RENDERED: SEPTEMBER 28, 2023
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2022-SC-0348-MR

TIMOTHY HINKLE — APPELLANT

V.

ON APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ANNIE O'CONNELL, JUDGE
NO. 19-CR-000953

COMMONWEALTH OF KENTUCKY — APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

A Jefferson County jury convicted Timothy Hinkle of rape in the first degree, wanton endangerment in the second degree, tampering with a witness, assault in the fourth degree, and being a persistent felony offender in the first degree. Consistent with the jury's recommendation, the trial court sentenced Hinkle to a total of twenty-one (21) years in prison. This appeal followed as a matter of right. *See* KY. CONST. § 110(2)(b). Having reviewed the record and the arguments of the parties, we affirm the judgment of the Jefferson Circuit Court.

I. BACKGROUND

On June 5, 2018, L.P.O.,[1] picked up her boyfriend, Timothy Hinkle, from the Community Corrections Center (CCC) in Louisville, where he was incarcerated. Hinkle had job search privileges authorized by a judge, so he

[1] We identify the victim by her initials to protect her privacy.

could leave the jail on weekdays to search for employment. L.P.O. allowed Hinkle to drive her car. While stopped at a red light, Hinkle asked L.P.O. a question about sex. At trial, L.P.O. could not remember the exact question or her exact answer but testified that Hinkle became angry. Hinkle put his hand behind L.P.O.'s neck and pulled her hair. He strangled her so that it was difficult for her to speak and breathe. He then "threw" her head around, hitting it on the console, dashboard, and window of the car. He threatened to break her jaw if he did not believe the answers to the questions he asked her and threatened to transfer the title to her car to himself. L.P.O. testified that it happened very quickly, although it felt like it went on for a long time, and that the physical assault ended shortly after the traffic light turned green. L.P.O. testified that Hinkle had never done anything like this to her before, and she was scared.

After stopping at a couple of other places, Hinkle drove to his uncle's house. He parked the car in his uncle's garage and closed the garage door. He asked L.P.O. to perform oral sex on him, and she refused. The two then spoke for a few minutes, and Hinkle told L.P.O. that he was a good man and that he believed she had cheated on him. L.P.O. testified that Hinkle then helped her out of the front seat, gently laid her on the back seat, and took off her pants. She was crying while this was taking place. Hinkle then placed his mouth on L.P.O.'s vagina and had sexual intercourse with her, without her consent. L.P.O. explained that this was painful because she recently had a miscarriage and was still sore from the medical procedure required.

L.P.O. testified that after the sexual intercourse, they both put their clothes back on, spoke for a few minutes, and left. They drove around for a while so that Hinkle could continue to look for employment. At one point, Hinkle stopped the car at a park and walked off. Then L.P.O. got into the driver's seat of the car. When Hinkle returned to the car, they drove around some more. Hinkle got mad when he believed L.P.O. was speeding and threw her phone, broke her rosary, and stomped on her glasses. L.P.O. testified that she was scared and shaking. After stopping at another park, L.P.O. eventually returned Hinkle to CCC.

After dropping Hinkle off at CCC, L.P.O. went to a friend's house, where she stayed the night. She did not call the police that night because she was still processing what had happened. Hinkle, however, called her several times from the jail that night. On the recorded phone calls, Hinkle apologized, acknowledging he "roughed her up" but claiming that he had not "beat her ass." The next day, L.P.O. did not pick Hinkle up to job search, and she stayed at her friend's house. Hinkle showed up at the friend's house and asked to speak to L.P.O. L.P.O. then asked her friend's mother to call 911, telling her that Hinkle had been violent the previous day.

Police responded to L.P.O.'s friend's house, but by the time they arrived, Hinkle had already left. Detective Michael Parsons responded to the scene and spoke with L.P.O. She disclosed the physical assault to Detective Parsons but did not mention the sexual assault. Detective Parsons then asked a female officer, Sergeant Jessica Crick, to speak to L.P.O. L.P.O. finally disclosed the

sexual assault to Sergeant Crick. Later that day, L.P.O. underwent a sexual assault nurse examination (SANE), where she was interviewed again, evidence was collected, and photographs were taken. At that time, L.P.O. told Detective Tony Gipson, from the sex crimes unit of the Louisville Metro Police Department, that she did not want to pursue charges against Hinkle related to the sexual assault. Based on this statement, Detective Gipson brought charges against Hinkle only for wanton endangerment and assault in the fourth degree. At that time, he neither investigated nor brought charges for the sexual assault.

After the assault, L.P.O. went to Mexico for a few months to "get away from everything." Upon her return, she decided that she did, in fact, wish to pursue the sexual assault charges against Hinkle. She testified that her mother convinced her to pursue the charges. Before Detective Gipson could conduct a second interview with L.P.O., L.P.O. was arrested for burglary in the first degree. Subsequent to this arrest, Detective Gipson interviewed L.P.O. a second time, and she confirmed that she did, in fact, wish to pursue the sexual assault charge against Hinkle. Thereafter, Hinkle was indicted on the additional charge of rape in the first degree. Hinkle was tried and convicted on all charges by a Jefferson County jury. He was sentenced to twenty-one (21) years in prison, consistent with the jury's recommendation. This appeal followed.

II. ANALYSIS

Hinkle alleges the trial court committed three errors that compel a reversal of his convictions. First, he argues that the trial court erred in

excluding evidence of L.P.O.'s arrest for burglary in the first degree. Second, he argues that the trial court erred in admitting multiple hearsay statements through the SANE nurse. Finally, he argues that the trial court erred in refusing to instruct the jury on sexual abuse in the third degree as a lesser included offense of rape in the first degree. We address each of Hinkle's arguments in turn.

A. Evidence of L.P.O.'s Arrest

Hinkle first argues to this Court that the trial court erred in excluding evidence of L.P.O.'s arrest for burglary in the first degree. As previously discussed, although L.P.O. reported both the physical assault and the sexual assault to police authorities the day after they occurred, she told the police that she did not want to pursue the sexual assault charge. Because of this, the police did not investigate the sexual assault, and Hinkle was not initially charged with that crime.

Shortly after she was assaulted by Hinkle, L.P.O. went to Mexico for a few months to "get away from everything." Upon her return in August, she contacted the Commonwealth's Attorney's Office and explained that she now wanted to pursue the sexual assault charge. She testified at trial that her mother had convinced her to do this. The Commonwealth's Attorney sought to set up a second interview between L.P.O. and Detective Gipson but was unable to quickly do so.

On November 28, 2018, L.P.O. was arrested and charged with burglary in the first degree. The following day, she finally spoke with Detective Gipson

and expressed to him her desire to pursue the sexual assault charge against Hinkle. Thereafter, Hinkle was indicted on the charge of rape in the first degree. L.P.O. eventually resolved her burglary case by being placed on diversion.

Prior to trial, the Commonwealth filed a motion in limine to exclude any evidence of L.P.O.'s burglary case. Hinkle opposed this motion, arguing that the timing of L.P.O.'s second statement to police – just one day after being arrested for a serious burglary charge – was relevant to her credibility and bias. Ultimately, the trial court granted the Commonwealth's motion and prohibited Hinkle from cross-examining the detective or L.P.O. about the timing of her arrest and subsequent statement wishing to pursue the sexual assault charge against Hinkle.

Hinkle argues that the trial court erred in excluding this evidence. His argument is preserved, and therefore, we review the trial court's decision for an abuse of discretion. *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999) (citation omitted). "The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Goodyear Tire & Rubber Co. v. Thompson*, 11 S.W.3d 575, 581 (Ky. 2000).

There can be no doubt that "[e]xposing a witness's bias or motivation to testify is 'a proper and important function of the constitutionally protected right of cross-examination.'" *Commonwealth v. Armstrong*, 556 S.W.3d 595, 600 (Ky. 2018) (quoting *Davis v. Alaska*, 415 U.S. 308, 316 (1974)). We have

explained, "Admissibility of evidence tending to prove the bias of a witness is a matter of relevancy. Any proof that tends to expose a motivation to slant testimony one way or another satisfies the requirement of relevancy." *Miller ex rel. Monticello Banking Co. v. Marymount Med. Ctr.*, 125 S.W.3d 274, 281–82 (Ky. 2004) (citations and internal quotation marks omitted). However, trial courts retain "wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986).

In order to show that the trial court erred in excluding evidence of bias,

> the defendant must show that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby to expose to the jury the facts from which jurors could appropriately draw inferences relating to the reliability of the witness. A defendant has satisfied this burden if a reasonable jury might have received a significantly different impression of the witness's credibility had the defense's counsel been permitted to pursue his proposed line of cross-examination.
>
> Reviewing courts have found this burden to be met when the excluded evidence clearly supports an inference that the witness was biased, and when the potential for bias exceeds mere speculation. A violation does not occur where the excluded evidence supports an inference of bias based on mere speculation.

Armstrong, 556 S.W.3d at 602–03 (internal quotation marks and alterations omitted) (quoting *Van Arsdall*, 475 U.S. at 680; *Davenport v. Commonwealth*, 177 S.W.3d 763, 769, 771 (Ky. 2005)).

In the case at bar, the evidence of the timing of L.P.O.'s arrest would not "clearly support[] an inference" that she was biased in her testimony at trial. *Id.* at 603. L.P.O. disclosed the sexual assault to police the day after the assaults occurred. Although she, at that time, did not want to pursue the rape charge against Hinkle, she never disavowed that the rape occurred. In fact, although the order of events arguably changed throughout her different statements, her description of what happened surrounding and during the rape was consistent throughout each statement and her trial testimony. The Commonwealth's Attorney explicitly denied that L.P.O. received any deal or leniency in her burglary case in exchange for her decision to pursue the rape charge against Hinkle, and L.P.O.'s burglary case was resolved and no longer pending by the time she testified at trial. Given the totality of these circumstances, "the excluded evidence support[ed] an inference of bias based [only] on mere speculation," and the trial court did not abuse its discretion in excluding the evidence. *Id.*

B. Hearsay Testimony from SANE Nurse

Hinkle next argues that the trial court erred in admitting multiple hearsay statements testified to by SANE Nurse Vicki Yazel. Hinkle preserved this issue by making a contemporaneous objection at trial. We review the trial court's decision on the admission of evidence for an abuse of discretion. *English*, 993 S.W.2d at 945 (citation omitted). "The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or

unsupported by sound legal principles." *Goodyear Tire & Rubber Co.*, 11 S.W.3d at 581.

At trial, Nurse Yazel testified regarding her examination of L.P.O. that occurred at the hospital the day after the assaults. In doing so, she read directly from her report the victim narrative that L.P.O. had provided to her. Hinkle objected, arguing that the narrative was hearsay and not admissible under any exception to the hearsay rule. The Commonwealth, on the other hand, argued that the statements were admissible under Kentucky Rule of Evidence (KRE) 803(4), the exception to the hearsay rule for statements made for purposes of medical treatment or diagnosis. The trial court agreed with the Commonwealth and admitted the statements.

On appeal to this Court, Hinkle asserts that three statements testified to by Nurse Yazel fail to meet the requirements of any hearsay exception. These statements are that L.P.O. told Nurse Yazel (1) that the sexual assault occurred in the car in Hinkle's uncle's garage, (2) that L.P.O. told Hinkle that she did not want to have sex with him, and (3) that Hinkle remarked to L.P.O. that L.P.O. no longer wanted to perform oral sex on him. Hinkle argues that these statements are not excepted from the hearsay rule either as statements made for purposes of medical treatment or diagnosis under KRE 803(4) or as prior consistent or inconsistent statements under KRE 801A.

"'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." KRE 801(c). "Hearsay is not admissible except as provided

by" the Kentucky Rules of Evidence or other rule of this Court. KRE 802. KRE 803(4) allows for the admission of hearsay statements that are made for purposes of medical treatment or diagnosis. That rule states that "[s]tatements made for purposes of medical treatment or diagnosis and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to treatment or diagnosis" are not excluded by the hearsay rules. KRE 803(4).

This Court has stated that

> [a]dmissibilty of a statement pursuant to Rule 803(4) is governed by a two-part test: "(1) the declarant's motive in making the statement must be consistent with the purposes of promoting treatment; and, (2) the content of the statement must be such as is reasonably relied on by a physician in treatment or diagnosis."

Colvard v. Commonwealth, 309 S.W.3d 239, 245 (Ky. 2010) (quoting *Willingham v. Crooke*, 412 F.3d 553, 561–562 (4th Cir. 2005)). We further explained that the most important element is "that the . . . declarant . . . believes that the doctor must have that information to render effective treatment. The doctor's actual need, use, or reliance upon the declarant's information is less meaningful than the declarant's belief that the information is essential to effective treatment." *Id.* Finally, this hearsay exception traditionally "allow[s] medical providers to testify to a patient's out-of-court statements as to what was done to the patient and how he or she was injured." *Id.* at 247.

The first statement about which Hinkle complains is L.P.O.'s statement to Nurse Yazel that the sexual assault occurred in the car in Hinkle's uncle's

garage. The fact that the sexual assault occurred in the car was part and parcel of "what was done to [L.P.O.] and how . . . she was injured" and arguably describes "the inception or general character of the cause or external source" of her injuries. *Id.*; KRE 803(4). It is perfectly reasonable that L.P.O. believed that the fact the sexual assault took place in a car was "information . . . essential to effective treatment" and that a medical professional would "reasonably rel[y]" on this information in diagnosing or treating her. *Colvard*, 309 S.W.3d at 245; KRE 803(4). For instance, the small space afforded by the backseat of a car could have led to additional or different injuries than those caused by a sexual assault that occurred in another setting, such as a bed.

L.P.O.'s statement that the sexual assault occurred in Hinkle's uncle's garage merely provided additional context to L.P.O.'s explanation of the events. The car in which the sexual assault occurred necessarily had to be parked somewhere. If L.P.O. did not tell Nurse Yazel where the car was, her narrative would have been incomplete and would not have made any sense. The same is true if Nurse Yazel did not testify to L.P.O.'s statement regarding the location of the car. This fact was so intimately connected with the rest of the story that it could not have been redacted. Accordingly, the trial court did not abuse its discretion in admitting L.P.O.'s statement that the sexual assault took place in a car in Hinkle's uncle's garage.

We turn now to the second statement about which Hinkle complains: that L.P.O. told Hinkle that she did not want to have sex with him. Undoubtedly, this statement falls within the hearsay exception for statements

made for purposes of medical treatment or diagnosis. It goes directly to "what was done to" L.P.O. and potential injuries that could have resulted from what was done. It seems obvious that L.P.O. would have believed this information was "essential to effective treatment" for any injuries that may have resulted from the non-consensual sexual intercourse. This is even more apparent in the case at bar, where L.P.O. may still have shown physical signs of her miscarriage and the subsequent necessary medical procedure. Accordingly, the trial court did not err in admitting this hearsay statement. *Colvard*, 309 S.W.3d at 245.

The last statement about which Hinkle complains is L.P.O.'s statement that Hinkle remarked to her that she no longer wanted to perform oral sex on him. Nurse Yazel testified that L.P.O. told her, "I was sitting in the passenger seat, and he was standing there, and he said you don't even want to suck my d— anymore." This statement did not describe any symptoms or pain, and it did not describe a potential cause of L.P.O.'s injuries. Therefore, it did not fall within the hearsay exception for statements made for purposes of medical treatment or diagnosis, as it was not pertinent to those things.

Hinkle also argues that the statement was not admissible as either a prior consistent or a prior inconsistent statement under KRE 801A. The Commonwealth does not put forth any argument that the statement is a prior inconsistent statement but does argue that it was admissible as a prior consistent statement. Under KRE 801A(a)(2), a prior statement of a witness "is not excluded by the hearsay rule . . . if . . . the statement is . . . [c]onsistent

with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive." In this case, Hinkle did not allege any "recent fabrication or improper influence or motive." Therefore, L.P.O.'s statement that Hinkle commented that she did not want to perform oral sex on him anymore was not admissible as a prior consistent statement. Accordingly, it was not admissible under any exception to the hearsay rule.[2]

Having concluded that the trial court erred in admitting one of L.P.O.'s hearsay statements, we must determine if that error was harmless. An error is harmless if a "reviewing court can say with fair assurance that the judgment was not substantially swayed by the error." *Winstead v. Commonwealth*, 283 S.W.3d 678, 689 (Ky. 2009) (citation omitted). In this case, the improperly admitted hearsay statement carried with it very little prejudice, as it was primarily background information regarding the context of the sexual assault. Further, it did not significantly bolster L.P.O.'s testimony, and it was not heavily relied upon by the Commonwealth. Thus, we "can say with fair assurance that the judgment was not substantially swayed by the error." *Id.*

C. Lesser-Included Offense Instruction

Finally, Hinkle argues that the trial court erred in refusing to instruct the jury on sexual abuse in the third degree as a lesser-included offense of rape in

[2] L.P.O.'s statement to Nurse Yazel is double hearsay. Although L.P.O.'s statement to Nurse Yazel is inadmissible hearsay, we make no determination as to the admissibility of Hinkle's hearsay statement if testified to by L.P.O. herself.

the first degree. This argument was preserved by defense counsel's tendering of the requested instruction to the trial court. *See* RCr 9.54; *Elery v. Commonwealth*, 368 S.W.3d 78, 89 (Ky. 2012). We generally review the trial court's refusal to give a specific jury instruction for abuse of discretion. *Sargent v. Schaffer*, 467 S.W.3d 198, 204 (Ky. 2015), *overruled on other grounds by Univ. Med. Ctr. v. Shwab*, 628 S.W.3d 112 (Ky. 2021). However, when "the trial court's decision on this issue was not based on its assessment of the facts but rather its assessment of the law, we review the trial court's denial of the requested jury instruction . . . de novo." *Davis v. Commonwealth*, 620 S.W.3d 16, 25 (Ky. 2021) (citing *Conyers v. Commonwealth*, 530 S.W.3d 413, 424 (Ky. 2017)). Hinkle asserts that we should review the trial court's decision in this case de novo. However, as explained in more detail below, we are unconvinced and review for abuse of discretion. As we previously stated, "[t]he test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Goodyear Tire & Rubber Co.*, 11 S.W.3d at 581.

We review a trial court's decision not to give the jury an instruction on a lesser offense under two principles:

> (1) it is the duty of the trial judge to prepare and give instructions on the whole law of the case . . . [including] instructions applicable to every state of the case deducible or supported to any extent by the testimony; and (2) although a defendant has a right to have every issue of fact raised by the evidence and material to his defense submitted to the jury on proper instructions, the trial court should instruct as to lesser-included offenses only if, considering the totality of the evidence, the jury might have a reasonable doubt as to the defendant's guilt of the greater offense,

> and yet believe beyond a reasonable doubt that he is guilty of the lesser offense.

Holland v. Commonwealth, 114 S.W.3d 792, 802 (Ky. 2003) (internal citations and quotation marks omitted). KRS 505.020(2)(a) allows a defendant to be "convicted of an offense that is included in any offense with which he is formally charged. An offense is so included when . . . [i]t is established by proof of the same or less than all the facts required to establish the commission of the offense charged." This Court, in *Hall v. Commonwealth*, rejected a strict same-elements test for determining whether a defendant is entitled to a lesser-offense instruction and instead adopted a fact-based approach. 337 S.W.3d 595, 607-08 (Ky. 2011).

Hinkle asserts that the trial court erred as a matter of law in concluding that sexual abuse in the third degree is not a lesser-included offense of rape in the first degree. While this is an issue that our Court has not yet addressed under circumstances similar to these, we need not decide it today. Given the facts of this case, Hinkle would not have been entitled to an instruction on sexual abuse in the third degree even if it were a lesser-included offense of rape in the first degree.

Under KRS 510.040(1)(a), "[a] person is guilty of rape in the first degree when . . . [h]e engages in sexual intercourse with another person by forcible compulsion[.]" Forcible compulsion is defined as "physical force or threat of physical force, express or implied, which places a person in fear of immediate death, physical injury to self or another person, fear of the immediate kidnap of self or another person, or fear of any offense under this chapter." KRS

510.010(2). The legislature further made it clear that "[p]hysical resistance on the part of the victim shall not be necessary to meet this definition." *Id.* Finally, "[i]n evaluating whether a threat satisfies the element of forcible compulsion, the Court does not employ an objective test. Rather, 'in determining whether the victim felt threatened to engage in sex or feared harm from the attacker, a subjective test is applied.'" *Murphy v. Commonwealth*, 509 S.W.3d 34, 44 (Ky. 2017) (citations and alterations omitted).

A person is guilty of sexual abuse in the third degree, on the other hand, "when he or she subjects another person to sexual contact without the latter's consent." KRS 510.130(1). Lack of consent of the victim "is an element of every offense defined in" Chapter 510, regardless of whether that element is specifically stated. KRE 510.020(1). "Lack of consent results from: (a) Forcible compulsion; (b) Incapacity to consent; or (c) If the offense charged is sexual abuse, any circumstances in addition to forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor's conduct." KRE 510.020(2).

Assuming, as Hinkle argues, that sexual intercourse is a type of sexual contact, the difference in elements between rape in the first degree and sexual abuse in the third degree is whether the lack of consent resulted from forcible compulsion (for rape in the first degree) or from "any circumstances . . . in which the victim does not expressly or impliedly acquiesce in the actor's conduct" (for sexual abuse in the third degree). *Id.* Hinkle argues that a jury could believe beyond a reasonable doubt that L.P.O.'s lack of consent was a

product of her lack of acquiescence while having reasonable doubt that her lack of consent resulted from forcible compulsion. We disagree.

First, more than sufficient evidence existed for a jury to believe that Hinkle's rape of L.P.O. was obtained through forcible coercion. Evidence was admitted at trial that just a short period of time before the rape, Hinkle physically assaulted L.P.O. He pulled her hair, strangled her until it was difficult for her to speak or breathe, and slammed her head into the console, dashboard, and window of the car. He also threatened to break her jaw. Upon arriving at his uncle's garage, Hinkle shut the garage door and retained possession of the car keys. L.P.O. could not leave. Hinkle told L.P.O. that he believed she was cheating on him and that she had embarrassed him. L.P.O. testified that she did not attempt to fight off Hinkle because she was afraid that he would strangle her again. Given all of these facts, a jury could easily believe that L.P.O. was "in fear of immediate . . . physical injury to [her] self" based on an implied threat of further physical force. *See* KRS 510.010(2).

However, no jury could harbor reasonable doubt that Hinkle accomplished the rape by use of forcible compulsion, and yet still believe that Hinkle accomplished the rape by any other circumstances in which L.P.O. did not acquiesce. Hinkle only points to two pieces of evidence to support a theory of non-consent, neither of which are compelling. First, he points to L.P.O.'s testimony that just minutes before the rape, Hinkle asked her to perform oral sex on him and she refused. He argues that if she was unafraid to refuse to perform oral sex, then a jury could believe that she was also unafraid to refuse

to engage in sexual intercourse. Second, he points to Nurse Yazel's testimony that L.P.O. told her that she did not want to have sex with Hinkle but that she did it anyway. He asserts that these two pieces of evidence show a lack of acquiescence but do not show forcible compulsion. We disagree with this interpretation of the evidence.

Accordingly, we hold that no reasonable jury could have a reasonable doubt as to Hinkle's guilt of rape in the first degree, and yet believe beyond a reasonable doubt that he is guilty of sexual abuse in the third degree. Therefore, the trial court did not err in refusing to instruct the jury on sexual abuse in the third degree.

III. CONCLUSION

For the foregoing reasons, we affirm the judgment of the Jefferson Circuit Court.

All sitting. VanMeter, C.J.; Bisig, Conley, Keller, Lambert and Nickell, JJ., concur. Thompson, J., concurs in result only.

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NO. 19-CR-000953

JEFFERSON CIRCUIT COURT
DIVISION TWO (2)
ANNIE O'CONNELL, JUDGE

COMMONWEALTH OF KENTUCKY — PLAINTIFF

V

TIMOTHY D. HINKLE — DEFENDANT
(B/M, DOB: 12-19-1985, SSN: 0809)

JURY TRIAL

At a jury trial in this court August 17, 2021 through August 20, 2021, the jury returned a guilty verdict against the defendant on the following:

- RAPE IN THE FIRST DEGREE
- WANTON ENDANGERMENT IN THE SECOND DEGREE
- TAMPERING WITH A WITNESS
- ASSAULT IN THE FOURTH DEGREE

Following the guilty verdict and during the Truth In Sentencing phase of the trial, the jury returned a guilty verdict against the defendant on the charge of **PERSISTENT FELONY OFFENDER IN THE FIRST DEGREE.** Further, the jury recommended a sentence as follows:

- RAPE IN THE FIRST DEGREE - ELEVEN (11) YEARS, ENHANCED TO TWENTY-ONE (21) YEARS (PFO 1ST DEGREE)
- WANTON ENDANGERMENT IN THE SECOND DEGREE - SEVEN (7) MONTHS
- TAMPERING WITH A WITNESS - ONE (1) YEAR, ENHANCED TO TEN (10) YEARS (PFO 1ST DEGREE)
- ASSAULT IN THE FOURTH DEGREE - SIX (6) MONTHS

App. A., TR II, 273

The jury recommended the sentences on each charge run *CONCURRENTLY* for a total of **TWENTY-ONE (21) YEARS.**

SENTENCING

This case came before the Court on April 14, 2022 for final sentencing. The Commonwealth was represented by Hon. Danielle Yannelli. The defendant, Timothy Daniel Hinkle, was present in court with counsel, Hon. Ryan Dischinger.

The Court afforded the defendant an opportunity to make statements on his behalf and present any information in mitigation of punishment. Having considered the Presentence Investigation Report (PSI), and having heard no legal cause why judgment and sentence should not be imposed, **IT IS HEREBY ORDERED AND ADJUDGED** that the defendant is guilty of the following offenses ad sentenced as follows:

- **PERSISTENT FELONY OFFENDER IN THE FIRST DEGREE**
- **RAPE IN THE FIRST DEGREE - ELEVEN (11) YEARS, ENHANCED TO TWENTY-ONE (21) YEARS**
- **WANTON ENDANGERMENT IN THE SECOND DEGREE - SEVEN (7) MONTHS**
- **TAMPERING WITH A WITNESS - ONE (1) YEAR, ENHANCED TO TEN (10) YEARS**
- **ASSAULT IN THE FOURTH DEGREE - SIX (6) MONTHS**

All charges shall run *concurrently* for a total of **TWENTY-ONE (21) YEARS TO SERVE.**

Further, **IT IS HEREBY ORDERED:**

App. A., TR II, 274

1. The defendant must register and comply with the Sex Offender Registry for his lifetime;

2. The defendant shall receive a Sex Offender Risk Assessment conducted by the Department of Corrections (SORA Unit) and complete treatment. as recommended;

3. Pursuant to KRS 532.043, the defendant shall be subject to a post incarceration supervision period of five (5) years; and

4. The defendant shall be entitled to additional custody credit time, as reflected in its separate Order (dated April 14, 2022).

This judgment is final and appealable. **SO ORDERED.**

Annie O'Connell

ANNIE O'CONNELL, JUDGE
JEFFERSON CIRCUIT COURT
DIVISION TWO (2)
DATE: 7/12/2022

cc: *Hon. Danielle Yannelli,*
Assistant Commonwealth's Attorney

Hon. Ryan Dischinger,
Louisville Metro Public Defender's office

Department of Corrections

Ruth Staples,
Sex Offender Risk Assessment unit
3001 Highway 146
LaGrange, Kentucky 40032

ENTERED IN COURT
DAVID L. NICHOLSON, CLERK
JUL 13 2022
BY ED
DEPUTY CLERK

App. A., TR II, 275

INSTRUCTION NO. 1C

Sexual Abuse in the Third Degree

If you find Timothy Hinkle not guilty under instruction 1A or 1B, you may find him guilty under this instruction if and only if you believe from the evidence beyond a reasonable doubt all of the following:

1. That, in Jefferson County, Kentucky, on June 5, 2018, he subjected L.P.O. to sexual contact, AND

2. That he did so without L.P.O.'s consent.

APPENDIX