-B

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,

Plaintiff-Appellee,

v.

Tizazu F. Arega,

Defendant-Appellant.

No. 12AP-263
(C.P.C. No. 11CR-1145)

(REGULAR CALENDAR)

D E C I S I O N

Rendered on December 6, 2012

Ron O'Brien, Prosecuting Attorney, and *Barbara A. Farnbacher*, for appellee.

Todd W. Barstow, for appellant.

APPEAL from the Franklin County Court of Common Pleas

SADLER, J.

{¶ 1} Defendant-appellant, Tizazu F. Arega, appeals from the judgment of the Franklin County Court of Common Pleas convicting him of rape and sexual battery. For the reasons that follow, we affirm in part and reverse in part.

I. FACTS AND PROCEDURAL BACKGROUND

{¶ 2} On March 1, 2011, appellant was indicted on one count of rape by vaginal penetration and one count of rape by anal penetration, both in violation of R.C. 2970.02, and one count of sexual battery in violation of R.C. 2907.03. The facts underlying the indicted charges were adduced at trial as follows. The victim, N.B., testified that on July 9, 2010, a car struck her as she was crossing the street to reach a city bus. As a result of the accident, N.B. suffered a broken leg that required surgery including the placement of a rod and screws. Because she was prohibited from putting any weight on her leg for

eight weeks, N.B. went to Heartland Victorian Village ("Heartland"), a skilled nursing facility, for rehabilitation. N.B.'s ability to move around began to improve "about the second week in August" when at this time, though wearing a fracture boot and still prohibited from putting weight on the injured leg, she was able to get from her bed to her wheelchair and was able to move by herself "a little bit more." (Tr. 23-24.) Appellant was employed at Heartland as a state tested nursing assistant ("STNA's" or "nursing assistant"). From her stay at Heartland, N.B. knew appellant as "Mr. T.," the name he was commonly referred to by those at Heartland.

{¶ 3} Regarding these charges, N.B. described that on September 1, 2010, appellant entered her room and asked her how she was doing. Appellant then shut the door, put the wheelchair against the door, and began kissing the back of her neck, cheeks, and eventually her lips. N.B. testified she was sitting in the middle of her bed when appellant starting kissing her and then he pushed her over so that she was "bent over in bed." (Tr. 26.) Appellant pulled her pajama bottoms down and inserted his penis into her vagina and anus. N.B. testified appellant was hurting her and she tried to say stop, but appellant told her to be quiet "because he acted like he didn't want to be caught." (Tr. 27.) According to N.B., the incident lasted "two to five minutes." (Tr. 28.) After it was over, appellant pulled N.B.'s pajama bottoms back up and said he would change the sheets. N.B. moved to the chair next to the bed and sat there while appellant changed the sheets. After he was finished, appellant put the sheets in a bag and left.

{¶ 4} Not knowing what else to do, N.B. called her gynecologist who in turn called Heartland. After receiving the call, a nurse from Heartland asked N.B. about what happened and N.B. told her. N.B. also told one of the other STNA's that came into her room. N.B. was then transported to the emergency room for treatment and examination. While at the emergency room, N.B. talked with a detective from the Columbus Police Department. At trial, N.B. denied ever having a romantic relationship with appellant, and further denied having any other interactions with him that were personal in nature.

{¶ 5} After N.B.'s gynecologist notified the staff at Heartland about the situation, Terrika Roy, a licensed practical nurse at Heartland, talked with appellant. While initially denying that he had been in N.B.'s room, appellant then admitted that he had been there to wash N.B. and change her sheets. When Roy told appellant what N.B. had reported,

appellant responded, "[T]his is bullshit. I don't have to take this," and he left the facility. (Tr. 56.) Christa King, former administrator of Heartland, testified she conducted a phone interview with appellant the day following the incident. Appellant told King he went into N.B.'s room to change her sheets because they were wet. Appellant denied the allegations and he was informed that he was suspended pending the investigation. Appellant's DNA matched semen found on N.B.'s shorts and in her vagina.

{¶ 6} Appellant testified on his own behalf. At trial, appellant admitted to engaging in sexual intercourse with N.B. on September 1, but testified it was consensual. According to appellant, since N.B.'s arrival at Heartland, the two often "flirted" with each other and had discussed how their relationship would proceed after she left Heartland.

{¶ 7} After deliberations, they jury returned verdicts finding appellant guilty of rape by vaginal intercourse, guilty of sexual battery, and not guilty of rape by anal intercourse. The trial court merged the convictions for purposes of sentencing, and appellant was sentenced to nine years incarceration. Additionally, appellant was awarded 34 days of jail-time credit.

II. ASSIGNMENT OF ERROR

{¶ 8} This appeal followed, and appellant brings the following assignment of error for our review:

> THE TRIAL COURT ERRED AND DEPRIVED APPELLANT OF DUE PROCESS OF LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE ONE SECTION TEN OF THE OHIO CONSTITUTION BY FINDING HIM GUILTY OF RAPE AND SEXUAL BATTERY AS THOSE VERDICTS WERE NOT SUPPORTED BY SUFFICIENT EVIDENCE AND WERE ALSO AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

III. DISCUSSION

A. Standard of Review

{¶ 9} In his assignment of error, appellant challenges both the weight and sufficiency of the evidence underlying his convictions. Sufficiency of the evidence is a legal standard that tests whether the evidence is legally adequate to support a verdict.

State v. Thompkins, 78 Ohio St.3d 380, 386 (1997). Whether the evidence is legally sufficient to support a verdict is a question of law, not fact. *Id.* In determining whether the evidence is legally sufficient to support a conviction, " '[t]he 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. Robinson*, 124 Ohio St.3d 76, 2009-Ohio-5937, ¶ 34, quoting *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus. A verdict will not be disturbed unless, after viewing the evidence in a light most favorable to the prosecution, it is apparent that reasonable minds could not reach the conclusion reached by the trier of fact. *State v. Treesh*, 90 Ohio St.3d 460, 484 (2001).

{¶ 10} In a sufficiency of the evidence inquiry, appellate courts do not assess whether the prosecution's evidence is to be believed, but whether, if believed, the evidence supports the conviction. *State v. Yarbrough*, 95 Ohio St.3d 227, 2002-Ohio-2126, ¶ 79-80 (evaluation of witness credibility not proper on review for sufficiency of evidence); *State v. Bankston*, 10th Dist. No. 08AP-668, 2009-Ohio-754, ¶ 4 (noting that "in a sufficiency of the evidence review, an appellate court does not engage in a determination of witness credibility; rather, it essentially assumes the state's witnesses testified truthfully and determines if that testimony satisfies each element of the crime").

{¶ 11} In contrast to assessing the sufficiency of the evidence, when presented with a manifest weight challenge, an appellate court may not merely substitute its view for that of the trier of fact, but 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. *Thompkins* at 387, citing *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983). An appellate court should reserve reversal of a conviction as being against the manifest weight of the evidence for only the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " *Id.*, quoting *Martin*.

{¶ 12} In conducting a manifest weight of the evidence review, we may consider the credibility of the witnesses. *State v. Cattledge*, 10th Dist. No. 10AP-105, 2010-Ohio-4953, ¶ 6. However, in conducting such review, "we are guided by the presumption that

the jury, or the trial court in a bench trial, 'is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.' " *Id.*, quoting *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984).

B. Analysis

{¶ 13} Though appellant's stated assignment of error refers to both convictions, the arguments presented in his appellate brief focus solely on the evidence pertaining to the sexual battery conviction. Defining the offense of sexual battery, R.C. 2907.03 states, in relevant part:

> (A) No person shall engage in sexual conduct with another, not the spouse of the offender, when any of the following apply:
>
> (1) The offender knowingly coerces the other person to submit by any means that would prevent resistance by a person of ordinary resolution.
>
> (2) The offender knows that the other person's ability to appraise the nature of or control the other person's own conduct is substantially impaired.
>
> (3) The offender knows that the other person submits because the other person is unaware that the act is being committed.
>
> (4) The offender knows that the other person submits because the other person mistakenly identifies the offender as the other person's spouse.
>
> (5) The offender is the other person's natural or adoptive parent, or a stepparent, or guardian, custodian, or person in loco parentis of the other person.
>
> (6) The other person is in custody of law or a patient in a hospital or other institution, and the offender has supervisory or disciplinary authority over the other person.
>
> (7) The offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the state board of education prescribes minimum standards pursuant to division (D) of section 3301.07 of the

> Revised Code, the other person is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school.
>
> (8) The other person is a minor, the offender is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the other person is enrolled in or attends that institution.
>
> (9) The other person is a minor, and the offender is the other person's athletic or other type of coach, is the other person's instructor, is the leader of a scouting troop of which the other person is a member, or is a person with temporary or occasional disciplinary control over the other person.
>
> (10) The offender is a mental health professional, the other person is a mental health client or patient of the offender, and the offender induces the other person to submit by falsely representing to the other person that the sexual conduct is necessary for mental health treatment purposes.
>
> (11) The other person is confined in a detention facility, and the offender is an employee of that detention facility.
>
> (12) The other person is a minor, the offender is a cleric, and the other person is a member of, or attends, the church or congregation served by the cleric.
>
> (13) The other person is a minor, the offender is a peace officer, and the offender is more than two years older than the other person.

{¶ 14} Appellant was indicted under R.C. 2907.03(A)(6), which is a strict liability offense. *State v. Fortson*, 8th Dist. No. 92337, 2010-Ohio-2337, ¶ 13. Regarding those in the custody of law or institutionalized in a hospital or elsewhere, R.C. 2907.03(A)(6) makes criminal even voluntary sexual conduct between consenting adults. Whether the sexual conduct in those instances constitutes a criminal act depends on the status of the offender and whether the offender had supervisory or disciplinary authority over the other when the sexual conduct occurred. In this case, appellant was indicted and convicted for violating subsection (A)(6), and sexual conduct between appellant and N.B. is not contested as appellant admitted at trial that it had occurred. Hence, for purposes of

our analysis of R.C. 2907.03(A)(6), we need not consider the veracity of N.B.'s or appellant's testimony regarding how the events on September 1 unfolded because our focus is whether there was sufficient evidence that at the time of the sexual conduct, N.B. was a patient in a hospital or other institution and that appellant had supervisory or disciplinary authority over her.

{¶ 15} It is appellant's position that the state provided insufficient evidence that he had supervisory authority over N.B. Thus, we reiterate that, for purposes of R.C. 2907.03(A)(6), the narrow issue before this court is whether the evidence presented by the state at trial is sufficient to establish that appellant had supervisory or disciplinary authority over N.B. such that there is sufficient evidence to support appellant's sexual battery conviction under R.C. 2907.03(A)(6).

{¶ 16} Because "supervisory or disciplinary authority" is not statutorily defined, the words must be construed according to the rules of grammar and common usage. *State ex rel. Rose v. Ohio Dept. of Rehab. and Corr.*, 91 Ohio St.3d 453, 455 (2001) citing *State ex rel. Rose v. Lorain Cty. Bd. of Elections*, 90 Ohio St.3d 229, 231 (2000); R.C. 1.42. In *State v. Mathess*, 10th Dist. No. 77AP-45 (Nov. 1, 1977), this court reviewed the terms "supervisory or disciplinary authority" when a defendant challenged R.C. 2907.03(A)(6) as being unconstitutionally vague. In rejecting the defendant's constitutional challenge to the statute, this court in *Mathess* defined the terms as follows:

> The definition of "authority" as contained in *Webster's Third New International Dictionary Unabridged* is "power to require and receive submission: the right to expect obedience: superiority derived from a status that carries with it the right to command and give final decisions: dominion, jurisdiction * * *: delegated power over others: authorization * * *: power to influence the outward behavior of others: practical personal influence * * *: persons in command * * *."
>
> "Supervise" is defined, "to coordinate, direct, and inspect continuously and at first hand the accomplishment of: oversee with the powers of direction and decision the implementation of one's own or another's intentions: superintend."
>
> "Discipline" is defined as, "training or experience that corrects, molds, strengthens, or perfects * * *: punishment: as * * * punishment by one in authority, esp. with a view to

> correction or training * * *: control gained by enforcing obedience or order * * *."

{¶ 17} We have found the majority of cases discussing R.C. 2907.03(A)(6) are in the context of prisoners and corrections staff or law enforcement. In those cases, the existence of "supervisory or disciplinary authority" was either not contested or easily discernable. *See, e.g., State v. Hresko*, 8th Dist. No. 76006 (Mar. 23, 2000) (jail nurse had "supervisory and disciplinary authority" over inmate because of nurse's direct ability to control inmates while incarcerated); *Fortson*, supra (no challenge to supervisory or disciplinary authority under R.C. 2907.03(A)(6) involving sexual conduct between corrections officer at prison facility for female offenders); *State v. Walker*, 140 Ohio App.3d 445 (1st Dist.2000) (police officer convicted under R.C. 2907.03(A)(6) contested only whether females were "in custody" at the time of sexual conduct).

{¶ 18} Though finding little discussion of R.C. 2907.03(A)(6) and the involvement of institutionalized patients, and more specifically, what constitutes supervisory or disciplinary authority over a patient in a hospital or other institution, *Mathess* provides some instruction. In *Mathess*, the defendant worked as a power plant laborer at a state hospital, Columbus State Institute. Some of the patients at the institution were inmates who would also work at the institution. While the work was voluntary, the patients were paid for their work.

{¶ 19} The defendant in *Mathess* was indicted for sexual battery under R.C. 2907.03(A)(6) for engaging in sexual conduct with three different patients. On appeal, the defendant argued there was insufficient evidence that he had supervisory or disciplinary authority over the patients named in the indictment. This court rejected the defendant's arguments and cited to evidence that the defendant "would tell the patient what to do in a specific case," and if the patient did not comply, the patient's supervisor would be notified. There was also testimony that it was necessary "to keep very direct control" over the patients. Most notably, there was testimony that the defendant "had to exercise supervisory control over the patients that worked there." Thus, even in *Mathess*, though "patients" in a state institution, it appears the patients' stay at the hospital was custodial in nature and the defendant was in a position of command where he could direct their behavior.

{¶ 20} The most analogous case our research has revealed is from a Georgia appellate court and involves a similar factual scenario and statutory language similar to R.C. 2907.03(A)(6). In *Wilson v. State*, 270 Ga.App. 311 (2004), the court reviewed convictions for sexual assault and aggravated sodomy. The charges arose in relation to acts committed against a nursing home patient in the defendant's care. According to *Wilson*, Georgia's sexual assault statute provided that a person commits sexual assault "when such person has supervisory or disciplinary authority over another person and such person engages in sexual contact with that other person who is: * * * [d]etained in or is a patient in a hospital or other institution." *Id.* at 312. The *Wilson* court applied common usage to the words "supervisory" and "authority" and reasoned that "supervisory authority" means "the power to direct * * * compliance." *Id.* at 313.

{¶ 21} The defendant in *Wilson* was employed as a nursing assistant at the nursing home where the victim resided. The evidence pertaining to the defendant's official duties at the nursing home established the defendant was a "patient personal caregiver, cleaning up after incontinence and looking after general needs." *Id.* The court concluded this evidence expressly established the defendant "is *not* a supervisor and does *not* have 'supervisory authority' over the patients" in the nursing home. (Emphasis sic.) *Id.* Because the evidence failed to establish the defendant had supervisory authority over the victim, the court held the conviction, as indicted, could not stand.

{¶ 22} While recognizing *Wilson*'s limited applicability, we nonetheless take note of the similarities between the two cases and find sound its reasoning. We conclude the evidence presented in the case herein is not sufficient to establish appellant had supervisory authority over N.B.

{¶ 23} According to the testimony at trial, appellant was employed at Heartland as an STNA. At Heartland, STNA's often are the persons that respond if a patient pushes his or her call button. As N.B. explained, "I had a call button that I would push. And then one of the nurses' aides would come in and find out what I would need. And if it was something like if I needed my medication, they would go and tell my nurse. Or if it was something as simple as getting ice water for me, the nurse's aide would do it." (Tr. 23.)

{¶ 24} Roy also explained the function of STNA's at Heartland. According to Roy, STNA's "basically communicate with the patients' needs; wash them up; do range of

motion and things of that nature." (Tr. 48.) When asked if STNA's have any decision-making authority with respect to patients, Roy responded, "[i]t depends. If they are taking care of a resident, or they need to take care of a resident that needs help in the hallway or something, they can make a decision whether they are going to help that patient or not as far as like getting water or something, you know." (Tr. 59.)

{¶ 25} King provided the majority of the testimony regarding an STNA's responsibilities at Heartland. When asked about the STNA's, King testified, "There [sic] abilities are basically to provide or assist, enable, to be as independent as possible in doing their personal care; getting trays, eating, feeding." (Tr. 82.) Additionally, on cross-examination King testified as follows:

> Q. Does an STNA make decisions regarding a patient with regard to medication?
>
> A. No.
>
> Q. Or whether to go to physical therapy?
>
> A. The STNA doesn't determine physical therapy. The therapist would schedule, and they would be held accountable for following the schedule.
>
> Q. Let's give an example to make sure I understand. Say the STNA is supposed to get a patient to physical therapy, and the patient says I don't want to go. I don't want to go to physical therapy today.
>
> Could the STNA force that person to go?
>
> What is the STNA supposed to do?
>
> A. They can immediately have a resident stay where they are, and they can go get the therapist to try to talk to them. There are many ways they can work with that person, but never force.
>
> Q. Never force. They don't have the authority to say you must do this now?
>
> A. Nobody has that authority. The resident makes the choice.

(Tr. 82-83.)

{¶ 26} On redirect examination, the following exchange occurred between King and the prosecutor:

> Q. Miss King, you testified that nobody really has the authority to tell a resident. The resident makes the choice.
>
> A. The resident has the choice. You can try to persuade them and explain the benefits and the risks, but in the end their decision is their decision.
>
> Q. These people aren't prisoners. This isn't a locked facility.
>
> A. No. Unless maybe somebody is not mentally able to make decisions for themselves as a patient. The patient is there for physical rehabilitation.
>
> Q. Do they make their own medical decisions?
>
> A. Yes, unless they have been declared incompetent and have a guardian.
>
> Q. Even if the doctor would say you should take this medicine, or you should do physical therapy three times a week, who decides whether or not that happens?
>
> A. The resident.

(Tr. 89-90.)

{¶ 27} The evidence presented demonstrates that though STNA's were often the first to respond to a patient if a call button was activated, the STNA's acted as liaisons between patients and nursing staff, and did not engage in activities that required an exercise of judgment. While STNA's would provide assistance to patients, STNA's had no decision-making ability with respect to patient care, medication administration, or therapy schedules. In essence, the evidence established STNA's at Heartland performed perfunctory-type tasks such as getting patients ice and water, assisting patients in moving from one place to another, and changing linens. The evidence does not indicate appellant had any authority to command or direct N.B. to make any decisions on her behalf or to engage in any undertaking that required an exercise of his judgment. Instead, according to the evidence, it appears N.B. had authority to direct appellant to perform perfunctory-

type tasks. Even construing this evidence in a light most favorable to the prosecution, it appears appellant had no authority, supervisory or otherwise, over N.B. Therefore, based on the evidence and testimony presented at trial, the essential elements of sexual battery, as indicted under R.C. 2907.03(A)(6), could not be proven beyond a reasonable doubt. *Robinson*, supra.

{¶ 28} Our conclusion regarding appellant's sexual battery conviction should not be interpreted as exempting a certain category or categories of employees and caretakers from prosecution under R.C. 2907.03(A)(6). Rather, as is always the case when reviewing the sufficiency of the evidence, the determinate factor is the evidence presented at trial. Additionally, our conclusion, of course, does not mean appellant's actions did not constitute any criminal offense. As previously mentioned, appellant was also convicted of rape, and we review that conviction now.[1]

{¶ 29} To convict him of rape, the state was required to prove appellant engaged in sexual conduct with the victim, purposely compelling her to submit by force or threat of force. *See* R.C. 2907.02(A)(2). Here, N.B. testified appellant entered her room, closed the door and began kissing her. Appellant then pushed N.B over and instructed her to be quiet. Thereafter, appellant proceeded to engage in vaginal intercourse. Construing this evidence in a light most favorable to the prosecution, we conclude the state presented sufficient evidence to support appellant's conviction for rape. *See Robinson.*

{¶ 30} Regarding appellant's manifest weight challenge, appellant testified at trial that everything that happened between he and N.B. was consensual and at her initiation. N.B., however, testified to the contrary. Hence, the contested issue before the jury was created by the witnesses' conflicting testimony. As this court has consistently held, the weight to be given to inconsistencies in any witnesses' testimony is a determination within the province of the trier of fact. Furthermore, the jury was free to believe, or disbelieve, any part of the witnesses' testimony, and a conviction is not against the manifest weight of the evidence merely because the jury believed the prosecution's testimony. *See State v. Smith*, 10th Dist. No. 04AP-726, 2005-Ohio-1765. The jury was tasked with determining

[1] We reiterate that other than the conclusion assertion that his conviction for rape is against the manifest weight of the evidence and is not supported by sufficient evidence, appellant does not make any specific evidentiary challenges.

the credibility of the witnesses and in completing that task found N.B.'s testimony more credible than appellant's. Because the trier of fact could properly believe N.B.'s testimony and because the trier of fact is in the best position to determine the credibility of each witness by taking into account inconsistencies, as well as witnesses' manner and demeanor, we cannot conclude this record presents a scenario where the jury clearly lost its way or a manifest injustice has been created. *Thompkins*. Accordingly, we do not find that appellant's rape conviction is against the manifest weight of the evidence.

IV. DISPOSITION

{¶ 31} Based on the foregoing, appellant's assignment of error is sustained with respect to his conviction for sexual battery and overruled with respect to his conviction for rape. Consequently, the judgment of the Franklin County Court of Common Pleas is hereby affirmed in part and reversed in part; however, sentence modification is not required because of the merger of offenses described previously. Though appellant's rape conviction and the sentence imposed thereon remain unaffected by this decision, this matter is remanded to the trial court with instructions to enter a judgment of acquittal on the charge for sexual battery indicted under R.C. 2907.03(A)(6).

Judgment affirmed in part;
reversed in part and remanded with instructions.

TYACK and CONNOR, JJ., concur.

APPENDIX B

57951 - N79

Exhibit

Appendix-C

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CRIMINAL DIVISION

THE STATE OF OHIO, : TERMINATION NO. 5 BY: LG

Plaintiff, :

vs. :

: Case No. 11CR-1145

TIZAZU AREGA, :

: JUDGE BESSEY

Defendant. :

FILED
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FRANKLIN CO. OHIO
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CLERK OF COURTS

JUDGMENT ENTRY ON SENTENCING

On the 30th, and 31st days of January, 2012 and the 1st day of February 2012, the State of Ohio was represented by Assistant Prosecuting Attorney Megan Jewett and the Defendant was represented by Attorney Karen Phipps. Counts One, Two, and Three of the indictment were tried by a jury which returned a verdict on February 3, 2012, finding the Defendant guilty of the following offenses:

Count One of the indictment, to-wit: RAPE, in violation of Section 2907.02 of the Ohio Revised Code, a felony of the 1st degree, and

Count Three of the indictment, to-wit: SEXUAL BATTERY, in violation of Section 2907.03 of the Ohio Revised Code, a felony of the 3rd degree.

The jury found the Defendant not guilty of Count Two of the indictment, to-wit: RAPE, in violation of Section 2907.02, a felony of the 1st degree.

The Court ordered and received a pre-sentence investigation.

On March 1, 2012, a sentencing hearing was held. The State of Ohio was represented by the Assistant Prosecuting Attorney Megan Jewett and Defendant was represented by Attorney Karen Phipps.

The Court afforded counsel an opportunity to speak on behalf of the Defendant and addressed the Defendant personally affording him an opportunity to make a statement on his own behalf in the form of mitigation and to present information regarding the existence or non-existence of the factors the Court has considered and weighed.

1

2

The Court has considered the purposes and principles of sentencing set forth in R.C. 2929.11 and the factors set forth in R.C. 2929.12. In addition, the Court has weighed the factors as set forth in the applicable provisions of R.C. 2929.13 and R.C. 2929.14. The Court further finds that a prison term is mandatory pursuant to R.C. 2929.13(F).

It is the sentence of the Court that the Defendant serve **9 YEARS FOR COUNT ONE** at the **OHIO DEPARTMENT OF REHABILITATION AND CORRECTIONS. FOR PURPOSES OF SENTENCING, COUNT THREE SHALL MERGE WITH COUNT ONE. SENTENCING ON COUNT ONE ONLY FOR A TOTAL SENTENCE OF 9 YEARS AT ODRC.**

In addition, the Defendant has been declared a sexual offender and classified pursuant to S.B. 10 as a Tier III with registration duties to last a lifetime; in person verification is required every ninety (90) days and community notification will be sent.

NO FINE OR COURT COSTS IMPOSED DUE TO DEFENDANT'S INDIGENCY.

Attorney Todd Barstow has been appointed for purposes of appeal.

The Court finds that the Defendant has 34 days of jail credit and hereby certifies the time to the Ohio Department of Corrections. The Defendant is to receive jail time credit for all additional jail time served while awaiting transportation to the institution from the date of the imposition of this sentence.

JOHN P. BESSEY, JUDGE

Copies to:
All Counsel
Case No. 11CR-1145

Additional material from this filing is available in the Clerk's Office.