

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

STATE OF OHIO,	:	Case No. 19CA10
Plaintiff-Appellee,	:	
- vs -	:	<u>DECISION AND</u>
	:	<u>JUDGMENT ENTRY</u>
KEVIN A. RINGS,	:	
Defendant-Appellant.	:	RELEASED 8/28/2020

APPEARANCES:

Dave Yost, Attorney General, Andrea K. Boyd, Assistant Attorney General and Special Prosecuting Attorney, 150 East Gay Street - 16th Floor, Columbus, Ohio 43215, for appellee

Dennis W. McNamara, 88 East Broad Street, Suite 1350, Columbus, Ohio 43215, for appellant

Piper, J.

{¶1} Defendant-appellant, Kevin Rings, appeals his conviction in the Washington County Court of Common Pleas for a single count of coercion.

I. Facts

{¶2} In 2017, Rings was the Washington County Prosecutor and became involved in two criminal cases involving Amy Davis. The first case involved Davis as the criminal defendant for her arrest on drug trafficking charges. The second criminal case involved Davis as a victim and state's witness. While Davis was released on bond, she was severely

beaten by Jeremy Braun. Ryan Nichols observed the beating and did nothing to stop it. Braun was indicted for felonious assault and kidnapping and Nichols was indicted on related charges. Davis was to testify against Braun and Nichols regarding the charges against them.

{¶3} Specific to the criminal charges against her, Davis pled guilty to an amended drug charge and the remaining counts against her were dismissed. As part of Davis' agreed plea and sentence, the state recommended a sentence of three years of community control, 60 days in jail, and Davis taking the first available opening at a drug treatment facility after serving a minimum of 30 days in jail. Thus, Davis agreed to a minimum 30-day jail sentence as part of her plea.

{¶4} Specific to the case in which Davis was the victim, Davis was the main witness against Braun and Nichols. In preparing to prosecute Braun and Nichols, Rings was having difficulty reaching Davis. Davis consented to her cell phone number being given to Rings in order to contact her. Rings began to text Davis regarding her testimony and the pair also exchanged a few telephone calls. The text messages between the two occurred between June 30th and July 6th. Within these messages, both sent text messages of a flirtatious nature. Davis sent Rings a photograph of herself in a negligee and other photographs that could be considered provocative.

{¶5} On July 6, 2017, Davis met with Rings in his office. Davis claimed that when she entered Rings' office, he began to rub her head, kissed her, forced her to kiss him, and attempted to unbutton her shirt. After Davis rebuffed Rings' advances, the meeting continued for another 60 minutes wherein they discussed her potential testimony. Davis texted Rings later that evening suggesting, "maybe I'll show you what it's like to have fun. You only live once. What's a life that's spent in a boring office 24/7? Strippers, casino equal fun hahaha."

{¶6} Ten days after the meeting, a confidential informant told a West Virginia police officer about the situation, and the Washington County Sherriff was informed of the text messages between Davis and Rings. The Sherriff requested assistance from Ohio's Bureau of Criminal Investigation, and an agent interviewed Davis. Davis admitted that she flirted with Rings in an attempt to make him like her so that she would not "get in as much trouble."

{¶7} The grand jury indicted Rings for two misdemeanor counts of coercion and sexual imposition. Rings pled not guilty to the charges and the matter proceeded to trial. Rings was found not guilty of sexual imposition by the jury, but guilty of coercion. The trial court sentenced Rings to 60 days in jail.

{¶8} Rings now appeals his conviction, raising four assignments of error for our review. However, finding the first assignment of error dispositive of the appeal, the other assignments of error are moot.

{¶9} Assignment of Error No. 1:

{¶10} THE JURY'S VERDICT AS TO COERCION IS NOT SUPPORTED BY SUFFICIENT EVIDENCE.

{¶11} Rings argues in his first assignment of error that his conviction was not supported by sufficient evidence.

II. Insufficiency of the Evidence

{¶12} When reviewing the sufficiency of the evidence underlying a criminal conviction, an appellate court examines the evidence to determine whether such evidence, if believed, would support a conviction. *State v. Koster*, 4th Dist. Lawrence No. 14CA25, 2016-Ohio-2851. The 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. Johnson*, 4th Dist. Ross

Washington App. No. 19CA10

No. 14CA3459, 2016-Ohio-867. "To reverse a judgment of a trial court on the basis that the judgment is not sustained by sufficient evidence, only a concurring majority of a panel of a court of appeals reviewing the judgment is necessary." *State v. Miller*, 96 Ohio St.3d 384, 2002-Ohio-4931, ¶ 38.

{¶13} Rings was convicted of coercion in violation of R.C. 2905.12, which provides, "no person, with purpose to coerce another into taking or refraining from action concerning which the other person has a legal freedom of choice, shall do any of the following: take, withhold, or threaten to take or withhold official action, or cause or threaten to cause official action to be taken or withheld." Thus, the state had the burden to prove that the defendant threatened with the purpose to "coerce another into taking or refraining from taking action concerning which that person has a legal freedom of choice." *State v. Conese*, 102 Ohio St.3d 435, 2004-Ohio-3889, ¶ 13. "Threat" includes a direct threat and a threat by innuendo. R.C. 2905.12(E)(1).

{¶14} The state's theory of the case was, essentially, that Rings coerced Davis by threatening her with official action if she did not respond to him in the ways he wanted including answering his text messages and engaging in a sexual relationship with him. During trial, the state presented text messages between Rings and Davis to show the flirtatious nature of the messages, including overt and veiled reference to the sexual interest Rings had for Davis and her responses indicating reciprocal interest. While it may be reasonably inferred that Rings had a sexual attraction to Davis, the text messages do not demonstrate that Rings threatened to use his power to either take or withhold official action regarding Davis or her criminal case.

Power-Related Text Messages

{¶15} Some of the text messages were sent with the specific declaration that Rings would not take or withhold action in any way that would wield power over Davis. Rings

expressly stated in one message that he would "NEVER want to use any power [he] might have to coerce or manipulate" Davis. (Emphasis sic.) He also recognized the importance of not doing "anything that would appear to be taking advantage of [Davis'] situation." Rings also texted that he did not want "anyone to ever be able to say, well [Davis] only paid attention to you because you threatened her with legal stuff. That simply cannot happen. So I have to behave."

{¶16} While Davis testified that she believed Rings held power over her and her criminal case, Rings' messages to Davis established that *she* held the power when it came to the sexual suggestiveness of their text message exchanges. In one text, Rings told Davis, "feel free to tell me to 'fuck off.'" He also asked Davis what she was thinking one day and followed up his question with the statement, "I need to know where you are, so I don't make a fool of myself." Later in their exchanges, Rings tells Davis to "please let me know if my texts start to annoy you." Davis responded, "Awwwww im blushing!!! N no u don't annoy me silly, lol I LOVE IT, MAKES ME FEEL IMPORTANT." [sic] (Emphasis sic.) Davis then followed up her response with three emojis: a smiley face with hearts for eyes, a red heart, and red lips.

{¶17} Rings also allowed the conversations to progress at Davis' pace. In one text, after Rings asked for information on a woman Davis knew, Davis noted that she was spending time with her family that day. Rings responded, "if you are into something good with your family, do not let me mess it up. I can wait - - there is always tomorrow." Rings made no demands of Davis, and never threatened her with the use of his office if she did not want to continue the text message exchanges.

The July 4th Texts

{¶18} On July 4, 2017, Rings and Davis exchanged text messages that the state offered as proof that Rings coerced Davis. When Davis did not answer Rings' text

messages from 11:06 that morning, Rings sent Davis the following message at 5:06 p.m., "Seems like you don't really want to chat with me. I guess we'll talk about all of this in court someday soon." Even when viewed in a light most favorable to the prosecution, once the text message is placed in the context of Davis' role as a key witness against the man who beat her, Rings' statement was simply noting that Davis was expected to appear in court as a witness and testify during which Rings would be asking her questions.

{¶19} In fact, Rings' text message noting Davis' unwillingness to chat was sent in response to their earlier text message exchange in which Rings asked Davis to meet with him to discuss the criminal case against Braun and Nichols. Rings texted Davis, "Your case is important!! You are a true victim of a terrible crime." When Rings texted Davis on July 4th, he referenced meeting with Davis, and when she did not respond for several hours, texted the comment indicating that the two would speak about the criminal matter in court one day. Rings did not threaten the use of his office; he merely referenced Davis' role as a witness in a future court case.

"Legal Stuff" Texts

{¶20} On July 5th, Rings texted Davis and told her he hoped she had fun watching fireworks on the previous night. He then told Davis it was important for them to have time to talk. This exchange came immediately after Rings texted Davis the evening before about her role as a witness, "first thing is to get through the criminal stuff with Braun and Nichols. Then, you can focus all your attention on your children, and yourself." After Davis did not answer Rings for a few hours after his message to her on the morning of July 5th, Rings texted, "wow. You really don't want to talk to me, do you??? All right. I am gonna leave you alone, young lady. Good luck with all your legal stuff. Hope all of that works out for the best. I will talk to you about Mr Braun after your sentencing hearing. I am certain where you will be then." [sic.] While the state suggested this text message was threatening jail

time, the fact remained that Davis and the state had already negotiated an agreed sentence whereby Davis would go to jail for a minimum of 30 days and then to a drug treatment facility once there was an opening.

{¶21} Rings was correct that he was "certain" where Davis would be after sentencing because she and the state had already agreed to a recommended sentence of at least 30 days in jail, which would commence after sentencing. Everyone associated with the situation, not just Rings, knew where Davis would be after sentencing given the agreed sentence and signed plea form. Even when viewed in a light most favorable to the prosecution there was simply no "official action" Rings could take or withhold (or even *threaten* to take or withhold) in relation to Davis' sentencing. That remains true whether the consideration is in the context of a threat or innuendo of a threat.

{¶22} To further place the specific text in its proper context, once Davis answered Rings, he stated, "I don't mean to stress you out. It just seemed like you were trying very hard to avoid speaking to me. Which makes me nervous about [my] ability to do my job." As noted above, the only thing Rings stated he would do in the future was to talk to Davis about Braun, which was specifically related to Rings' obligation as prosecutor. On this occasion, Rings' text message was specific to Davis' role as a state's witness, not anything of a sexual nature that coerced Davis into taking any specific action or inaction other than testifying at a future trial.¹

{¶23} Although there is no doubt that Rings texted sexually related messages and returned Davis' flirtation, other messages were specific to Rings' prosecution of Braun. During one exchange, Rings asked Davis, "what the hell am I gonna do with you?" Davis responded, "whatever u want..." Rings then stated, "oh really? Here is what I want you to

1. The coercion statute expressly provides that prosecutors are not subject to the coercion statute when they take certain good faith actions in the interests of justice. R.C. 2905.12(B).

do tell the truth about Braun [], and then we'll see what happens after that." Davis then responded, "I did n I will." [sic.] As noted above, Rings referenced the case against Braun and that Davis' participation as a witness was necessary for the case. He did not, however, threaten to use his role as prosecutor against Davis during the text messages that were of a sexual nature, and any perception otherwise is unreasonable given the context of the text message exchanges.

Sentencing Texts

{¶24} The state attempted to show that Davis felt coerced into doing what Rings wanted given her impending sentencing hearing. During her testimony, Davis stated that she was afraid of Rings because "he's the prosecuting attorney. He can - - he could do whatever he wanted to me. * * * max me out, prison sentence." However, Davis had signed a plea agreement in which she had already agreed to a jail sentence. Moreover, during their text messages, Ring explained more than once that *only* the judge would sentence Davis.

{¶25} Despite Davis' testimony that she believed Rings controlled her sentence, Rings and she texted about her sentencing hearing and her possibly missing a summer vacation with her children. During this exchange, Rings stated, "Do you remember when you are to be sentenced? When is vacation over?? I could TRY to get your sentencing moved back until after vacation. That way, you could go with the family before going to rehab. Maybe. I need you here on August 14 to testify." (Emphasis sic.) Rings emphasized that he could "TRY" to have the date changed, and that changing the date was only a "maybe." However, Rings never offered to try and change the length of the sentence or to try and eliminate jail time for Davis' crime. At most, Rings offered to try and change the date of sentencing, offering to assist her so that she might be more cooperative in testifying against Braun and Nichols. Yet, he did not promise to do so, nor premise his

attempt to intervene on any sexual favors. Instead, Rings specifically noted that he needed Davis to testify on August 14th as part of Braun's prosecution.

{¶26} In a series of text messages, Rings and Davis discussed Davis having a meeting with probation for a presentence investigation. Davis asked Rings what a presentence investigation report was, and Rings answered, "the report to the Judge about your case to assist in imposing a sentence." In a follow up message, Davis suggested that each judge should have to spend six months in jail before ever sentencing someone so that judges could understand the impact jail had on people. Rings responded that he had never wanted to be a judge for that reason and that he did not want "the responsibility for someone else's fate." Davis testified that based on Rings' explanation of the presentence investigation process, she "really understood" what the report was. Thus, Davis understood that only the trial court could sentence her. Furthermore, Rings never implied, even by innuendo, that he could take official action to override the agreed plea.

{¶27} Moreover, and as noted above, Davis negotiated a plea wherein she agreed to spend 30 days in jail and participate in a drug rehabilitation program. While the sentence was jointly recommended and the trial court *could* sentence as it saw fit, Davis knew the responsibility of sentencing was solely on the judge. The state's attempt to show that Rings implied the use of his official power to affect Davis' sentence is simply unsupported by evidence where Davis already agreed to a jail sentence and understood that the judge would impose the sentence, not Rings.

Children-Related Texts

{¶28} The state also suggested that Rings used Davis' children as a coercion tactic. During some of the text messages, Davis referenced her children and that she did not have custody of them. Davis told Rings that her children "r my, life, without them [I'm] nothing..... Love my babies." Rings responded, "first thing is to get through the criminal stuff with Braun

[]. Then, you can focus all of your attention on your children, and yourself. I will help you with all of that, if I can." However, Rings did not promise to take or withhold any official action regarding Davis' child custody situation in exchange for Davis doing what he wanted, and he specifically noted that he would help "if" he was able. (Emphasis added.) This text message does not demonstrate Rings' use, or threatened use, of his position when he acknowledged to Davis that he was unaware if he could even help Davis with her situation.

{¶29} Even if Rings had conditioned his willingness to potentially help Davis at a future date with her children, he did so based on Davis' contribution to the prosecution of Braun, which is something prosecutors can do legally and ethically as part of the process of trying cases and ensuring witness participation. Even then, there simply was no quid pro quo approaching "coercion."

{¶30} Davis also testified that she would have exchanged sexual activity for Rings helping her with her children or her criminal case. However, no sexual exchange occurred. Thus, the only inference to be made is that Davis knew that Rings could not, in fact, use his power to help her with either her sentencing or her custody issues. Otherwise, and according to her own testimony, Davis would have exchanged sexual favors for Rings' use of power to assist her with her issues, which never happened.

Davis' Reaction to the Text Message Exchanges

{¶31} The state focused on the sexual nature of the text messages to show that such caused Davis discomfort. While Davis testified that she felt "overwhelmed" and that she sometimes did not understand why Rings was texting her, Davis' testimony clearly demonstrates that the text messages were invited, welcomed, and not something she perceived as threatening or coercive. Davis never testified that she was being coerced to do something particular, and never testified that Rings threatened the use of his public office against her.

{¶32} When asked how Rings' text messages made her feel, she replied "good. It felt good." Davis also testified that when she responded to Rings' messages, including when she sent pictures of herself in a negligée, that she was "flirting" because she wanted Rings to know that she "wasn't that dirty person in orange."² Rather than feeling coerced or forced into any action, Davis testified that she felt comfortable texting Rings enough that she "said what [she] wanted to" during the message exchanges. Davis testified that she also felt "flattered" and "comfort[ed]," and that sending Rings pictures of herself in her lingerie made her "feel better about myself."

{¶33} When asked why she chose to respond to Rings' text messages, rather than indicating she felt coerced to do so, Davis testified that it was because she "didn't want to just not text him back. I didn't want to be rude." Davis also testified that she exchanged text messages with Rings because, "I thought it would be in my favor."³

{¶34} As noted earlier, Davis and Rings exchanged messages on the day of the meeting wherein Davis alleged that Rings forced himself upon her sexually. In addition to the text regarding strippers and casinos, Davis texted, "see, maybe we can both save each other.... You only live once n you never know when you gonna go.... Take chances, have fun, make memories, love your babies... [because] in the end, that is all that matters." Rings later texted Davis, "so.... We still have a few things we need to talk about.... I think we need [to] talk sometime where I can bring [a detective] along. He knows the case pretty well. Probably better than I do." Davis responded, "ok cool." Soon thereafter, the text message exchange between Davis and Rings ended when Rings blocked further communication from Davis. However, Davis did not mention any discomfort she allegedly

2. Davis referenced her mug shot in some of the text messages and also suggested that she "cleaned up nice" as compared to her appearance when she was arrested and appeared in jail clothing.

3. Davis' testimony directly contradicts the state's theory of coercion contained in the Bill of Particulars, that Davis felt threatened and thus needed to respond to Rings' texts.

felt. Nor did she raise the issue that Rings was using or threatening to use official power to make her do something she did not want to do.

III. Conclusion

{¶35} The state clearly established Rings' behavior in multiple ways was morally unacceptable and inappropriate for a prosecutor. The state repetitively impugned Rings' character with evidence inferring that Rings intended to develop a relationship at some point in time that was sexual in nature with Davis. However, neither the text messages, nor Davis' testimony, demonstrate that Rings attempted to purposely coerce Davis into taking or refraining from taking action concerning which she had a legal freedom of choice. Nor does the evidence demonstrate that Rings threatened by innuendo that Davis do whatever he wanted in order for her to avoid the use of his power. Evidence of poor judgment and poor character is not sufficient to satisfy the specific elements of coercion. After viewing the evidence in a light most favorable to the prosecution, we find that any rational trier of fact could not have found the essential elements of coercion proven beyond a reasonable doubt.

{¶36} Having found that Rings' conviction for coercion is not supported by sufficient evidence, we sustain his first assignment of error. Given this disposition, we find Rings' three other assignments of error moot.⁴

{¶37} Judgment reversed, and the matter is remanded so that Rings may be discharged.

M. POWELL, P.J., concurs.

S. POWELL, J., dissents.

S. POWELL, J., dissenting.

{¶38} The standard of review an appellate court applies when reviewing whether a

4. We would not disagree with the Dissent's resolution of Rings' Fourth Assignment of Error were we to consider such.

conviction is supported by sufficient evidence is well established. "When a court reviews a record for sufficiency, '[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. Maxwell*, 139 Ohio St.3d 12, 2014-Ohio-1019, ¶ 146, quoting *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus; *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781 (1979). In making this determination, "[t]he court must defer to the trier of fact on questions of credibility and the weight assigned to the evidence." *State v. Dillard*, 4th Dist. Meigs No. 13CA9, 2014-Ohio-4974, ¶ 27, citing *State v. Kirkland*, 140 Ohio St.3d 73, 2014-Ohio-1966, ¶ 132. Whether a conviction is supported by sufficient evidence is a question of law that we review de novo. *State v Jackson*, 4th Dist. Highland No 18CA7, 2018-Ohio-4289, ¶ 10; *State v. Allah*, 4th Dist. Gallia No. 14CA12, 2015-Ohio-5060, ¶ 8.

{¶39} Applying this standard of review, I believe the text message exchanges between Rings and Davis, coupled with testimony elicited at trial, established each of the essential elements of coercion in violation of R.C. 2905.12. Davis, having the legal freedom of choice whether she would text message, sext, or engage in sexual relations with Rings, was faced with a prosecutor who wanted those things and was implying to Davis the vigorous or lackluster prosecution of her attackers if she did not respond favorably to his advances, thus leaving Davis vulnerable to her attackers' future retribution. Therefore, when viewing the evidence in a light most favorable to the prosecution, I believe the state provided sufficient evidence to support Rings' conviction for coercion in violation of R.C. 2905.12. Accordingly, because I would find the state provided sufficient evidence to support Rings' conviction, I must dissent from the majority's decision as it relates to Rings' first assignment of error.

{¶40} However, although I believe the state provided sufficient evidence to support

Rings' conviction for coercion in violation of R.C. 2905.12, I would nevertheless reverse Rings' conviction and remand this matter to the trial court for further proceedings based upon Rings' fourth assignment of error. In his fourth assignment of error, Rings argues the trial court abused its discretion by (1) permitting David Andrew Wilson, the former Prosecutor for Clark County, Ohio, to give his expert opinion on the manner in which Ohio's Rules of Professional Conduct pertain to prosecutors, and by (2) permitting Wilson to testify that the text messages Rings' sent to Davis violated Ohio's Rules of Professional Conduct. I agree.

{¶41} The trial court determined that Wilson's expert testimony regarding his knowledge of Ohio's Rules of Professional Conduct as it pertains to prosecutors was admissible as it would provide "a discussion of the standards of conduct contained within the Ohio Rules of Professional Conduct," something which the trial court found relevant to the "understanding of a lay jury." However, although the trial court determined that Wilson could provide expert testimony regarding his knowledge of Ohio's Rules of Professional Conduct, the trial court determined that Wilson was not permitted to "render opinions" as to whether Rings "violated any particular rule or criminal statute." But, despite the trial court's ruling, and over multiple objections, Wilson nevertheless testified:

[B]ased on my knowledge, my training, and my experience in the field of prosecution and my knowledge and training on the Ohio Rules of Professional Conduct, I - - I find no legitimate or appropriate reason under [Rule 3.8], in light of the prosecutor's duty to be a minister of justice, for these types of texts or communications between a - - a prosecutor and a - - and a witness or a victim.⁵

{¶42} Thereafter, when asked what he based his opinion on, Wilson testified:

[M]any years of training in - - in this field. Many years of work in

5. Rule 3.8 of Ohio's Rules of Professional Conduct sets forth a prosecutor's responsibilities. It does not say anything about texting to, communicating to, or having a romantic interest in, a victim or witness. The idea that prosecutors are "ministers of justice" is only in a comment to the rule.

this field. Many hours of interactions with victims, especially victims who are vulnerable. Victims of physical or emotional abuse, and many, many hours of training in professional conduct and ethics."

{¶43} The state then relied on Wilson's testimony in its closing argument by telling the jury that "it's pretty clear what everyone thought after reading these messages. It's a violation of [the] code."

{¶44} In *State v. Searfoss*, 6th Dist. Wood Nos. WD-18-005, WD-18-007, and WD-18-008, 2019-Ohio-4619, the trial court permitted the state to use the Trust Code, R.C. Chapters 5801 to 5811, as well as Ohio's Rules of Professional Conduct, as evidence at a jury trial where the appellant was being tried for aggravated theft, money laundering, engaging in a pattern of corrupt activity, grand theft, theft, and aggravated theft. The state then relied upon the Trust Code and Ohio's Rules of Professional Conduct as part of its closing argument to establish appellant's guilt. After being found guilty, appellant appealed his conviction to the Sixth District Court of Appeals and argued that the trial court erred when it "allowed the state to reference the Trust Code and the Rules of Professional Conduct in its closing argument, thereby supplanting the trial court's exclusive role" to instruct the jury as to the applicable law. *Id.* at ¶ 123. The Sixth District agreed.

{¶45} In so holding, the Sixth District determined that the trial court's decision allowing the state to use the Trust Code and Ohio's Rules of Professional Conduct as evidence of appellant's guilt "set the stage for the jury to improperly hold appellant criminally accountable for his alleged violation of non-criminal statutes pertaining to a trustee's fiduciary duty and rules governing the practice of law." *Id.* at ¶ 126. The Sixth District found this was "further solidified" when "the state relied upon appellant's violation of the prohibition against trustee commingling contained in R.C. 5808.10(B) to make its case concerning the charges of theft, money laundering, and engaging in a pattern of corrupt activity." *Id.* This,

according to the Sixth District, may have "confused the jury by inviting a criminal conviction premised upon the violation of civil laws." *Id.* at ¶ 129. As the Sixth District stated:

[A]ppellant's knowledge of appropriate trustee conduct under the Trust Code is not a concern in this case, where appellant is charged with criminal, not civil, wrongdoing. As stated above, this is a theft case. Even if appellant violated the Trust Code and the Rules of Professional Conduct, such violations do not constitute crimes.

Id. at ¶ 128.

{¶46} I believe the Sixth District's rationale in *Searfoss* applies here. Similarly to the facts set forth in *Searfoss*, Wilson's expert testimony regarding Rings' alleged violation of Ohio's Rules of Professional Conduct was highly prejudicial to Rings. This is because, through Wilson's expert testimony, the state was able to suggest that Rings must be held to a higher standard given the ethical obligations of prosecutors as set forth by Ohio's Rules of Professional Conduct. The higher standard imposed on Rings through Ohio's Rules of Professional Conduct, coupled with Wilson's expert testimony that the text messages exchanged between Rings and Davis were inappropriate and unethical, made it much more difficult, if not impossible, for the jury to treat Rings the same as any other public official charged with coercion. This higher standard instead allowed the jury to infer Rings was guilty by virtue of his alleged breach of Ohio's Rules of Professional Conduct. Just like in *Searfoss*, this connection was further solidified during the state's closing argument when the state relied upon Rings' alleged violation of Ohio's Rules of Professional Conduct to establish Rings' guilt beyond a reasonable doubt.

{¶47} Similar to the state in *Searfoss*, the state in this case used Rings' alleged *civil* wrongdoing to bolster its *criminal* case against him. The Sixth District found this constituted reversible error. I agree with the Sixth District. This becomes even more clear in this case when considering the state argued to the jury that the public deserved better than the

actions taken by Rings and implored the jury to "expect more. Expect more from your elected official. Expect more from our society." However, while I agree that we should expect more from our elected officials, even when assuming Rings' conduct was a violation of Ohio's Rules of Professional Conduct, such inappropriate and unbecoming behavior by an elected official does not necessarily mean it was also a crime under the Ohio Revised Code.

{¶48} Just as in *Searfoss*, I believe the trial court's decision to admit Wilson's expert testimony may have misled the jury into believing a prosecutor's violation of Ohio's Rules of Professional Conduct was the professional equivalent to a criminal defendant's violation of the Ohio Revised Code. Given the potential confusion that may have arisen within the members of the jury, I believe the trial court's decision to admit Wilson's expert testimony was an abuse of discretion. Therefore, while I find the state did provide sufficient evidence to support Rings' conviction of coercion in violation of R.C. 2905.12, I would nevertheless sustain Rings' fourth assignment of error, overrule as moot Rings' second and third assignments of error, reverse Rings' conviction, and remand this matter to the trial court for further proceedings.

Piper, J., of the Twelfth Appellate District, sitting by assignment of the Chief Justice, pursuant to Section 5(A)(3), Article IV of the Ohio Constitution.

M. Powell, J., of the Twelfth Appellate District, sitting by assignment of the Chief Justice, pursuant to Section 5(A)(3), Article IV of the Ohio Constitution.

S. Powell, J., of the Twelfth Appellate District, sitting by assignment of the Chief Justice, pursuant to Section 5(A)(3), Article IV of the Ohio Constitution.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS REVERSED, and that the CAUSE IS REMANDED so that appellant may be DISCHARGED. Appellee shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Washington County Common Pleas Court to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

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

M. Powell, J.: Concurs in Judgment and Opinion.

S. Powell, J.: Dissents with Opinion.

For the Court

BY: _____
Robin N. Piper, Judge

NOTICE TO COUNSEL

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