

**IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
UNION COUNTY**

STATE OF OHIO,

CASE NO. 14-25-44

PLAINTIFF-APPELLEE,

v.

SAI PRAVEEN LINGAM,

**OPINION AND
JUDGMENT ENTRY**

DEFENDANT-APPELLANT.

**Appeal from Union County Common Pleas Court
Trial Court No. 24-CR-0011**

Judgment Affirmed

Date of Decision: September 28, 2026

APPEARANCES:

Marcus A. Ross and Darren L. Meade for Appellant

Samantha Hobbs for Appellee

WILLAMOWSKI, J.

{¶1} Defendant-appellant Sai Praveen Lingam (“Lingam”) appeals the judgment of the Union County Court of Common Pleas, asserting that (1) an expert witness was not qualified to diagnose the victim, A.K., with post-traumatic stress disorder; (2) the trial court erred in denying his motion for a mistrial; (3) his five convictions for rape are not supported by sufficient evidence and are against the manifest weight of the evidence; (4) the State engaged in prosecutorial misconduct; and (5) he was denied his right to the effective assistance of counsel. For the reasons set forth below, the judgment of the trial court is affirmed.

Facts and Procedural History

{¶2} In 2019, A.K. relocated with her mother to Dublin, Ohio while her father remained where they had previously lived in California. After moving to Ohio, A.K. did not live far from the house where her uncle, Lingam, resided in Dublin. Lingam was married to the sister of A.K.’s mother and had a son, R.L., who was around A.K.’s age.

{¶3} While A.K.’s father visited her around four times a year, she frequently spent time at Lingam’s house as a teenager. A.K. testified that Lingam came to be like “a father” to her while Lingam described A.K. as being like a “daughter” to him. (Sept. 10 Tr. 130, 227). Additionally, A.K.’s father explained that they were a family of Indian descent and that, in their Telugu-speaking culture, a maternal

uncle would have a special role in the lives of nieces or nephews, making him “almost a father figure” to them. (*Id.* at 145).

{¶4} A.K.’s family would often take walks with Lingam’s family. On these walks, A.K. would usually walk ahead of her family members. At times, Lingam would match A.K.’s pace and talk with her as they walked alongside each other. On one of these occasions, Lingam mentioned that he knew that she had recently kissed one of her male friends. In subsequent conversations, Lingam spoke with A.K. about her relationships with boys; the bodies of other females; and her figure.

{¶5} A.K. also testified that, on one of their walks, Lingam pulled on her shirt and had her take a picture of her bust. A.K. also stated that, shortly after this incident, Lingam had her come upstairs to his room where he showed her pornography on an iPad and stated that he was letting her pick out what videos to view because he knew she was not allowed to do this at home.

{¶6} After A.K. turned sixteen in the spring of 2022, Lingam helped her to practice driving. Around this time, A.K. went with Lingam and R.L. on a trip to New York City. A.K. stated that, while R.L. was at an event, Lingam talked with her about her past sexual relationships but told her that she should tell R.L. that they had just been talking about driving. A.K. later testified that she did not feel comfortable speaking with Lingam about these subjects but felt like she “had to” engage in these conversations “because that’s what he expected [her] . . . to do.” (Sept. 9 Tr. 216).

{¶7} Early in the summer of 2022, she received a friend request from a “Kevin Vincent” (“Vincent”) on Snapchat. Vincent indicated that he was a teenage boy who had become attracted to her after he had seen her at a Mid Ohio Foodbank event where he was volunteering. A.K. testified that, in this timeframe, Lingam had been encouraging her to pursue sexual relationships with boys and told her that she should add Vincent as a friend on Snapchat. He also said that Vincent appeared to be “safe” and “trustworthy.” (Sept. 9 Tr. 222). (Ex. 2).

{¶8} After exchanging messages with A.K., Vincent began to discuss sexual topics with her. A.K. and Vincent then began to exchange nude pictures on Snapchat. A.K. testified that Lingam encouraged her to send these nude pictures to Vincent. At some point, A.K. told her high school friend, N.E., about the pictures she was sending to Vincent. After viewing some of these communications, N.E. told A.K. that the pictures Vincent had sent of himself looked like they had been pulled from a Google image search. A.K. then performed a reverse image search and found out that the pictures that Vincent had sent her were from the internet.

{¶9} Upon this discovery, N.E. and A.K. began discussing the possibility that Lingam was the person behind the “Kevin Vincent” account. During this time, A.K. tried texting the Vincent account while she was with her uncle and noticed that she did not get any immediate responses. To determine whether Vincent was Lingam, one of N.E.’s friends crafted a link that appeared to be for a lewd image but was designed to disclose the receiver’s internet protocol address (“IP address”) when

clicked. After A.K. sent this link via Snapchat, the IP address that was returned connected the Vincent account to Lingam's house in Dublin, Ohio. Her friends then advised her to stay away from her uncle.

{¶10} However, A.K. testified that she "didn't want to believe" that her uncle was sexting with her and "just didn't think family would do that." (Sept. 9 Tr. 233; Sept. 10 Tr. 120). A.K. eventually confronted Lingam and asked him whether he was behind the Vincent account. In response, Lingam gave A.K. his phone to examine. She testified that she did not find any indication on his phone that he was active on Snapchat as Vincent. For these reasons, she continued to visit with Lingam.

{¶11} As A.K. was beginning her junior year of high school in mid-August, Lingam communicated with her about taking early morning walks before she went to school. A.K. initially expressed hesitance because she wanted more sleep, but she eventually agreed to take a walk with Lingam at around 6:00 A.M. At this time, A.K. was sixteen years old while Lingam was around forty-five years old.

{¶12} On August 17, 2022, Lingam drove A.K. to the Glacier Ridge Metro Park ("GRMP") in his Honda CR-V. A.K. testified that, at the park, Lingam told her to get in the backseat of the vehicle and that she complied "because he told me to." (Sept. 9 Tr. 237). A.K. testified that, while Lingam was in the backseat with her, he unhooked her bra; touched her breasts; put his hands down her sweatpants; and inserted his fingers into her vagina.

{¶13} A.K. also testified that Lingam tried to kiss her multiple times but that she closed her mouth to avoid him. A.K. testified that she did not want to engage in this conduct but stated that she did not fight him because she did not know what he would do in response and was afraid that he would “hurt” her. (Sept. 9 Tr. 241). She also said that she told him that this conduct was wrong and that, in response, Lingam said it was fine because they were not blood relatives.

{¶14} On August 18, 2022, Lingam picked up A.K. for another early morning walk. She testified that she agreed to go with him because she did not believe that any more sexual conduct would occur. She said, “I thought that he understood that this is not something that I wanted to happen to me because I was talking about how it was wrong and that he was cheating on his wife and that it’s just not something that should happen.” (Sept. 9 Tr. 243). A.K. reported that, after Lingam parked his car in the GRMP, “[h]e touched [her] . . . breasts and finger[ed]” her. (Sept. 9 Tr. 304).

{¶15} On August 19, 2022, Lingam drove A.K. to the GRMP at roughly 6:00 A.M. and parked his vehicle near to a swing set. When A.K. got out of the vehicle, Lingam asked her if she wanted to go on a walk or get into the backseat together. A.K. testified that she told him that she wanted to go on a walk because she “want[ed] to avoid whatever sexual activities he was going to do to me.” (Sept. 9 Tr. 253).

{¶16} A.K. testified that Lingam then grabbed her by the waist and pulled her into the vehicle. She stated that Lingam laid her down on her back. While she could not remember all of what transpired next, she testified that he did put his fingers inside of her vagina and later explained that the “same” conduct occurred on the three days on which they were at the GRMP. (Sept. 9 Tr. 304). A.K. also testified that Lingam took pictures of her body in a state of undress without her consent. Later that day, A.K. sent the following text to N.E.:

Basically he [Lingam] said tmrw morning walking? And I said I don't think I'm going to come anymore

And he was like why and I was like I don't want to continue our relationship like this and he was just like ok

But when I tried to convince him in person he was like pls do this for me I need this and some bs and saying that he would never put it in without my consent but when I told him I don't want to today this morning and when I tried to run he grabbed me and made me get in the car and do sh*t

But I feel like the next he talks to me alone he'll convince me somehow

(Ex. 8).

{¶17} On August 23, 2022, Lingam invited A.K. to come to his house so that they could take a walk together in the evening. A.K. testified that she did not believe that any sexual conduct would occur because she thought other people would be at the park in the evening. When she got to Lingam's house, her uncle was home alone

as her cousin was at a Taekwondo lesson and her aunt was shopping. Lingam told her that he needed help with a task upstairs.

{¶18} A.K. testified that, once she got into his bedroom, Lingam directed her to undress and that she took off her clothes in response because she was afraid of him. She stated that he then got undressed and obtained a condom from his closet. A.K. testified that Lingam returned to where she was located on the bed and started to kiss her, though she again closed her mouth to stop him.

{¶19} A.K. stated that Lingam then got on top of her body and inserted his genitalia into her vagina, causing her constant pain. She testified that she attempted to “push him off” of her body but could not move him. (Sept. 9 Tr. 267). After this incident, she went with her uncle to pick up her cousin from Taekwondo. A.K. stated that Lingam laughed when she told him that, as a result of the sexual conduct, she was experiencing pain from sitting down.

{¶20} On August 28, 2022, A.K. went to Lingam’s house for a family gathering. She was in the upstairs loft spending time with her cousin when Lingam asked her if she wanted to watch a movie with him in his bedroom. A.K. testified that, when she and Lingam were watching a movie alone in his room, he placed his fingers inside of her vagina, touched her breasts, and told her to perform oral sex on him.

{¶21} A.K. explained that Lingam could use his phone to monitor if anyone was coming towards his bedroom because he had video cameras in the upstairs

hallway. She testified that Lingam moved to the other side of the bed when he noticed that his son was walking towards the bedroom. A.K. stated that, after Lingam's son had entered and left the room, she began to cry and begged Lingam to let her go. She then ran out of the room crying.

{¶22} A.K. testified that, at some point on August 28, she told Lingam that this conduct needed to stop but that he responded by saying, "Watch how quickly things will go south." (Sept. 9 Tr. 271). A.K. further explained that, during the course of this situation, Lingam had told her that she would "lose" her cousin, R.L., if she reported this conduct and made her promise not to tell anyone about his sexual conduct. (Sept. 10 Tr. 125). She also stated that, during a prior conversation, Lingam indicated to her that he intended for this conduct to continue until she got married.

{¶23} On the evening of August 28, 2022, A.K. sent a text message to N.E. that stated, "I ended things with my uncle, like for good." (Sept. 9 Tr. 43). The following exchange then occurred:¹

N.E.: explain everything

A.K.: Yeah bae but I'm kinda worried

N.E.: wdym [what do you mean]?

¹ The text messages exchanged between A.K. and N.E. contain numerous text initialisms. In the following reproduction of these text exchanges, each initialism will be followed by its long form meaning in brackets. In turn, the long forms in the brackets are drawn from N.E.'s trial testimony where she verbally explained these initialisms as she read these text messages out loud.

N.E.: why bae

N.E.: did he threaten you?

A.K.: Like he said it was our destiny and if doesn't happen everything will turn bad

N.E.: what the h*ll

A.K.: Ik [I know]

N.E.: this psychopath

A.K.: But everything he's been saying has been true

A.K.: Well sorta

A.K.: Idk [I don't know]

A.K.: He said that someone in my family was Not well

A.K.: And then I called my dad and he said he got Covid

N.E.: No way . . . [A.K.]

N.E.: dont

A.K.: And idk [I don't know] it freaks me out and I cat [sic] stop crying cuz I miss my dad sm [so much]

N.E.: jathakams are vague for a reason²

N.E.: when they're wrong people br[u]sh it off

N.E.: but when theyre right people worship it

N.E.: so dont even worry abt [about] that

A.K.: Yeah I guess

² During her testimony, N.E. explained that "jathakam" was essentially "another word for . . . astrology." (Sept. 9 Tr. 44).

A.K.: Ur [you are] right I just need some confidence cuz I'm worried that what he say might turn true

N.E.: dont worry

N.E.: i will back u up a hundred percent

...

A.K.: I just hope nothing bad happens

A.K.: I feel like I'm going to think that every time something bad happens it's because of this

A.K.: But u need to convince me it's not

A.K.: Or I will literally drive myself to the ends

N.E.: I understand that

A.K.: If what he says is true I hope ur [you are] the one thing doesn't leave me

N.E.: always do not even worry

...

A.K.: Disliked "did you end it in person?"

N.E.: baeeeee

...

A.K.: No but I told him multiple times he just manipulated me

...

N.E.: hes a pedo [pedophile]

A.K.: fr [for real]

...

A.K. I can't believe I didn't see how bad this was earlier until I got out of his trance or some sh*t.

(Ex. 39). A.K. later explained that she grew up in a cultural context that accepted astrology and palmistry. For this reason, she said, "I was really scared that whatever he was saying and cursing me was going to come true." (Sept. 10 Tr. 124). She also testified that Lingam told her that the lines on the palm of her hand told him that she was going to have sex with him.

{¶24} On the evening of August 30, 2022, A.K. and N.E. exchanged the following text messages:

A.K.: I didn't like what I did with my uncle and I feel like it was kinda forced.

A.K.: I didn't want to do it.

N.E.: . . . it was definitely forced.

A.K.: And I don't know why I told u I wanted to then.

A.K.: I was just scared of what would happen if I didn't.

...

N.E.: is he threatening you?

...

A.K.: No nothing like that but he was like trying to scare me like I said before

...

A.K.: Like he's telling me bad things will happen if I don't do sh*t w[ith] him

...

N.E.: hes just trying to guilt trip u with religion

N.E.: but thats not religion thats just superstition

...

A.K.: Ik [I know] I feel so stupid for believing everything he said to me

...

A.K.: Ur [you are] right and I was so stupid to not realize this and I literally forced myself.

(Ex. 39). A.K. then informed her father about what had transpired. While he had a trip to Ohio scheduled for September 15, 2022, his discussion with A.K. prompted him to fly to Ohio earlier than he had planned.

{¶25} On September 4, 2022, A.K. went with her father to the Dublin Police Department and reported that Lingam had raped her. On September 14, 2022, A.K. went to the Child Assessment Center (“CAC”) at Nationwide Children’s Hospital for an interview. The police then conducted two interviews with Lingam.

{¶26} During his first police interview with Officer Jake Williams (“Officer Williams”), Lingam denied A.K.’s allegations. He stated that A.K. was like his “daughter” and that he helped her with homework, learning how to drive, and getting good grades. (Sept. 10 Tr. 227). He told the police that A.K. might be angry

at him for telling her mother about what A.K. had been doing, leading her to have increased restrictions.

{¶27} During this interview, he confirmed that he went on walks alone with A.K. at the locations and times that she had described. He also confirmed that he watched a movie with her in his bedroom but said that they remained on opposite sides of his large bed. When asked about whether he was involved in Snapchat, Lingam indicated that he created and deleted an account on August 28, 2022.

{¶28} Law enforcement then extracted the data from Lingam's phone but did not find any evidence that was relevant to this investigation. Officer Williams testified that he obtained a search warrant for Kevin Vincent's Snapchat account and determined that the IP address for this profile was linked to Lingam's address in Dublin, Ohio. The police also located another Snapchat account that was associated with Lingam's IP address. This second Snapchat account had been used on August 28, 2022, which was the date on which Lingam said he had created and deleted a Snapchat account. The police also performed a search of Lingam's residence and located a box of condoms in his bedroom closet as described by A.K.

{¶29} At a second police interview, Officer Williams told Lingam that he had not been forthcoming with the police about his use of Snapchat. In response, Lingam stated that A.K. had told him that she had sent nude images to people and that he created the "Kevin Vincent" account to see if this was true. He indicated that this account was made to monitor A.K. because she had a troubled family life

and that he deleted the nude images on receipt. But Lingam again denied A.K.'s allegations.

{¶30} In June of 2023, A.K. began seeing a licensed professional clinical counselor named Kathryn Barrett ("Barrett"). A.K. went to counseling because she had been struggling with anger, irritability, slipping grades, and difficulty sleeping. During their early sessions, A.K. made a vague reference to an incident that had occurred before the onset of these issues but did not provide further details. Barrett's initial assessment was that A.K. was dealing with an adjustment disorder related to various life stressors.

{¶31} However, A.K. subsequently disclosed what had transpired with her uncle. A.K. also reported having nightmares and flashbacks about these incidents in addition to having feelings of guilt and shame. Barrett testified that, after hearing about these incidents, she modified her diagnosis to post-traumatic stress disorder ("PTSD"), noting that A.K. was exhibiting the requisite signs of physiological distress.

{¶32} On January 19, 2024, Lingam was indicted on five counts of rape in violation of R.C. 2907.02(A)(2), first-degree felonies; five counts of sexual battery in violation of R.C. 2907.03(A)(1), third-degree felonies; five counts of gross sexual imposition in violation of R.C. 2907.05(A)(1), fourth-degree felonies; and one count of kidnapping in violation of R.C. 2905.01(A)(4), a first-degree felony. On June 28, 2024, a superseding indictment was filed that added five counts of sexual battery

in violation of R.C. 2907.03(A)(5), third-degree felonies, to the sixteen charges that were contained in the original indictment.

{¶33} The jury trial on these charges occurred from September 8 to 12, 2025. At trial, the State called A.K.’s counselor, Barrett, to testify as an expert witness. She testified that she had diagnosed A.K. with PTSD and described Lingam’s tactics as coercion through manipulation. After Barrett testified that Lingam had a “parental capacity” in A.K.’s life, defense counsel objected on the grounds that this opinion was not contained in her expert report and made a motion for a mistrial. (Sept. 9 Tr. 175). The trial court declined to declare a mistrial but instructed the jury to disregard the challenged opinion as it was stricken from the record.

{¶34} N.E. testified at trial regarding the content of the text messages that she had exchanged with A.K. in July and August of 2022. The State also introduced recordings of A.K.’s CAC interview at Nationwide Children’s Hospital and the two police interviews with Lingam. A.K. testified on September 9 and 10, 2025. She testified about her communications with the Vincent account on Snapchat; described each of the incidents of sexual abuse; and explained her thought process across these events.

{¶35} On cross-examination, A.K. was questioned as to whether she truly doubted that Lingam was behind the Vincent account because some of text messages to N.E. seemed to indicate that she had reached this conclusion over the summer time. But A.K. explained that in previous and later text messages she

continued to have doubts that her uncle was sexting her as Vincent and that she talked herself out of believing that her uncle was Vincent. She further testified that she continued to doubt that Lingam was posing as Vincent until the police confirmed he was behind this Snapchat account.

{¶36} Defense counsel also pointed to a text exchange between A.K. and N.E. in which they discussed what A.K. should tell her father about what had happened. This exchange reads as follows:

N.E.: whats up

A.K.: What am I supposed to tell him again

A.K.: I keep forgetting

A.K.: Just so much on my mind

A.K.: I'm calling him now so text fast

N.E.: tell him that you were afraid that if you didn't go he would do something worse to you

N.E.: and if they say why didn't you fight then say you were so scared that something bad would happen if you did

A.K.: Ok

N.E.: keep saying that you were afraid

N.E.: and manipulation

A.K.: Ok

...

A.K.: Im having a mental breakdown and I cant stop thinking about what's going on rn [right now] at home

A.K.: Im so broken

(Ex. 39). Defense counsel then inquired into whether A.K. and N.E. were crafting an alternative narrative of what had transpired in these texts.

{¶37} In response, A.K. stated that she “didn’t know how to explain it [this situation] to” her father. (Sept. 10 Tr. 70). She also said that, across these text threads, N.E. was helping her to “reason[]” through what she had gone through with her uncle. (Sept. 10 Tr. 69). During a similar line of questioning, N.E. explained that she was repeating much of what A.K. had told her previously.

{¶38} A.K. was also asked about why she continued to see her uncle after the sexual conduct began. In response, A.K. said, “I felt like I had to. I was pressured into it.” (Sept. 10 Tr. 63). She also indicated that she did not understand at that time that she was being manipulated by Lingam and that she was confused. Defense counsel also noted that A.K.’s trial testimony contained details that were not disclosed during her interview at Nationwide Children’s Hospital. She indicated that she did not recall all of the details at that time and was nervous.

{¶39} At the close of the State’s evidence, the trial court granted Lingam’s Crim.R. 29 motion as to the five counts of sexual battery in violation of R.C. 2907.03(A)(5) after finding that the evidence at trial was not sufficient “to establish [the] In Loco Parentis” element of these charges. (Sept 11 Tr. 155). On September

12, 2025, the jury returned verdicts of guilty on the sixteen remaining charges against Lingam.

{¶40} On October 27, 2025, Lingam appeared for sentencing. After the trial court conducted a merger analysis and the State made its election on the counts that remained, Lingam had five convictions for rape in violation of R.C. 2907.02(A)(2). The trial court then ordered Lingam to serve an aggregate prison term of twenty-five to twenty-seven-and-a-half years with twenty-five years of this sentence being mandatory. The trial court issued its judgment entry of sentencing on October 27, 2025.

{¶41} Lingam filed his notice of appeal on November 26, 2025 and raises the following five assignments of error:

First Assignment of Error

The trial court abused its discretion when it certified the expert Kathryn Barrett, in the absence of specific qualifications and scientifically accepted methods.

Second Assignment of Error

The trial court abused its discretion when it denied trial counsel's motion for a mistrial after witness, Kathryn Barrett, testified that defendant acted in a 'Parental Capacity.'

Third Assignment of Error

The State provided insufficient evidence to support a conviction against the defendant and the jury's guilty verdict is against the manifest weight of the evidence.

Fourth Assignment of Error

The State engaged in misconduct by instructing their witness how to answer questions during a juror's break in the middle of testimony.

Fifth Assignment of Error

Trial counsel's assistance was ineffective in making prejudicial comments on the record, in the presence of the jury.

First Assignment of Error

{¶42} Lingam argues that the trial court erred in permitting Barrett to testify as an expert witness.

Legal Standard

{¶43} “The distinction between lay and expert witness opinion testimony is that lay testimony ‘results from a process of reasoning familiar in everyday life,’ while expert testimony ‘results from a process of reasoning which can be mastered only by specialists in the field.’” *State v. McKee*, 91 Ohio St.3d 292, fn. 2 (2001), quoting *State v. Brown*, 836 S.W.2d 530, 549 (Tenn. 1992). Evid.R. 702 addresses expert testimony and provides the following:

A witness may testify as an expert if the proponent demonstrates to the court that it is more likely than not that all of the following apply:

(A) The witness' testimony either relates to matters beyond the knowledge or experience possessed by lay persons or dispels a misconception common among lay persons;

(B) The witness is qualified as an expert by specialized knowledge, skill, experience, training, or education regarding the subject matter of the testimony;

(C) The witness' testimony is based on reliable scientific, technical, or other specialized information and the expert's opinion reflects a reliable application of the principles and methods to the facts of the case. To the extent that the testimony reports the result of a procedure, test, or experiment, the testimony is reliable only if all of the following apply:

(1) The theory upon which the procedure, test, or experiment is based is objectively verifiable or is validly derived from widely accepted knowledge, facts, or principles;

(2) The design of the procedure, test, or experiment reliably implements the theory;

(3) The particular procedure, test, or experiment was conducted in a way that will yield an accurate result.

“When performing this analysis, we are mindful that ‘courts should favor the admissibility of expert testimony whenever it is relevant and the criteria of Evid.R. 702 are met.’” *State v. Nemeth*, 82 Ohio St.3d 202, 207 (1998).

Standard of Review

{¶44} Decisions related to the admissibility of expert opinion testimony are entrusted to the sound discretion of the trial court. *State v. Newcomb*, 2001 Ohio App. Lexis 5237, *19 (3d Dist. Nov. 27, 2001) (Trial courts have discretion over matters related to the scope of expert testimony); *State v. Simon*, 1998 Ohio App. Lexis 5095, *11 (3d Dist. Oct. 21, 1998) (Trial courts have discretion over matters related to whether a witness is qualified to testify as an expert).

{¶45} In general, an appellate court will not reverse a decision regarding the admissibility of expert opinion testimony absent an abuse of discretion. *State v.*

Baker, 2025-Ohio-5463, ¶ 50 (3d Dist.). More than an error of judgment, an abuse of discretion is present where a decision is arbitrary, unconscionable, or unreasonable. *State v. Ortega*, 2017-Ohio-239, ¶ 10 (3d Dist.).

Legal Analysis

{¶46} On appeal, Lingam argues that Barrett did not have the “qualifications for testifying regarding the diagnosis and treatment of PTSD.” (Appellant’s Brief, 9). Importantly, he “does not dispute Ms. Barrett’s qualifications as a mental health professional.” (*Id.*). At trial, Barrett testified that she is a licensed professional clinical counselor in the state of Ohio, permitting her to diagnose and treat mental health disorders. To obtain her license, she got a master’s degree in clinical mental health counseling from Hodges University and completed various residency requirements as part of her graduate program.

{¶47} Barrett also testified that her licensure requirements are similar to those for social workers and that she takes continuing education classes from the counselor of social work and marriage therapy board. *See State v. Ibrahim*, 2015-Ohio-3345, ¶ 39 (8th Dist.). She then stated that, after working in a group practice for several years, she formed an independent practice and has treated hundreds of clients in her career.

{¶48} After Barrett testified about her credentials and experience, the trial court concluded that she was qualified to testify as an expert in the field of diagnosis and treatment of psychological symptoms. Her testimony indicated that, by the time

of trial, she had worked with A.K. for over two years and had diagnosed her with PTSD during the course of her treatment.

{¶49} Barrett also testified that PTSD is included in the Diagnostic and Statistical Manual of Mental Disorders (“DSM”) and that her license permits her to render a diagnosis from the DSM. After discussing the criteria for diagnosing PTSD, she identified the relevant symptoms that A.K. had exhibited and the underlying trauma that A.K. had disclosed in the process of describing the onset of these various symptoms.

{¶50} Relying on the testimony about Barrett’s professional credentials, the State points out that R.C. 4757.21 states that “a licensed professional clinical counselor . . . may diagnose and treat mental and emotional disorders. . . .” In turn, R.C. 4757.01(F) states that

‘mental and emotional disorders’ means those disorders that are classified in accepted nosologies such as the international classification of diseases and the diagnostic and statistical manual of mental disorders [DSM] and in future editions of those nosologies.

Since PTSD is a condition listed in the DSM, the State argues that Barrett, as a licensed professional clinical counselor, was qualified to diagnose A.K. with PTSD. *See Ibrahim*, 2015-Ohio-3345, at ¶ 36-39 (8th Dist.).

{¶51} Against this evidence from the record, Lingam raises two main arguments. First, he asserts that Barrett did not have the experience to provide testimony on this diagnosis because she had not previously testified as an expert

witness at trial and did not, in her trial testimony, provide the precise number of PTSD diagnoses that she had made in her career.

{¶52} However, “[a]ll expert witnesses presumably have a first time testifying as an expert. If a witness cannot qualify as an expert without prior experience testifying as an expert, there can never be expert witnesses.” *State v. Moulder*, 2002-Ohio-5327, ¶ 65 (8th Dist.). Thus, the fact that Barrett had not previously testified at a trial as an expert witness does not mean that she was not qualified to testify as an expert witness. *State v. Smith*, 2025-Ohio-2086, ¶ 42-43 (2d Dist.).

{¶53} Further, as noted previously, Barrett gave extensive testimony about her educational background, credentials, and experience. She also indicated that she had worked with hundreds of clients in her practice during her career. The fact that she could not give the precise number of PTSD diagnoses that she has given does not establish that Barrett was not qualified to testify as an expert in this area. *See In re J.D.*, 2022-Ohio-2334, ¶ 34 (11th Dist.). Since Lingam’s assertions do not establish that Barrett lacked the credentials to diagnose A.K. with PTSD, this first argument is without merit.

{¶54} Second, Lingam argues that Barrett should not have been able to testify as an expert witness because she did not produce her treatment notes to substantiate her PTSD diagnosis. Defense counsel questioned her on this matter at trial. In response, Barrett explained that these notes were in the possession of the

group practice that she had recently left and that these documents could be released with A.K.'s consent or on receipt of a subpoena.

{¶55} At trial, Barrett testified about the methodology she employed in treating A.K.; the symptoms A.K. had exhibited; and the basis for the PTSD diagnosis. *See J.D.*, 2022-Ohio-2334, at ¶ 34 (11th Dist.). The record also establishes that defense counsel received and reviewed a copy of Barrett's expert report that detailed her findings in this case. Ultimately, the absence of the treatment notes at trial does not establish that Barrett was not qualified to testify as an expert witness on this matter. Thus, the second argument is without merit.

{¶56} In summary, Lingam's arguments fail to establish that Barrett lacked the qualifications to diagnose A.K. with PTSD and testify on this matter as an expert witness. Further, the record contains no indication that the trial court abused its discretion by permitting Barrett to testify as an expert witness in this case. Accordingly, the first assignment of error is overruled.

Second Assignment of Error

{¶57} Lingam argues that the trial court erred by denying the motion he made for a mistrial after Barrett gave an opinion that was not in her expert report.

Legal Standard

{¶58} "A mistrial should not be ordered in a cause simply because some error has intervened. The error must prejudicially affect the merits of the case and the substantial rights of one or both of the parties." *State v. Bender*, 2024-Ohio-1750,

¶ 38 (3d Dist.), quoting *Tingue v. State*, 90 Ohio St. 368 (1914), paragraph three of the syllabus.

To determine whether the error resulted in prejudice, we must consider (1) the nature of the error, (2) whether an objection was made, (3) whether the trial court provided corrective instructions, and (4) the strength of the evidence against the defendant.

State v. Junod, 2019-Ohio-743, ¶ 44 (3d Dist.), quoting *State v. Morris*, 2018-Ohio-5252, ¶ 44 (10th Dist.). Ultimately, “[a] mistrial is an extreme remedy, declared only when a fair trial is no longer possible.” *State v. Berry*, 2021-Ohio-1132, ¶ 78 (3d Dist.), quoting *State v. Sidibeh*, 2011-Ohio-712, ¶ 44 (10th Dist.).

Standard of Review

{¶59} The decision of whether to declare a mistrial is entrusted to the sound discretion of the trial court because the trial judge is best positioned to determine whether the circumstances warrant this course of action. *State v. Ahmed*, 2004-Ohio-4190, ¶ 92. For this reason, an appellate court will not reverse a decision on a motion for a mistrial in the absence of an abuse of discretion. *State v. Randle*, 2018-Ohio-207, ¶ 29 (3d Dist.).

Legal Analysis

{¶60} During her testimony at trial, Barrett stated that Lingam acted in “a parental capacity” in A.K.’s life. (Sept. 9 Tr. 175). In response, defense counsel objected on the grounds that this conclusion was not contained in Barrett’s expert report. The Defense then moved for a mistrial. After overruling the motion for a

mistrial, the trial court struck the comment from the record and instructed the jurors to disregard the challenged statement.

{¶61} On appeal, Lingam argues that the trial court should have declared a mistrial over the expert testimony that he was in loco parentis. However, the only charges that required the State to prove he was in loco parentis were the five counts of sexual battery in violation of R.C. 2907.03(A)(5) that were dismissed at the close of the State's evidence. Nonetheless, Lingam still asserts that this evidence was relevant to establishing the force element for the five convictions he received for rape in violation of R.C. 2907.02(A)(2).

{¶62} However, the jury listened to the recording of the police interview in which Lingam said that A.K. was "like my daughter." (Sept. 10 Tr. 227). In this interview, he also stated that he helped her get her driver's license, assisted her with homework, and spoke with her about her relationships. Lingam's son also testified at trial and affirmed that his father saw A.K. "as his daughter." (Sept. 10 Tr. 175). A.K.'s father also indicated that, in Telugu culture, an uncle has a special role "as a father" to nieces or nephews and that, for this reason, Lingam was "almost like a father figure" to A.K. (*Id.* at 145). Similarly, A.K.'s grandmother reported that A.K. "used to spend a lot of time with him [Lingam] because it's almost like a father to her." (*Id.* at 158).

{¶63} The State also produced ample evidence to establish the force element at trial. A.K.'s testimony provided specific descriptions of Lingam's role in her life

and explained in detail how this relationship dynamic impacted the decisions she made across the summer of 2022. A.K. indicated that, as he provided guidance to her on educational matters, he began to give her relationship advice that progressed into sexual discussions. He then posed as a teenage boy online and used the Vincent account to further their conversations on sexual matters.

{¶64} A.K. also testified that she followed several of Lingam’s directives because she was scared; confused; and “[p]ressed into it.” (Sept. 10 Tr. 63). She indicated that this pressure was the result of the fact that she “felt like he [Lingam] was a father to me.” (Sept. 10 Tr. 130). Her testimony also indicated that Lingam indicated that she would lose her relationship with his family if she reported him and that he used palmistry to manipulate her.

{¶65} The State also produced evidence of coercion that went beyond the relationship dynamic between A.K. and Lingam. A.K. testified that, in one incident, her uncle physically forced her into a car and raped her. In another incident, she tried to “push him [Lingam] off” of her. (Sept. 9 Tr. 267). She also testified that she told Lingam “no” before he raped her on one of these occasions. (Sept. 9 Tr. 267). Defense counsel also vigorously cross-examined her on the issue of whether she was coerced in these incidents.

{¶66} Finally, after defense counsel objected to the challenged opinion, the trial court instructed the jury to disregard Barrett’s statement. “[A] jury is presumed to follow the instructions, including curative instructions, given to it by a trial

judge.” *Junod*, 2019-Ohio-743, at ¶ 45 (3d Dist.). The record contains no evidence that would lead us to dispense with this presumption, especially in light of the fact that all of the charges with an in loco parentis element were dismissed in this case.

{¶67} Having examined the contents of the record, we conclude that a fair trial was possible after the trial court sustained the Defense’s objection to Barrett’s testimony. Lingam’s argument fails to establish that his substantial rights or the merits of this case were prejudiced by the stricken statement. Having examined the evidence in the record, we find no indication that the trial court abused its discretion in denying Lingam’s motion for a mistrial in this case. Accordingly, the second assignment of error is overruled.

Third Assignment of Error

{¶68} Lingam argues that his convictions for rape are not supported by sufficient evidence and are against the manifest weight of the evidence.

Legal Standard

{¶69} “A sufficiency-of-the-evidence analysis examines whether the State has carried its burden of production at trial.” *State v. Whitt*, 2025-Ohio-424, ¶ 16 (3d Dist.). “On review, an appellate court is not to consider whether the evidence at trial should be believed but whether the evidence, if believed, could provide a legal basis for the finder of fact to conclude that the defendant is guilty of the crime charged.” *State v. Daniels*, 2024-Ohio-1536, ¶ 13 (3d Dist.).

Accordingly, the applicable standard ‘is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.’

State v. Reed, 2024-Ohio-4838, ¶ 30 (3d Dist.), quoting *State v. Plott*, 2017-Ohio-38, ¶ 62 (3d Dist.).

{¶70} In contrast, “[a] manifest-weight analysis examines whether the State has carried its burden of persuasion at trial.” *State v. Carroll*, 2024-Ohio-1626, ¶ 58 (3d Dist.). On review, “an appellate court’s function . . . is to determine whether the greater amount of credible evidence supports the verdict.” *State v. Harvey*, 2020-Ohio-329, ¶ 12 (3d Dist.), quoting *Plott*, 2017-Ohio-38, ¶ 73 (3d Dist.).

Appellate courts “must review the entire record, weigh the evidence and all of the reasonable inferences, consider the credibility of witnesses, and determine whether in resolving conflicts in the evidence, the factfinder ‘clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.’”

Randle, 2018-Ohio-207, at ¶ 36 (3d Dist.), quoting *Plott* at ¶ 73, quoting *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997).

Legal Analysis

{¶71} In this case, Lingam was convicted of five counts of rape in violation of R.C. 2907.02(A)(2). To establish a conviction for rape, the State must prove that the defendant “engage[d] in sexual conduct with another when the offender purposely compels the other person to submit by force or threat of force.” R.C. 2907.02(A)(2). The Ohio Revised Code defines “sexual conduct” as

vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal opening of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.

R.C. 2907.01(A). The Ohio Revised Code also defines “force” as “any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing.” R.C. 2901.01(A)(1). In this analysis,

“ . . . the type and amount of force necessary to purposefully compel a victim to submit ‘by force or threat of force’ depends upon the victim and offender’s relationship.” *State v. Wine*, . . . 2012-Ohio-2837, ¶ 41 [(3d Dist.)]. . . . Where the victim is a child and the offender is a person in a position of authority over the child, such as a parent or stepparent, ‘the same degree of force and violence may not be required . . . as would be required were the parties more nearly equal in age, size, and strength.’ [*State v. Eskridge*, 38 Ohio St.3d 56 (1988), paragraph one of the syllabus] . . . Moreover, the force applied against the child ‘need not be overt and physically brutal, but can be subtle and psychological.’ *Eskridge* at 58, quoting *State v. Fowler*, 27 Ohio App.3d 149, 154 . . . (8th Dist.1985).

(Citation omitted.) *State v. Bradshaw*, 2023-Ohio-1244, ¶ 51, (3d Dist.)

(considering a case in which sexual abuse occurred when victim was roughly sixteen years old). *See Id.* at 54, 62.³

{¶72} At trial, A.K. provided extensive testimony about the nature of her relationship with Lingam after she moved to Ohio in 2019. Her testimony indicates

³ The text of Lingam’s assignment of error mentions the sufficiency *and* manifest weight of the evidence. However, as the State points out on appeal, the body of Lingam’s brief only raises specific arguments that address the manifest weight of the evidence. On appeal, the appellant bears the burden of affirmatively demonstrating error and must, pursuant to App.R. 16(7), present arguments in support of the contentions made in the brief’s assignments of error. But rather than disregard his sufficiency argument, we will perform a brief analysis of this issue in the interests of justice.

that she saw Lingam as a “father” figure and that he was roughly forty-five in 2022 when she was only sixteen. (Sept. 10 Tr. 130). Lingam similarly indicated that A.K. was like a “daughter” to him. (Sept. 10 Tr. 130, 227). A.K.’s father also explained that, in Telegu culture, a maternal uncle is a father figure in the lives of his nieces and nephews.

{¶73} A.K.’s testimony also described how this relationship evolved after she turned sixteen in the spring of 2022. A.K. testified that Lingam helped her with her studies and learning how to drive. However, she indicated that Lingam began to broach the topic of her relationships with boys after she turned sixteen. In addition to talking about her sexual relationships, Lingam also exposed her to pornography on at least one occasion and began talking about her body.

{¶74} During the summer of 2022, Lingam posed as a teenage boy on Snapchat and used the Vincent account to elicit nude pictures from A.K. He also discussed the Vincent account with A.K. and encouraged her to engage in sexting during these conversations on Snapchat. According to A.K., Lingam lied about posing as Vincent when she confronted him about the Snapchat account. Lingam also used palmistry to explain that she was destined to sleep with him.

{¶75} At trial, A.K. provided detailed descriptions of the locations, circumstances, and timing of five separate incidents that occurred on August 17, 18, 19, 23, and 28 of 2022. She testified that, on each of these dates, Lingam went with her to a secluded area and penetrated her vagina with his fingers or genitals. Her

testimony indicated that, during different incidents, she told Lingam that this conduct was wrong; told him “no”; closed her mouth so that he could not kiss her; and tried to push him off of her. (Sept. 9 Tr. 267).

{¶76} A.K. also testified that, during the August 19, 2022 incident, Lingam forced her into the car and raped her. After this incident, A.K. sent a text message to N.E. that said, “I tried to run[. H]e grabbed me and made me get in the car and do sh*t[.]” (Ex. 8). She also stated that she was afraid of what her uncle would do if she did not follow his directives or if she reported what had transpired.

{¶77} The evidence at trial indicated that Lingam used aspects of their religious practices to lead her into believing that she or her family members could experience misfortune if she did not do as he wished, leading N.E. to send A.K. text messages about the difference between religion and superstition. (Ex. 39). Lingam also told her that she would lose her close friendship with her cousin, R.L., if she disclosed this situation. (Sept. 10 Tr. 125). Barrett also testified about how manipulation can have a coercive effect on a minor.⁴

{¶78} Having viewed the evidence presented at trial in a light most favorable to the prosecution, we conclude that a rational trier of fact could find evidence produced at trial that substantiated the essential elements for Lingam’s five convictions for rape. In his brief, Lingam has not raised an argument that establishes

⁴ We note that, in the first assignment of error, Lingam only challenged Barrett’s qualifications to diagnose A.K. with PTSD and did not challenge her testimony on his manipulative tactics.

his convictions were not supported by sufficient evidence. Thus, this argument is without merit.

{¶79} Next, Lingam’s manifest-weight arguments each address the existence of various points of tension between the statements that N.E. and A.K. made across their text messages, their police interviews, and their trial testimony. Lingam points out that N.E. did not immediately disclose the existence of the text messages to the police, even though she preserved many of these communications in screenshots that she had saved to her phone. At trial, N.E. stated that she did not understand what the detective was asking when she indicated that she did not have any relevant text messages.

{¶80} Further, in the text messages exchanged on August 30, 2022, A.K. initially asked N.E. what she was supposed to say. In response, N.E. told A.K. to say that she was afraid and that Lingam had manipulated her. Based on this exchange, Lingam asserted that N.E. and A.K. crafted a narrative in which A.K. was raped rather than engaging in a consensual sexual relationship with her uncle. However, A.K. explained that she was discussing what she should say to her father and reasoning through the situation with her friend.

{¶81} The Defense pointed out that, during her police interview, N.E. had indicated that A.K. seemed “excited at first” about “sneaking out” for the first encounter. (Sept 11 Tr. 100). However, A.K. indicated that she was confused by what was happening, was afraid, and did not understand that she was being

manipulated. She describe this period as being in “his trance” in her text messages with N.E. (Ex. 39). She testified that she did not want to engage in sexual intercourse with her uncle. She also explained that she repeatedly returned to his house because she believed that the sexual conduct would not occur again or that she could handle her uncle.

{¶82} In a similar vein, N.E. repeatedly told A.K. that Lingam was posing as Kevin Vincent on Snapchat, but in response, A.K. vacillated on the question of whether Lingam was behind this account. At trial, A.K. testified that she could not bring herself to believe that Lingam was texting her as Vincent even though the IP address linked him to this account. She stated that she did not fully believe that her uncle was posing as Vincent until the police confirmed his involvement with this account.

{¶83} In this case, defense counsel made these points of tension in N.E. and A.K.’s statements salient to the jurors by vigorously cross-examining these witnesses. Ultimately, the “trier of fact ‘may take note of the inconsistencies and resolve or discount them accordingly, [but] such inconsistencies do not render [a] defendant’s conviction against the manifest weight or sufficiency of the evidence.’” *State v. Canankamp*, 2023-Ohio-43, ¶ 42 (3d Dist.), quoting *State v. Craig*, 2000 Ohio App. Lexis 1138 (10th Dist. Mar. 23, 2000).

{¶84} Having examined the contents of the record, we find no indication that the jurors lost their way by finding Lingam guilty of these charges. Thus, we

conclude that Lingam’s arguments fail to establish that his five convictions for rape are against the manifest weight of the evidence. Accordingly, the third assignment of error is overruled.

Fourth Assignment of Error

{¶85} Lingam argues that the State’s discussions with a witness constituted prosecutorial misconduct.

Legal Standard

{¶86} To establish a claim of prosecutorial misconduct, the appellant must demonstrate that the prosecution acted improperly and, as a result, prejudiced the appellant’s substantial rights. *State v. Tebelman*, 2023-Ohio-882, ¶ 91 (3d Dist.). Because this type of claim implicates due process concerns, this analysis focuses on the fairness of the trial rather than the culpability of the prosecution. *State v. Passmore*, 2023-Ohio-3209, ¶ 46 (3d Dist.). “Misconduct of a prosecutor at trial will not be considered grounds for reversal unless the conduct deprives the defendant of a fair trial.” *State v. Bruce*, 2023-Ohio-3298, ¶ 104 (3d Dist.), quoting *State v. Johnson*, 2014-Ohio-4750, ¶ 88 (3d Dist.).

Legal Analysis

{¶87} In this case, the trial court ordered a recess during A.K.’s testimony. Before the proceeding was reconvened, defense counsel informed the trial court that a victim advocate with the prosecutor’s office spoke with A.K. briefly during the recess. While the prosecutors did not overhear this discussion, one of the defense

attorneys heard what was said and reported that the victim's advocate "[j]ust spoke on answering the question." (Sept. 9 Tr. 247). The lead defense attorney then added that this "[was]n't bad advice" and suggested that this might be used as a good "learning moment" for the victim advocate. (*Id.*).

{¶88} In this discussion, defense counsel did not appear to be concerned about what the victim's advocate said during this interaction, reporting that the statement "[was]n't bad advice." (Sept. 9 Tr. 247). Rather, defense counsel appears to have been primarily concerned about ensuring that this type of interaction did not happen again at trial to eliminate the possibility of the victim advocate making a prejudicial comment to a witness in the future.

{¶89} Ultimately, the only description of this interaction came from the Defense and suggested that the statement made by the victim advocate to A.K. in this situation was innocuous. Lingam has not explained how the victim advocate's comment, as described by defense counsel, deprived him of a fair trial under the facts of this case. *See State v. Cook*, 2008-Ohio-89, ¶ 59 (6th Dist.). Having examined the contents of the record, we conclude that Lingam has failed to demonstrate that his substantial rights were prejudiced by the identified conduct. Accordingly, the fourth assignment of error is overruled.

Fifth Assignment of Error

{¶90} Lingam argues that he was deprived of his right to the effective assistance of counsel.

Legal Standard

{¶91} “Ohio law presumes that a licensed attorney’s representation was competent.” *State v. Morgan*, 2024-Ohio-625, ¶ 13 (3d Dist.). “In order to prove an ineffective assistance of counsel claim, the appellant must carry the burden of establishing (1) that his or her counsel’s performance was deficient and (2) that this deficient performance prejudiced the defendant.” *State v. McWay*, 2018-Ohio-3618, ¶ 24 (3d Dist.), quoting *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

{¶92} To establish deficient performance, the appellant must demonstrate that defense “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” *State v. Howton*, 2017-Ohio-4349, ¶ 35 (3d Dist.), quoting *Strickland* at 687. In general, matters that fall within the ambit of trial strategy or debatable tactics do not constitute ineffective assistance of counsel. *State v. Wears*, 2023-Ohio-4363, ¶ 32 (3d Dist.).

{¶93} To establish prejudice, “the defendant must show a reasonable probability that, but for counsel’s errors, the result of the proceeding would have been different.” *State v. Bibbs*, 2016-Ohio-8396, ¶ 13 (3d Dist.). “If the appellant does not establish one of these two prongs, the appellate court does not need to consider the facts of the case under the other prong of the test.” *State v. Gear*, 2023-Ohio-1246, ¶ 50 (3d Dist.).

Legal Analysis

{¶94} Lingam argues that his defense counsel was ineffective for failing to subpoena the files that contained A.K.'s mental health records. He suggests that these records could have potentially revealed additional bases for cross-examining Barrett. However, the contents of these files are not in the record before us. *State v. Nichols*, 2023-Ohio-4364, ¶ 21 (3d Dist.). For this reason, the evidentiary value of these documents to the Defense remains unknown.

{¶95} Because the contents of these files could have potentially provided additional corroboration for Barrett's testimony or A.K.'s allegations, defense counsel may have chosen not to subpoena these mental health records as a matter of trial strategy and opted instead to rely on cross-examination. *State v. Matusic*, 1999 Ohio App. Lexis 3921, *22 (7th Dist. Aug. 23, 1999); *State v. Pilgrim*, 2009-Ohio-5357, ¶ 55 (10th Dist.). We note that defense counsel vigorously cross-examined both Barrett and A.K. at trial on a variety of issues. Having examined the evidence in the record, we conclude that Lingam has failed to establish deficient performance.

{¶96} Further, Lingam's arguments about the effect that subpoenaing these records could have had on the outcome of this proceeding are ultimately speculative because he has failed to demonstrate that these files contained evidentiary materials that would have been beneficial to his defense. *State v. Brown*, 2025-Ohio-1079, ¶ 34 (2d Dist.); *State v. Jones*, 2010-Ohio-4823, ¶ 44 (3d Dist.). Having examined the evidence in the record, we conclude that Lingam has failed to demonstrate

prejudice. Thus, he has not established his ineffective assistance of counsel claim.

Accordingly, the fifth assignment of error is overruled.

Conclusion

{¶97} Having found no error prejudicial to the appellant in the particulars assigned and argued, the judgment of the Union County Court of Common Pleas is affirmed.

Judgment Affirmed

MILLER and WALDICK, J.J., concur.

JUDGMENT ENTRY

For the reasons stated in the opinion of this Court, the assignments of error are overruled and it is the judgment and order of this Court that the judgment of the trial court is affirmed with costs assessed to Appellant for which judgment is hereby rendered. The cause is hereby remanded to the trial court for execution of the judgment for costs.

It is further ordered that the Clerk of this Court certify a copy of this Court's judgment entry and opinion to the trial court as the mandate prescribed by App.R. 27; and serve a copy of this Court's judgment entry and opinion on each party to the proceedings and note the date of service in the docket. *See* App.R. 30.

John R. Willamowski, Judge

Mark C. Miller, Judge

Juergen A. Waldick, Judge

DATED:
/hls