

Released 12/18/00 - Please attach to Judge Evans' opinion.

STATE V. MAYER - HIGHLAND APP. NO. 99CA08

Harsha, J., concurring in part and dissenting in part:

I concur in the judgment and opinion concerning the First and Third Assignments of Error. I also concur with the treatment of the Second Assignment of Error, except for the appellant's conviction for attempted rape of J. Fr. under count fourteen. The conviction for attempted rape is not supported by sufficient evidence because there is no testimony that appellant tried to insert anything into any of J. Fr.'s body cavities. Nor could the jury reasonably infer such intent or conduct. See State v. Davis (1996) Ohio St.3d. 107, 114. Thus, I would reverse appellant's conviction for attempted rape under count fourteen.