[Cite as *State v. Picard*, 2010-Ohio-6358.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

	:	JUDGES:
STATE OF OHIO	:	Julie A. Edwards, P.J.
	:	William B. Hoffman, J.
Plaintiff-Appellee	:	John W. Wise, J.
	:	
-vs-	:	Case No. 2009 CA 0108
	:	
	:	
JOHN S. PICARD	:	O P I N I O N
Defendant-Appellant		

CHARACTER OF PROCEEDING:	Criminal Appeal from Richland County Court of Common Pleas Case Nos. 2009 CR 545H & 2009 CR 111H
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	December 20, 2010

APPEARANCES:

For Plaintiff-Appellee

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Edwards, P.J.

{¶1} Appellant, John S. Picard, appeals a judgment of the Richland County Common Pleas Court convicting him of twelve counts of sexual battery in violation of R.C. 2907.03(A)(1) and four counts of sexual battery in violation of R.C. 2907.03(A)(9) in case number 2008-CR-545H, and fourteen counts of sexual battery in violation of R.C. 2907.03(A)(1) and twelve counts of sexual battery in violation of R.C. 2907.03(A)(2) in case number 2009-CR-111H. Appellee is the State of Ohio.

STATEMENT OF FACTS AND CASE

{¶2} In 1990, appellant was hired as the youth pastor at the Marion Avenue Grace Brethren Church in Mansfield, Ohio. In his position at the church, appellant and his wife Sherry had regular contact with teenage girls and young adult females in the church.

{¶3} Appellant formed close relationships with several of the girls in the youth group, distancing these girls from their family and friends. He referred to this smaller group as "the family," which was made up of appellant and his wife, several of the girls in the youth group, and eventually the girls' husbands as they grew older and married. As the leader, appellant controlled nearly every aspect of their lives. Appellant influenced where the girls lived, who they dated or married, and what cars they purchased. Appellant spoke of having a large piece of land where the "family" could live in a large house with separate wings, sharing a common kitchen and dining area.

{¶4} H.G. began attending the Marion Avenue Church when she was twelve years old, and moved in with her great aunt and uncle after her parents died. She began babysitting appellant's children when she was sixteen. When she was sixteen,

she and appellant began kissing and fondling. One night, after eating dinner with appellant's family, H.G. went to the basement with appellant to spot him while he was working out. Appellant had H.G. perform oral sex on him. Appellant explained to H.G. that it wasn't sinful because it wasn't sex. On another occasion, appellant and H.G. were in the bedroom of appellant's home naked. Appellant digitally penetrated H.G.'s vagina, but appellant's son walked in before the encounter could go any further. H.G. left the area when she turned eighteen, but saw appellant one last time thereafter. Appellant drove her out into the country where they kissed and fondled each other, and H.G. performed oral sex on appellant.

{¶5} S.S. began attending Marion Avenue Church in her sophomore year of high school. Her mother had divorced for a second time and she had to move in with her father. While involved with the youth group, S.S. would run errands with appellant. On one occasion they went for a motorcycle ride. Appellant reached between S.S.'s legs, claiming he was switching to an alternate gas tank. Like H.G., S.S. babysat appellant's children. On one occasion, appellant asked S.S. to stop at his house after a New Year's Eve party. When she arrived, the house was dark. Appellant took her into the bedroom, kissed her, pulled down her pants and touched her genital area. He asked her to say, "Fuck me." Tr. 215. She became afraid because she had never seen appellant behave in such a harsh manner. She ultimately said what he asked her to say, although no penetration occurred. On Sundays after church appellant began taking S.S. by the hand and leading her to his office, where they would kiss and stroke each other. Appellant told her that being a youth pastor was difficult and he was frequently under attack, and this was a form of comfort his wife could not give him.

{¶6} During the summer of 2004, S.S. accompanied the youth group on a mission trip. While taking the garbage to the dumpster with appellant, he unzipped his pants and guided her head to his penis, asking her to put his penis in her mouth. He instructed her to perform oral sex on him in the back of a truck at a later time on the same mission trip. He told S.S. that this was something his wife could not do for him.

{¶7} S.W. was an only child from what she considered a normal family. However, as she became more involved with appellant and Sherry through the youth group, her relationship with her parents deteriorated. In the fall of 1995, appellant asked S.W. to kiss him. By 1996, S.W. considered appellant to be her best friend. Appellant told her that best friends engage in sexual acts with each other, claiming that the Bible states that Jonathan and David were best friends who engaged in sexual behavior together. He also told S.W. that when the Bible says a pastor should be a one woman man that just means he can't be with two women at the same time. He explained to her that his job was very taxing, and he needed her to fill him back up. Around 1996 or 1997, he asked S.W. to perform oral sex on him in the kitchen of his home. For the next ten years, she regularly engaged in oral sex and sexual intercourse with appellant. He told her it would be a worse sin for her not to have sex with him than it would be to have sex with him, because God was protecting their relationship. Sometimes when S.W. did not want to have sex with appellant she cried, and appellant told her he liked it when she cried.

{¶8} G.R. attended the youth group at the Marion Avenue Church. She had been sexually abused by her father. G.R. also babysat for appellant and Sherry. When G.R. was 13 and appellant was driving her home after babysitting, he pulled into a

wooded area and asked her to perform oral sex on him. Appellant told her that he believed God put her in his life for this special relationship because there were things Sherry could not do for him. Appellant and G.R. began engaging in oral sex and sexual intercourse on a weekly basis when she babysat for his children. Sometimes in his office in the church he would place her on his lap, rub her breasts and her genital area, and have her rub his genitals. During a game of hide and seek at a youth group overnighter at the church, appellant found G.R. hiding in the baptismal. He had G.R. perform oral sex on him in the baptismal. He told G.R. that he had consulted the Holy Spirit and had received peace that his relationship with G.R. was right. He told her that giving him oral sex was her God-given role as his comforter.

{¶9} J.F. is G.R.'s step-sister. Between the ages of 18 and 20, she began giving appellant oral sex in his office and in a storage room at the church. In April of 1999, when J.F. was 20 years old, she began engaging in sexual intercourse with appellant. After she moved into her own apartment in October, 2001, she and appellant engaged in sex once or twice a week. Appellant told her if she didn't have sex with him, he would terminate their friendship and she would be shunned by the church. Appellant hit J.F. at times, and threatened to tie her up if she did not comply with his request for sex. Appellant told her that she was a special friend who had been chosen for him. He explained to her that their relationship was not different from those in the Bible, including Jonathan and David. He told her that in the Biblical account of the Last Supper where John leans on Jesus, it is possible that John had contact with Jesus' genitals, and also recounted the story where Abraham places his hand on another

man's thigh to make an oath to support his claims that his relationship with J.F. was Biblically sanctioned.

{¶10} L.R. was 14 years old when she began attending the church with a friend. She admired and trusted appellant and thought of him more highly as a spiritual leader than anyone she had ever met. She longed to be a part of the group that was close to appellant and his wife. On one occasion when she was on the church bus alone with appellant, he told her that he thought she was very godly, and if anything happened to Sherry, L.R. is the kind of woman he would want for his wife. In 2004, L.R. asked to meet with appellant to learn how to memorize Scripture. When she went to appellant's office, he told her that things were hard and he needed comfort. He then placed L.R.'s hands on his genitals, telling her that his wife is not a comfort to him and L.R. is the only one he could trust. When decorating for a wedding shower at the church, appellant pulled L.R. into his office and asked her for oral sex. She refused. However, in September of 2004 appellant convinced L.R. to perform oral sex on him. Eventually the oral sex progressed into sexual intercourse, and the sexual behavior continued regularly through December of 2007. He explained that this was not adultery, telling L.R., "You were given to me by God. You were made just for me." Tr. 635.

{¶11} In 2005, H.G. disclosed her involvement with appellant to a pastor at her new church. This pastor in turn relayed the allegations to the Marion Avenue church, and H.G. was called before a council of pastors. H.G.'s claims were discounted by the church, but the church held a series of meetings about whether to retain appellant as youth pastor. His other victims attended these meetings, either standing in full support of appellant or remaining silent. Many members of the church had become concerned

about appellant's close relationships with young women in the congregation, with one member referring to the group as appellant's "harem." Tr. 229.

{¶12} Although the congregation voted to retain appellant, he resigned from the church and made plans to form his own church with members of his "family." These plans fell apart in January of 2005 when S.S. confessed her relationship with appellant to her husband.

{¶13} Initially, police were not concerned with relationships between appellant and the girls after they turned 18, believing them to be consensual relationships between adults. Appellant was initially indicted in Case No. 08-CR-545 for sexual battery against H.G. and G.R. when they were juveniles. After the nature of the control and mental and spiritual coercion appellant exerted over the girls became apparent to police, the State moved to amend the indictment to include offenses against H.G. and G.R. after they turned 18, and to amend the statutory subsection in counts nine through sixteen, which related to H.G., to allege a violation of R.C. 2907.03(A)(1) rather than a violation of R.C. 2907.03(A)(9) because subsection (A)(9) was not in effect during the time period alleged in these counts.

{¶14} Appellant was later indicted in 09-CR-111 for sexual battery against S.W., L.R., J.F. and S.S. The cases were consolidated for trial.

{¶15} The case proceeded to jury trial in the Richland County Common Pleas Court. Following trial appellant was convicted of all charges and sentenced to an aggregate term of 40 years in prison, with 5 years mandatory post-release control.

{¶16} Appellant assigns seven errors on appeal:

{¶17} "I. DEFENDANT-APPELLANT'S CONSTITUTIONAL AND STATUTORY SPEEDY TRIAL RIGHTS WERE VIOLATED BY THE STATE'S FAILURE TO BRING HIM TO TRIAL WITHIN 270 DAYS OF HIS ARREST.

{¶18} "II. THE TRIAL COURT ERRED IN REFUSING TO DISMISS COUNTS OF THE INDICTMENT WHICH WERE FILED AFTER THE EXPIRATION OF THE APPLICABLE STATUTE OF LIMITATIONS.

{¶19} "III. DEFENDANT-APPELLANT'S CONSTITUTIONAL AND DUE PROCESS RIGHTS WERE VIOLATED BY THE GENERIC FORM OF THE INDICTMENTS AND BILLS OF PARTICULARS AND BY REPEATED AMENDMENTS TO THE INDICTMENTS AND REFUSAL TO PERMIT GRAND JURY TRANSCRIPT INSPECTION, SUCH THAT HIS CONVICTIONS MUST BE REVERSED.

{¶20} "IV. THE TRIAL COURT ERRED IN REFUSING TO DECLARE A MISTRIAL, DISMISS COUNTS INVOLVING G.R., STRIKE HER TESTIMONY OR INSTRUCT THE JURY AS TO THE ASSERTION OF HER FIFTH AMENDMENT RIGHTS.

{¶21} "V. THE DEFENDANT WAS DENIED DUE PROCESS BY THE STATE'S FAILURE TO PROVIDE TIMELY DISCOVERY, FAILURE TO PROVIDE EVIDENCE FAVORABLE TO THE ACCUSED AND THE STATE'S MISUSE OF PRETRIAL SUPERVISION AUTHORITY, SUCH THAT THE CHARGES AGAINST HIM SHOULD HAVE BEEN DISMISSED.

{¶22} "VI. THE VERDICT FORMS DO NOT SUPPORT DEFENDANT'S CONVICTIONS FOR 42 COUNTS OF SEXUAL BATTERY.

{¶23} "VII. THE TRIAL COURT ERRED IN CONVICTING AND SENTENCING THE DEFENDANT ON DUPLICATIVE COUNTS."

I

{¶24} In his first assignment of error, appellant argues that the court erred in overruling his motion to dismiss on speedy trial grounds. Appellant filed a motion to dismiss on speedy trial grounds on August 17, 2009, the date the case was scheduled to proceed to trial. The court overruled the motion from the bench on August 20, 2009, when the case proceeded to trial.[1]

{¶25} The right to a speedy trial is guaranteed by the Sixth Amendment to the United States Constitution and Section 10, Article I of the Ohio Constitution. Pursuant to these constitutional mandates, R.C. 2945.71 through R.C. 2945.73 prescribe specific time requirements within which the State must bring an accused to trial. *State v. Baker,* 78 Ohio St.3d 108, 110, 1997-Ohio-229, 676 N.E.2d 883. R.C. 2945.71 provides, in pertinent part:

{¶26} "(C) A person against whom a charge of felony is pending:

{¶27} "(2) Shall be brought to trial within two hundred seventy days after the person's arrest....

{¶28} "(E) For purposes of computing time under divisions (A), (B), (C)(2), and (D) of this section, each day during which the accused is held in jail in lieu of bail on the pending charge shall be counted as three days. This division does not apply for purposes of computing time under division (C)(1) of this section."

[1] Appellant has not provided a separate argument and computation of time for Case No. 09-111, arguing solely that because the indictment in that case involved the same underlying facts as 08-545, the time runs together in both cases. Because we find that Case No. 08-545 was tried within the time provisions of R.C. 2945.71, we need not reach the issue of whether 09-111 runs together with 08-545.

{¶29} However, the time limit can be tolled, or extended, pursuant to R.C. 2945.72, which states, in relevant part:

{¶30} "The time within which an accused must be brought to trial, * * * may be extended only by the following:

{¶31} "* * *(E) Any period of delay necessitated by reason of a .... motion, proceeding, or action made or instituted by the accused.

{¶32} "(H) The period of any continuance granted on the accused's own motion, and the period of any reasonable continuance granted other than upon the accused's own motion."

{¶33} Speedy trial statutes are to be strictly construed against the State. *State v. Miller* (1996), 113 Ohio App.3d 606, 681 N.E.2d 970. In reviewing a speedy trial claim, an appellate court must count days chargeable to each side and determine whether the case was tried within the statutory time limits. *City of Oregon v. Kohne* (1997), 117 Ohio App.3d 179, 690 N.E.2d 66.

{¶34} Appellant argues that he was in jail from his arrest on July 18, 2008, until he was able to post bond on October 1, 2008. He argues that under the triple-count provisions, these 75 days count for 225 days, leaving 45 days within which he must be tried. Appellant argues that he took no action during this time period which could be construed as a tolling event.

{¶35} However, on August 28, 2008, appellant filed a motion for bond reduction. This Court has previously held that a motion for a reduction in bond is a tolling event under R.C. 2945.72(E). *State v. Rouse*, Tuscarawas App. No. 2007AP120078, 2008-Ohio-5891, ¶20-22, citing *State v. Walters* (Jan. 18, 1996), Cuyahoga App. No. 68279,

unreported; *State v. Caudill* (1998), Hancock App. No. 05-97-35; *State v. Brown*, Ashtabula No. 2003-A-0092, 2005-Ohio-2879. Therefore, only 41 days passed between the date of appellant's arrest until the first tolling event, which under the triple count provision counts as 123 days lapsed on the speedy trial clock.

{¶36} Further, appellant filed a motion for a bill of particulars on September 18, 2008, which also tolled the speedy trial clock for the amount of time it would have been reasonable for the state to respond. *State v. Ferrell*, Cuyahoga App. No. 93003, 2010-Ohio-2882, ¶27. Thirty days has been determined to be a reasonable amount of time for the state to respond by the 8th District. *Ferrell*, supra; *State v. Barb*, Cuyahoga App. No. 90768, 2008-Ohio-5877.

{¶37} In any event, before thirty days had elapsed from the date appellant moved for a bill of particulars and before the trial court issued a final ruling on approving the magistrate's decision reducing bond, the court sua sponte continued the case on September 22, 2008. The continuance recites that the trial judge was unable to hear the case until October 20, 2008, and time was tolled during the period of the continuance.

{¶38} A sua sponte continuance must be properly journalized before the expiration of the speedy trial period and must set forth the trial court's reasons for the continuance. "The record of the trial court must ... affirmatively demonstrate that a sua sponte continuance by the court was reasonable in light of its necessity or purpose." *State v. Lee* (1976), 48 Ohio St.2d 208, 209, 357 N.E.2d 1095. Further, the issue of what is reasonable or necessary cannot be established by a per se rule but must be determined on a case-by-case basis. *State v. Saffell* (1988), 35 Ohio St.3d 90, 518

N.E.2d 934; *State v. Mosley* (Aug. 15, 1995), Franklin App. No. 95APA02-232. However, a continuance due the trial court's engagement in another trial is generally reasonable under R.C. § 2941.401. *State v. Doane* (July 9, 1992), Cuyahoga App. No. 60097; See also *State v. Judd,* Franklin App. No. 96APA03-330, 1996 WL 532180. However, a continuance because the court is engaged in trial may be rendered unreasonable by the number of days for which the continuance is granted. See *State v. McRae* (1978), 55 Ohio St.2d 149, 378 N.E.2d 476.

{¶39} In the instant case, the court's continuance for a period of 28 days due to the judge's inability to hear the case is reasonable, particularly as the motion for a bill of particulars remained pending, as did the final decision on the motion for bond reduction.

{¶40} On September 24, 2008, appellant moved to continue the case. In the motion, counsel stated that he was recently retained and unavailable to try the case on October 20, 2008, and that appellant would waive speedy trial rights for the period of this continuance. Accordingly, the court continued the case until December 1, 2008, by judgment filed October 16, 2008.

{¶41} The speedy trial clock was thus tolled until December 1, 2008. In the interim, appellant filed a motion for disclosure of grants of immunity, promises of leniency or threats of prosecution, and the existence of plea bargain agreements on November 3, 2008, and a motion to dismiss counts nine through sixteen on statute of limitations grounds on November 13, 2008.

{¶42} On November 25, 2008, appellant filed another motion to continue due to medical issues in counsel's family. The court granted the motion on December 1, 2008,

continuing trial to February 2, 2009. The court's entry specifically states that the speedy trial time was tolled for the period of this continuance.

{¶43} While time was tolled during this period of continuance, appellant's motion to dismiss for statute of limitations violation remained pending. The state filed a response on January 21, 2009, and appellant filed a response to the reply on January 23, 2009. The clock was therefore still tolled on a motion of the accused when the clock began to run again on February 2, 2009.

{¶44} On February 3, 2009, the court continued the case sua sponte because *State v. Jefferson*, 08-485, proceeded to trial. The court's entry states that time is tolled for speedy trial purposes.

{¶45} In his motion to dismiss for speedy trial violation, appellant attached a copy of the docket from *State v. Jefferson*, arguing that the continuance was unreasonable because the trial in that case only lasted several days. The court continued the case until March 23, 2009.

{¶46} We do not find the length of the delay unreasonable despite the fact that the Jefferson case took only days to try. At the time the court continued the case, appellant's motion to dismiss was still pending, the state having filed a response to the motion on January 5, 2009, appellant filing a response to the state's reply on January 21, 2009, and the state filing a reply to appellant's reply to the state's response on January 23, 2009. Further, appellant had yet to provide discovery to the State. We do not find the length of the delay to be unreasonable.

{¶47} On February 24, 2009, appellant filed a motion to continue because of a scheduled vacation, and waived time for the period of this continuance. The court

granted the motion to continue, and set the case for trial on April 13, 2009. The time was thus tolled until April 13, 2009.

{¶48} On April 13, 2009, the case did not proceed to trial. However, time was still tolled because appellant's motion to dismiss remained pending. This Court has previously recognized that the Ohio Supreme Court has found a five-month delay between the filing of a motion to dismiss and the trial court's ruling on the motion to be non-prejudicial for speedy trial purposes. *State v. Richardson*, Richland App. No. 2009-CA-00027, 2009-Ohio-4867, ¶58, citing *State v. Bickerstaff* (1984), 10 Ohio St.3d 62, 67, 461 N.E.2d 892.

{¶49} The court sua sponte continued the case on April 21, 2009, because *State v. Dawson* was proceeding to trial. Appellant argues that the continuance of the case until June 8, 2009, was unreasonable because Dawson resulted in a change of plea on April 13, 2009. However, appellant's motion to dismiss remained pending at this time. Assuming *arguendo* that we accept appellant's argument that this continuance is unreasonable, 56 days are added to the speedy trial time, bringing the total number of days that have elapsed to 179.

{¶50} On June 5, 2009, appellee filed a motion to continue because the investigating officer and one of the victims were unavailable for trial on that date. The motion was granted on June 9, 2009, and the court tolled the speedy trial time during this period. Trial was reset for August 17, 2009. Appellant argues that this continuance is unreasonable and should not toll the speedy trial clock.

{¶51} A motion to continue based on the unavailability of a witness acts to extend the speedy trial provisions if the length of the delay is reasonable. *State v.*

Saffell (1988), 35 Ohio St.3d 90, 518 N.E.2d 934. This Court has found that a delay of 64 days due to the unavailability of a State's witness was not unreasonable. *State v. Nichols*, 2007-CA-17, 2007-Ohio-6466, ¶14. Considering that the case had previously been continued three times on appellant's motion and this was the State's first request for a continuance, we do not find the continuance to be unreasonable.

{¶52} Further, on June 5, 2009, appellant filed a second motion to dismiss, arguing that the officers of the State charged with monitoring appellant's pretrial bond had misused their authority by obtaining photographs from appellant's computer that were prepared for his attorney for trial and thus protected by attorney-client privilege. Appellant requested an oral hearing on this motion. This motion by appellant further served to toll the speedy trial time.

{¶53} On August 17, appellant filed a motion to dismiss on speedy trial grounds, a motion to dismiss duplicative counts in the indictments, a motion to exclude testimony and evidence not timely provided in discovery, and a motion in limine. All of these motions served to toll the speedy trial time, and in any event the parties jointly agreed to continue the case to August 20, 2009. The case proceeded to trial on August 20, 2009.

{¶54} Because we have found that, at most, 179 days elapsed of the 270 days within which appellant must be brought to trial, the first assignment of error is overruled.

II

{¶55} Appellant argues that the court erred in overruling his motion to dismiss counts IX through XVI of the indictment in 08-545, because the statute of limitations had expired before appellant was charged on July 17, 2008.

{¶56} The victim in Counts IX through XVI was H.G., and the conduct took place when H.G. was 16 years old. H.G. was born on October 26, 1975. In these counts of the indictment appellant was charged with violations of R.C. 2907.03 for conduct occurring between October 26, 1991, to September 25, 1992.

{¶57} R.C. 2901.13(A)(3) sets forth a 20-year statute of limitations for violations of R.C. 2907.03. However, this statute of limitations went into effect on March 9, 1999, after the instant offenses occurred. The amending bill provided in pertinent part:

{¶58} "Section 2901.13 of the Revised Code, as amended by this act, applies to an offense committed on and after the effective date of this act and applies to an offense committed prior to the effective date of this act if prosecution for that offense was not barred under section 2901.13 of the Revised Code as it existed on the day prior to the effective date of this act." 1998 H 49, §3.

{¶59} Thus, the question becomes whether prosecution was barred for the acts in question prior to March 9, 1999.

{¶60} Under the law in effect when the crimes were committed, R.C. 2901.13 provided a six year statute of limitations, except that the period of limitations did not run during any time when the corpus delicti remained undiscovered. The Ohio Supreme Court found that the corpus delicti of crimes involving child abuse or neglect is discovered when a responsible adult, as listed in R.C. 2151.421, has knowledge of both the act and the criminal nature of the act. *State v. Hensley* (1991), 59 Ohio St.3d 136, 571 N.E.2d 711.

{¶61} Appellant argues that because H.G. was 16 years old when the crime occurred and the age of consent for purposes of unlawful sexual conduct with a minor

under R.C. 2907.04 is sixteen, the corpus delicti of the crime was discovered at the time of the crime and the six-year statute of limitations then in effect began to run immediately. Under appellant's argument, the statute of limitations expired on September 25, 1998, six years after the crime occurred. Appellant therefore argues that because the statute of limitations had expired prior to the amendment of R.C. 2901.13 on March 9, 1999, the 20-year statute of limitations does not apply and prosecution is barred.

{¶62} In *State v. Weiss* (1994), 96 Ohio App.3d 379, 645 N.E.2d 98, this Court rejected a similar argument. In *Weiss*, a school teacher was charged with sexual battery for performing fellatio on a seventeen-year-old student. The appellant argued that *Hensley*, supra, did not apply because in *Hensley*, the victims were all under 13 years of age. The appellant buttressed his argument by directing the court to criminal statutes involving criminal child enticement, statutory rape, gross sexual imposition, sexual imposition, corruption of a minor, and importuning, wherein the legislature chose to offer protection only to those children under thirteen years of age and, in some instances, those under sixteen.

{¶63} This Court rejected this argument, finding that the statute began to run when the victim turned eighteen:

{¶64} "While it is true *Hensley* involved 'children of tender years,' we believe the reasoning contained therein to be applicable to cases where the victim is less than eighteen years of age. It is not hard to imagine that seventeen year olds who have been sexually abused by an adult would internalize the abuse, blame themselves and/or feel they were the wrongdoers. As testified to in this case, peer ridicule, embarrassment,

and the desire not to be labeled 'dirty' or 'gay' can cause a child sexual abuse victim to remain silent on the subject. Whether such 'internalization' is sufficient to toll the statute of limitations in any given case involving the abuse of a child under eighteen years of age is best left to the trier of fact. It is the trier of fact who can determine from the credibility of witnesses whether their delay in reporting a sex abuse crime was justified under the circumstances of each case." Id. at 384.

{¶65} Further, while the age of consent for purposes of consent to sexual conduct is sixteen, adult responsibilities are not imposed on children until they are eighteen. Where a civil suit for assault or battery is brought by the victim of childhood sexual abuse, the statute of limitation is twelve years from the time the cause of action accrues, and the cause of action does not accrue until the age the victim reaches majority. R.C. 2305.111(C). The cause of action should not accrue at the age of majority for purposes of a civil statute of limitations and at the age of consent for purposes of the criminal statute of limitations for the same acts of childhood sexual abuse.

{¶66} In the instant case, H.G. testified that she had concerns that the sexual conduct between her and appellant was wrong, but he always made it clear to her that it wasn't sex and was not a sinful act, and that it was okay because he loved her. Tr. 172-173. When she wrote appellant a letter expressing her concerns about the sinful nature of their relationship, he again expressed to her that they were not having intercourse so it was not a sexual relationship. Tr. 174. Throughout trial evidence was presented that the victims were afraid to report appellant's behavior to the church leaders.

{¶67} Based on H.G.'s testimony, the court did not err in finding that the statute of limitations did not begin to run until H.G. turned 18 years of age. H.G. turned 18 on October 26, 1993. The six-year statute of limitations in effect at the time of the crime therefore did not expire until October 26, 1999, after the March 9, 1999, amendment to change the statute of limitations to 20 years. Therefore, because the prosecution for the offenses against H.G. was not barred under section 2901.13 of the Revised Code as it existed on the day prior to the effective date of the amendment, the amended version of R.C. 2901.13 applies and the statute of limitations is 20 years. Appellant does not dispute that he was charged within 20 years of the date of the crimes.

{¶68} The second assignment of error is overruled.

III

{¶69} In his third assignment of error, appellant first argues that the indictments and bill of particulars are vague and duplicative and do not state with sufficient specificity facts which would enable him to plead double jeopardy in a subsequent proceeding based on the same facts. He specifically argues that each count of the indictment, as reflected in the bill of particulars, charges him with the same conduct toward a group of victims, and the indictments are therefore duplicative.

{¶70} An indictment meets constitutional requirements if it contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend, and it enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense. *State v. Childs*, 88 Ohio St.3d 558, 564-565, 2000-Ohio-425, quoting *Hamling v. United States* (1974), 418 U.S. 87, 117-118. Due process problems caused by vagueness in the indictment may be cured if the prosecution

delineates the factual bases for the separate incidents during trial. *State v. Barrett,* Cuyahoga App. No. 89918, 2008-Ohio-2370, ¶19, citing *Valentine v. Konteh* (C.A.6 2005), 395 F.3d 626, 634.

{¶71} As to the bill of particulars, the purpose is to elucidate or particularize the conduct of the accused, not to provide the accused with specifications of evidence or serve as a substitute for discovery. *Barrett*, supra, at ¶16. A bill of particulars which mirrors the language of the indictment and also specifies the time period and location for the alleged offenses is sufficient to elucidate and particularize the conduct of the accused. Id. at ¶17.

{¶72} Contra to appellant's argument, the bill of particulars does not reflect that he is being charged with the same conduct to a group of victims in each count. The bill of particulars specifically sets forth the individual victim in each case and the time frame in which the offense occurred. The use of the term "others" is used only to explain that appellant used the same scheme or plan with each of his victims. For example, in 08-545, the bill recites as to Counts IX through XII:

{¶73} "Between on or about October 26, 1991, and on or about October 25, 1992, the defendant engaged in sexual conduct with [H.G.], a minor at the time of the events. There were four incidents that all took place in Richland County. These incidents either took place in John Picard's home or in his car. The sexual conduct included fellatio, cunnilingus, digital vaginal penetration and fondling of the victim's breasts. John Picard was the youth pastor and counselor of the victim. John Picard used the victim's religious beliefs and teachings in order to coerce her into submitting to

his sexual desires. John Picard engaged in a pattern of this coercion with this victim and other victims in order to remove their resistance to sexual conduct with him."

{¶74} In 09-111, the bill of particulars states in pertinent part as to Counts IX through XII involving L.R.:

{¶75} "The victim knew the defendant since she was approximately 13 years of age and the defendant used his position to groom and influence this victim and others. John Picard used the victim's religious beliefs and teachings, as well as his and his wife's personal relationship as friend or mentor to the victim in order to coerce her into submitting to his sexual desires. John Picard engaged in a pattern of this coercion with this victim and other victims in order to remove their resistance to sexual conduct with him."

{¶76} The bill of particulars in both cases clearly sets forth the alleged conduct for each particular victim, and only refers to other victims in order to clarify that he engaged in the same pattern of coercion with each of the girls.

{¶77} Further, the testimony of each of the victims at trial, as set forth in the Statement of Facts earlier in this opinion, clearly set forth specific instances of sexual conduct with specificity as to the victim's age, the location of the conduct, and type of conduct.

{¶78} Appellant next argues that the trial court erred in allowing the prosecution to amend the indictment in 08-545 to include periods of time after G.R. reached adulthood. Appellant argues that he was unable to defend these allegations due to the addition of the 11 year time period, and during this time period the victim was promiscuous and made repeated false statements to law enforcement officers regarding

other matters, including accusing her husband of the same conduct with which she accused appellant.

{¶79} The record demonstrates that appellant was able to extensively cross-examine G.R. concerning her promiscuity and accusations against her husband. Further, appellant was put on notice that the sexual relationship continued beyond her 18th birthday by the original bill of particulars, which stated that the sexual activity began when G.R. was 13 and continued beyond her 18th birthday.

{¶80} Appellant next argues that the court erred in permitting the state to amend the indictment in 08-545. The indictment, counts I through IV as to G.R. originally alleged a violation of R.C. 2907.03(A)(12):

{¶81} "(A) No person shall engage in sexual conduct with another, not the spouse of the offender, when any of the following apply:

{¶82} "(12) The other person is a minor, the offender is a cleric, and the other person is a member of, or attends, the church or congregation served by the cleric."

{¶83} The indictment was later amended to allege a violation of R.C. 2907.03(A)(1):

{¶84} "(A) No person shall engage in sexual conduct with another, not the spouse of the offender, when any of the following apply:

{¶85} "(1) The offender knowingly coerces the other person to submit by any means that would prevent resistance by a person of ordinary resolution."

{¶86} As to Counts V through VIII, the indictment was amended from an allegation of a violation of R.C. 2907.03(A)(12) to one of R.C. 2907.03(A)(9):

{¶87} "(9) The other person is a minor, and the offender is the other person's athletic or other type of coach, is the other person's instructor, is the leader of a scouting troop of which the other person is a member, or is a person with temporary or occasional disciplinary control over the other person."

{¶88} As to Counts IX through XVI relating to H.G., the indictment was amended from an allegation of violation of R.C. 2907.03(A)(9) to one of R.C. 2907.03(A)(1).

{¶89} Appellant argues that the amendments of the indictment changed the nature of the offenses and prejudiced his defense.

{¶90} The amendments to the indictment were permitted by the court because certain subsections were not in effect at the time of the alleged offenses. The conduct with which the appellant was accused did not change, as the alleged acts and patterns of behavior which constituted the State's theory of the case remained consistent from the allegations as set forth in the bill of particulars through trial.

{¶91} Crim. R. 7(D) provides in pertinent part:

{¶92} "The court may at any time before, during, or after a trial amend the indictment, information, complaint, or bill of particulars, in respect to any defect, imperfection, or omission in form or substance, or of any variance with the evidence, provided no change is made in the name or identity of the crime charged."

{¶93} The Ohio Supreme Court has held that an amendment to the indictment under Crim. R. 7(D) does not permit the amendment of an indictment when the amendment changes the penalty or degree of the charged offense; amending the indictment to change the penalty or degree changes the identity of the offense. *State v. Davis*, 121 Ohio St.3d 239, 903 N.E.2d 609, 2008 -Ohio- 4537, ¶9.

{¶94} In the instant case, the amendments did not change the penalty or degree of the offense. Appellant was put on notice throughout the bill of particulars that even though the original indictments in 08-545 did not allege coercion, the State's theory of the case rested on an allegation that appellant used the religious beliefs and teachings of his victims as well as their personal relationships with him and his wife to coerce them into submitting to sexual conduct with him.

{¶95} Finally, appellant argues that the court erred in refusing to allow counsel for appellant to inspect the grand jury transcripts to ensure that evidence supporting the amendments was in fact presented to the grand jury.

{¶96} Crim.R. 6(E) provides that a trial court may permit the disclosure of grand jury testimony "at the request of the defendant upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury." Crim.R. 16(B)(1)(a) provides for the discovery of grand jury testimony involving the defendant's own testimony or that of a co-defendant. Any other disclosure of grand jury testimony by the trial court is governed by a determination of "particularized need." *State v. Greer* (1981), 66 Ohio St.2d 139, 420 N.E.2d 982. The *Greer* court at paragraph three of the syllabus held a particularized need "is shown where from a consideration of all the surrounding circumstances it is probable that the failure to disclose the testimony will deprive the defendant of a fair adjudication of the allegations placed in issue by the witness' trial testimony." The need to review a witness's testimony for impeachment purposes is dictated by Crim.R. 6(E) and a showing of such particularized need. *Greer* at 150, 420 N.E.2d 982.

{¶97} In the instant case, appellant asked for a review of the grand jury transcript relating to the time frame appellant allegedly engaged in sexual conduct with G.R. to ensure that evidence was presented to the grand jury relating to conduct occurring after she was an adult. The trial court conducted an in camera review of the grand jury transcript and stated on the record that the transcript demonstrated that the grand jury considered evidence from the time G.R. was age 13 through age 26. Tr. 859-861. Appellant has not demonstrated error in the court's refusal to give him the grand jury transcripts for inspection.

{¶98} The third assignment of error is overruled.

IV

{¶99} In his fourth assignment of error, appellant argues that the court should have declared a mistrial or dismissal of the counts related to G.R. because of her false testimony at trial. In the alternative, he argues that her testimony should have been stricken by the court or the jury should have been given a cautionary instruction as to her credibility due to her refusal to answer questions upon assertion of her Fifth Amendment rights.

{¶100} Appellant first argues that the State should have produced G.R.'s deposition testimony from her divorce proceeding as evidence favorable to the accused because in this testimony, she accused her husband of the same acts which she claimed at trial were committed by appellant.

{¶101} Crim. R. 16(B)(1) provides:

{¶102} "Upon receipt of a written demand for discovery by the defendant, and except as provided in division (C), (D), (E), (F), or (J) of this rule, the prosecuting

attorney shall provide copies or photographs, or permit counsel for the defendant to copy or photograph, the following items related to the particular case indictment, information, or complaint, and which are material to the preparation of a defense, or are intended for use by the prosecuting attorney as evidence at the trial, or were obtained from or belong to the defendant, within the possession of, or reasonably available to the state, subject to the provisions of this rule:

{¶103} "(5) Any evidence favorable to the defendant and material to guilt or punishment;"

{¶104} The record does not reflect that G.R.'s divorce deposition was in the possession of the state or reasonably available to the state, nor does the record reflect that the testimony was material to appellant's guilt or innocence. Appellant began cross-examining G.R. concerning this testimony. The prosecutor objected. During the ensuing bench conference, it became clear that counsel for appellant was relying on an affidavit of G.R.'s husband concerning what G.R. said during the course of the divorce, and counsel admitted that he sat in on a portion of G.R.'s deposition when it was taken. Tr. 489-92, 748. Following this exchange, the State obtained copies of four depositions G.R. gave in her divorce case to use in redirect, and turned these copies over to appellant's counsel. The court gave appellant the opportunity to recall G.R., as if on cross examination, after receiving the depositions, which appellant chose not to do. Tr. 750-751.

{¶105} Further, nothing in the record indicates that at any point in the depositions G.R. contradicted her testimony concerning the acts she alleges appellant committed. Counsel cross-examined G.R. extensively concerning her accusations against her ex-

husband Alex and other acts she had allegedly committed. G.R. asserted her 5th Amendment rights when questioning began concerning whether she set fire to a house. The issue of her setting fire to a house lies totally outside the scope of the issues in the instant case and went solely to her credibility, which appellant had already extensively challenged.

{¶106} The decision to grant or deny a motion for mistrial lies within the sound discretion of the trial court. An appellate court will not disturb a trial court's decision to deny a motion for mistrial in the absence of some demonstration that the court abused its discretion. *Goudy v. Dayton Newspapers, Inc.* (1967), 14 Ohio App.2d 207, 237 N.E.2d 909. An abuse of discretion "connotes more than an error of law or of judgment; it implies an unreasonable, arbitrary or unconscionable attitude on the part of the court." *Pembaur v. Leis* (1982), 1 Ohio St.3d 89, 91 437 N.E.2d 1199, 1201.

{¶107} The court did not abuse its discretion in refusing to grant a mistrial or strike G.R.'s testimony based on a lack of credibility. The credibility of witnesses lies within the province of the trier of fact, and counsel was given extensive opportunity to question G.R.'s credibility on cross-examination.

{¶108} Appellant lastly argues that the court erred in failing to give the jury a cautionary instruction concerning G.R.'s assertion of her 5th Amendment rights.

{¶109} The requested instruction reads:

{¶110} "You have heard the testimony of [G.R.] who asserted her Fifth Amendment privilege against self-incrimination as to various matters.

{¶111} "The assertion of her Fifth Amendment privilege limited the defendant's ability to cross examine her. You may therefore consider the assertion of her Fifth Amendment privilege in assessing her credibility."

{¶112} The trial court instructed the jury:

{¶113} "You've heard the testimony of [G.R.] who asserted her Fifth Amendment in the United States Constitutional (sic) Right against self-incrimination as to various unrelated matters. The assertion of her Fifth Amendment Right limited the Defendant's ability to cross-examine her concerning her unrelated activities. You may not consider the assertion of her Fifth Amendment Right for any purpose. Her testimony must be considered and judged by the same standards as you use to determine the credibility and the believability of all witnesses." Tr. 947.

{¶114} Appellant's reliance on *State v. Reiner* (2001), 93 Ohio St.3d 601, 605, is misplaced. *Reiner* considered the issue of whether the trial court's grant of immunity from prosecution to a witness rather than allowing the witness to take the stand and assert her Fifth Amendment rights in front of the jury prejudiced the defendant. In the instant case, G.R. took the stand and was cross-examined extensively. She asserted her 5th Amendment rights on an issue of setting a fire, not on any issue that related directly to the accusations she made against appellant. The court did not err in refusing appellant's instruction as he cites no authority to support his proposition that this instruction represents a correct statement of the law.

{¶115} The fourth assignment of error is overruled.

V

{¶116} In his fifth assignment of error, appellant first argues that the state failed to provide discovery in a timely manner, and in fact produced 54 pages of discovery one week before trial.

{¶117} While several motions to compel discovery were filed and granted, it is not clear in these motions what evidence appellant claims he did not receive in a timely manner. Further, the record reflects that the State had an open file discovery policy. While appellant represents on page 22 of his brief that the trial court had a "so what?" response on this issue, citing to Tr. 868-869, the transcript pages appellant cites to reflect that Officer Shook testified that he believed he had turned a document over to the state a long time ago but shortly before trial he became aware of the fact that the State never received it. The Court's response was that this was a document which should have been turned over earlier. Appellant has not pointed this court to any specific discovery which he received late which prejudiced his defense or the manner in which he was prejudiced. Further, we note that while the State first filed its first discovery response on September 8, 2008, including a reciprocal request for discovery, appellant did not provide discovery to the State until June 5, 2009.

{¶118} Appellant argues that a tape recording of a controlled call between G.R. and appellant was not provided in discovery. The State supplied appellant with a transcribed copy, and appellant has not demonstrated any prejudice from the failure to supply an audio copy.

{¶119} Further, the materials given to the defense in discovery in August of 2009, were pictures and materials held by the Mansfield Police Department. Under Crim. R.

16(B)(1)(c), the State was under no duty to copy such material for appellant, but only to make it available. The discovery response filed by the State on September 8, 2008, specifically provides, "This report is authority to contact the above listed law enforcement agency(ies) to inspect and copy or photograph materials in compliance with Criminal Rule 16."

{¶120} Appellant next restates his arguments concerning the transcripts of G.R.'s deposition testimony in her divorce proceeding. For the reasons stated in Assignment of error IV above, we reject this argument.

{¶121} Finally appellant argues that the charges should have been dismissed because of misconduct by the probation officers supervising appellant as part of his pretrial release. In his June 5, 2009, motion to dismiss, appellant alleged without supporting evidence that a probation officer searched appellant's vehicle and examined his computer. He also claimed that an officer opened a file box and looked through material prepared in anticipation of trial. There is no evidence in the record to support these claims, as appellant did not support his motion with affidavits or other evidentiary support. Further, he points to nothing which was seized or reviewed in this "search" which the State used at trial. The officers appellant claims were involved in this search did not testify at trial and appellant points to no evidence used by the State which was discovered during this alleged search.

{¶122} The fifth assignment of error is overruled.

VI

{¶123} In his sixth assignment of error, appellant argues that the verdict forms are invalid, as they do not refer to specific counts in the indictment, the degree of the felony, nor the act which he is alleged to have committed.

{¶124} The verdict forms are structured the same on all counts. By way of example, the verdict form on Count 15 states:

{¶125} "We, the Jury, upon the evidence and the law, find the defendant, John S. Picard Guilty of the crime of Sexual Battery against [H.G.] as charged in the Indictment during the period October 26, 1991, and November 30, 2003."

{¶126} Appellant argues that because the indictments do not specify the criminal act which he committed nor the degree of the felony, they are insufficient to convict him of a crime, relying on *State v. Pelfrey*, 112 Ohio St.3d 422, 860 N.E.2d 735, 2007-Ohio-256. Appellant's reliance on *Pelfrey* is misplaced. *Pelfrey* involved an interpretation of R.C. 2945.72(A):

{¶127} "(A) When the presence of one or more additional elements makes an offense one of more serious degree:

{¶128} "(1) The affidavit, complaint, indictment, or information either shall state the degree of the offense which the accused is alleged to have committed, or shall allege such additional element or elements. Otherwise such affidavit, complaint, indictment, or information is effective to charge only the least degree of the offense.

{¶129} "(2) A guilty verdict shall state either the degree of the offense of which the offender is found guilty, or that such additional element or elements are present.

Otherwise, a guilty verdict constitutes a finding of guilty of the least degree of the offense charged."

{¶130} In the instant case, appellant was charged with sexual battery. There was no allegation of the presence of any additional element to make the offense of sexual battery one of a more serious degree. Therefore, the specificity required by *Pelfrey* and its progeny was not required to convict appellant of sexual battery.

{¶131} Appellant argues that because the verdict forms as to each victim state generally the offense without alleging a specific act, and they specify the same time frames as to each victim, the verdicts are duplicative and violate double jeopardy. We disagree. As noted in the Statement of Facts and earlier in this opinion, the victims each testified to multiple incidents of sexual conduct, sufficient to support convictions on each charge. Further, after reading the charges in the indictment to the jury and explaining the verdict forms, the judge instructed the jury, "And then you'll proceed to consider each and every charge separately and make a decision in that regard." Tr. 955. There is sufficient evidence to support convictions on all 42 counts and the jury was specifically instructed to consider each charge separately.

{¶132} The sixth assignment of error is overruled.

VII

{¶133} In his seventh assignment of error, appellant first argues that the following statement by the court in opening instructions to the jury improperly inferred the court's opinion as to his guilt when the court did not later dismiss any counts of the indictment:

{¶134} "The Defendant has moved the Court to dismiss some of the counts or force the state to elect or deselect certain counts. The Court will allow the State to put

on its case and then determine if some of the counts can be or should be dismissed in accordance to the evidence adduced at trial." Tr. 41.

{¶135} The court overruled appellant's motion for mistrial on this basis, noting that while the court probably shouldn't have made the comment, with all the other things the jury would hear throughout the course of the trial the jury would not have any recollection of that statement. Tr. 205. The court gave a curative instruction in closing instructions:

{¶136} "If during the course of the trial I said or did anything you consider an indication of my view of the facts, disregard it. Jurors and not the judge decide disputed facts." Tr. 956.

{¶137} The court did not abuse its discretion in overruling appellant's motion for mistrial based on this isolated comment in the course of a long trial.

{¶138} Appellant next restates his argument that the convictions are duplicative because no finding of any specific act was made by the jury as to any of the counts. He argues that because no specific acts were found by the jury and since the bill of particulars identified one victim "and others," the convictions are duplicative and therefore allied offenses. For the reasons stated in Assignment of error III and VI, we reject appellant's argument that the convictions are duplicative.

{¶139} Lastly, appellant argues that the court erred in imposing maximum and consecutive sentences. The court imposed 5-year sentences on one count each for offenses against G.R. and H.G. as juveniles, for one count each for offenses against G.R. and H.G. as adults, and for one count each for S.W., L.R., S.S. and J.F. These

sentences were to run consecutively to each other. On each of the other counts the court imposed a one year sentence, to be served concurrently with all other counts.

{¶140} R.C. 2929.14(C) provides in pertinent part:

{¶141} "[T]he court imposing a sentence upon an offender for a felony may impose the longest prison term authorized for the offense pursuant to division (A) of this section only upon offenders who committed the worst forms of the offense, upon offenders who pose the greatest likelihood of committing future crimes, upon certain major drug offenders under division (D)(3) of this section, and upon certain repeat violent offenders in accordance with division (D)(2) of this section."

{¶142} R.C. 2929.14(C)'s requirement that the trial court make specific findings in support of a maximum sentence was found unconstitutional by the Ohio Supreme Court in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, ¶63-64. In *State v. Kalish,* 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, the Ohio Supreme Court reviewed its decision in *Foster* as it relates to the remaining sentencing statutes and appellate review of felony sentencing.

{¶143} In *Kalish*, the Court discussed the affect of the *Foster* decision on felony sentencing. The Court stated that, in *Foster*, the Ohio Supreme Court severed the judicial fact-finding portions of R.C. 2929.14, holding that "trial courts have full discretion to impose a prison sentence within the statutory range and are no longer required to make findings or give their reasons for imposing maximum, consecutive, or more than the minimum sentences." *Kalish* at paragraphs 1 and 11, citing *Foster* at paragraph 100, See also, *State v. Payne*, 114 Ohio St.3d 502, 2007-Ohio-4642, 873 N.E.2d 306. "Thus, a record after *Foster* may be silent as to the judicial findings that appellate courts were

originally meant to review under 2953.08(G)(2).” *Kalish* at paragraph 12. However, although *Foster* eliminated mandatory judicial fact finding, it left intact R.C. 2929.11 and 2929.12, and the trial court must still consider these statutes. *Kalish* at paragraph 13, see also *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, 846 N.E.2d 1.[2]

{¶144} “Thus, despite the fact that R.C. 2953.08(G)(2) refers to the excised judicial fact-finding portions of the sentencing scheme, an appellate court remains precluded from using an abuse-of-discretion standard of review when initially reviewing a defendant’s sentence. Instead, the appellate court must ensure that the trial court has adhered to all applicable rules and statutes in imposing the sentence. As a purely legal question, this is subject to review only to determine whether it is clearly and convincingly contrary to law, the standard found in R.C. 2953.08(G).” *Kalish* at paragraph 14.

{¶145} Therefore, *Kalish* holds that, in reviewing felony sentences and applying *Foster* to the remaining sentencing statutes, the appellate courts must use a two-step approach. “First, they must examine the sentencing court’s compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law. If this first prong is satisfied, the trial court’s decision in imposing the term of imprisonment shall be reviewed under an abuse of discretion standard.” *Kalish* at paragraph 4, *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470.

[2] “[P]ursuant to R.C. 2929.11(A), a trial court must be guided by the overriding purposes of felony sentencing, which are ‘to protect the public from future crime by the offender and others and to punish the offender. The court must also consider the seriousness and recidivism factors under R.C. 2929.12.” *State v. Murray,* Lake App. No. 2007-L-098, 2007-Ohio-6733, paragraph 18, citing R.C. 2929.11(A).

{¶146} Appellant does not argue that the sentence was contrary to law, but rather argues the sentence was unduly harsh based on the facts of this case.

{¶147} Appellant has not demonstrated that the court abused its discretion in imposing a maximum and consecutive sentence. The trial court considered the number and age of the victims, the length of the sexual conduct, the psychological harm inflicted on the victims, the position of trust held by appellant as a pastor and appellant's failure to acknowledge the nature and extent of his conduct and to show remorse. Tr. 987-990.

{¶148} The seventh assignment of error is overruled.

{¶149} The judgment of the Richland County Common Pleas Court is affirmed.

By: Edwards, P.J.

Hoffman, J. and

Wise, J. concur

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JUDGES

JAE/r0802

[Cite as *State v. Picard*, 2010-Ohio-6358.]

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO

FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
JOHN S. PICARD	:	
Defendant-Appellant	:	CASE NO. 2009 CA 0108

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Richland County Court of Common Pleas is affirmed. Costs assessed to appellant.

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JUDGES