

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
OTTAWA COUNTY

State of Ohio

Court of Appeals No. OT-09-018

Appellee

Trial Court No. 08-CR-092

v.

Raymond E. Taylor, Jr.

DECISION AND JUDGMENT

Appellant

Decided: January 28, 2011

* * * * *

Mark E. Mulligan, Ottawa County Prosecuting Attorney, and
Melissa R. Bergman, Assistant Prosecuting Attorney, for appellee.

Keith O'Korn, for appellant.

* * * * *

HANDWORK, J.

{¶ 1} This case is before the court on appeal from a judgment of the Ottawa County Court of Common Pleas. In that court, appellant, Raymond Taylor, was found guilty by a jury of ten counts of disseminating obscene material harmful to a juvenile in violation of R.C. 2907.31(A)(1). Five of these charges were classified as fourth degree felonies and five of them were classified as fifth degree felonies.. The trial court

sentenced appellant to 18 months in prison for each of the fourth degree felonies and 12 months in prison for each of the fifth degree felonies, which are to be served consecutive to each other and to the prison terms imposed for the fourth degree felonies.

{¶ 2} Additionally, Taylor was found guilty of eight counts of rape, using force or threat of force, of a victim under the age of 13 or the age of ten in violation of R.C. 2907.02(A)(1)(b). All are felonies of the first degree and required the court below to impose a mandatory life sentence for each conviction. The court ordered each of these sentences to be served consecutive to each other and to the sentences imposed for the fourth and fifth degree felonies. Appellant was also found guilty on four counts of rape in violation of R.C. 2907.02(A)(2), felonies of the first degree, and sentenced to ten years in prison on each of these convictions, which are to be served consecutive to each other and to all other sentences. Finally, for appellant's remaining 59 violations of R.C. 2907.02(A)(2), which are all felonies of the first degree, the trial court imposed a ten year sentence for each, to be served consecutive to each other and to all other sentences imposed.

{¶ 3} Appellant appeals the common pleas court's judgment and sets forth the following assignments of error:

{¶ 4} "FIRST ASSIGNMENT OF ERROR

{¶ 5} "APPELLANT'S DUE PROCESS AND DOUBLE JEOPARDY RIGHTS WERE VIOLATED UNDER ARTICLE I, SECTIONS 10 AND 16 OF THE OHIO CONSTITUTION AND THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS

TO THE U.S. CONSTITUTION BY STRUCTURAL AND CONSTITUTIONAL ERROR THAT OCCURRED WHEN HE WAS CONVICTED UPON AN INSUFFICIENT AND DEFECTIVE INDICTMENT THAT INCLUDED CARBON COPY COUNTS WITH OFFENSE DATE RANGES.

{¶ 6} "SECOND ASSIGNMENT OF ERROR

{¶ 7} "THE TRIAL COURT MISAPPLIED THE RAPE SHIELD ACT AND VIOLATED THE APPELLANT'S 6TH AND 14TH AMENDMENT RIGHTS TO DUE PROCESS, TO PRESENT A DEFENSE AND CHALLENGE HIS ACCUSERS WHEN IT PREVENTED THE DEFENSE FROM CROSS EXAMINING THE VICTIM ON HER PRIOR FALSE ACCUSATIONS OF SEXUAL ABUSE AND EXCLUDED ANY EVIDENCE OR REFERENCE TO THESE PRIOR FALSE ALLEGATIONS .

{¶ 8} "THIRD ASSIGNMENT OF ERROR

{¶ 9} "APPELLANT WAS DEPRIVED OF HIS RIGHTS TO A FAIR TRIAL AND DUE PROCESS OF LAW AS GUARANTEED BY THE 14TH AMENDMENT TO THE U.S. CONSTITUTION AND SECTION 16, ARTICLE I OF THE OHIO CONSTITUTION BY PROSECUTORIAL MISCONDUCT DURING TRIAL.

{¶ 10} "FOURTH ASSIGNMENT OF ERROR

{¶ 11} "APPELLANT'S CONVICTIONS WERE BOTH AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND WERE NOT SUPPORTED BY THE SUFFICIENCY OF THE EVIDENCE IN VIOLATION OF THE DUE PROCESS

CLAUSE OF THE 14TH AMENDMENT TO THE U.S. CONSTITUTION AND ARTICLE I, SECTIONS 1, 10 & 16 OF THE OHIO CONSTITUTION.

{¶ 12} "FIFTH ASSIGNMENT OF ERROR

{¶ 13} "THE SENTENCE WAS CONTRARY TO LAW AND ALSO VIOLATED THE 6TH AMENDMENT TO THE U.S. CONSTITUTION.

{¶ 14} "SIXTH ASSIGNMENT OF ERROR

{¶ 15} TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE 6TH AMENDMENT TO THE U.S. CONSTITUTION AND ARTICLE I, SECTIONS 10, 16 [SIC] OF THE OHIO CONSTITUTION."

{¶ 16} The facts relevant to a disposition of appellant's assignments of error are as follows. Appellant was the stepfather of his former wife's two daughters, K.C. and her younger sister. According to K.C., appellant first began sexually abusing her when she was nine years old and continued the abuse until she was 15 years old. At that point, K.C. told a friend about the abuse; the friend, in turn, told the principal, who summoned K.C. to his office. When the principal asked K.C. if her stepfather had sexual intercourse with her, the girl began crying and said, "Yes."

{¶ 17} At appellant's trial, K.C. testified that Taylor first abused her in 2002, when she was nine years old, by placing his fingers in her vagina. Thereafter, he began touching her breasts and placing his fingers in her vagina at least twice per week. According to K.C., appellant also performed cunnilingus on her and had her perform

"hand jobs" and "blow jobs" on him. In addition, appellant would have the child watch pornographic movies at least once per week. Taylor also showed his stepdaughter nude photographs of himself and her mother and would have K.C. choose one of the photos of him. All of these activities occurred when K.C.'s mother was at work at a battery company or at her second job as a health care provider. Appellant worked as a health care provider for the same company as K.C.'s mother. His only client, however, was his disabled brother, who resided with the family, and was incapable of knowing what was happening to K.C. Thus, Taylor was at home almost all the time. According to the victim, the sexual abuse usually occurred during the day in the summer and on days during the school year when school was delayed by fog or snow.

{¶ 18} When appellant and K.C.'s mother were first married, they resided in Port Clinton, Ottawa County, Ohio. In December 2005, they moved to Oak Harbor, Ottawa County, Ohio, where appellant continued sexually abusing K.C. At that point, he sometimes attempted to put his penis in her vagina, but said it was still "too small." When Taylor determined that K.C. was "ready" in the summer of 2007, he ordered condoms to be delivered by mail. Notably, appellant did not have to use condoms when engaging in sexual intercourse with his wife because she had a tubal ligation. K.C. testified that there were ten0 condoms in the shipment and that there were 40 to 43 left when she decided that she could not "live with this much longer." She also informed the authorities that Taylor would wrap a used condom in a paper towel and place it in the kitchen waste basket. One of the used condoms was retrieved from the kitchen waste

basket and tested for DNA. The only DNA obtained from the inside of the condom belonged to appellant; the DNA obtained on the outside of the condom belonged to K.C. and appellant. Although intercourse was painful for K.C., she refused to make any noise because it "made him [Taylor] more aroused."

{¶ 19} In his first assignment of error, Taylor complains that the indictment in this case was constitutionally defective and insufficient because it contained "carbon copy" counts of disseminating obscene material to a juvenile, rape, and sexual battery¹ that differed only as to date of occurrence ranges. Article I, Section ten of the Ohio Constitution provides that "no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury." Therefore, the Ohio Constitution guarantees a defendant "that the essential facts constituting the offense for which he is tried will be found in the indictment by the grand jury." *State v. Pepka*, 125 Ohio St.3d 124, 2010-Ohio-1045, ¶ 14, citing *Harris v. State* (1932), 125 Ohio St. 257, 264.

{¶ 20} Pursuant to Crim.R. 12(C), any "[d]efenses and objections based on defects in the indictment" must be raised prior to trial. See Crim.R. 12(H) ; *State v. Foust*, 105 Ohio St.3d 137, 2004-Ohio-7006, ¶ 27. Thus, any claim of error in the indictment in a case where the defendant failed to raise the alleged defects prior to trial is limited to a plain error review on appeal. *State v. Frazier* (1995), 73 Ohio St.3d 323, 332. Plain or

¹Counts 82 through 140 of the indictment were not considered by the jury and the trial court's judgment does not contain any sentencing entry on these counts.

obvious error occurs when it affects the outcome of a trial. Crim.R. 52(B); *State v. Barnes* (2002), 94 Ohio St.3d 21, 27.

{¶ 21} In the present case, appellant failed to raise any issue with regard to the indictment prior to trial; therefore, we can only review the sufficiency of indictment for plain error. An indictment is sufficient if the language used in that indictment tracks the language of the statute that a defendant is alleged to have violated. *State v. Landrum* (1990), 53 Ohio St.3d 107, 119. Here, each of the offenses enumerated in the indictment tracks the language of the pertinent statutory section and is, therefore, sufficient.

{¶ 22} Moreover, the case *Valentine v. Konteh*, 395 F.3d 626, relied on by appellant to assert that the indictment in the present case violates his due process and double jeopardy rights is distinguishable from the case before us. In *Valentine*, the indictment set forth 20 identically worded counts of "child rape" and 20 identically worded counts of felonious penetration. *Id.* at 628. Likewise, a bill of particulars failed to offer any differentiation between the counts. *Id.* at 269. In addition, the eight-year-old victim's testimony was also vague and she altered the number of times that the sexual conduct occurred on cross-examination. Here, appellant failed to file a request for a bill of particulars, K.C. was able to provide specific details of the times that appellant engaged in sexual conduct with her, and other evidence, e.g. the times that the school bus was delayed and the fact that only appellant's and K.C.'s DNA were found on the condom, substantiated her testimony. For all of the foregoing reasons, appellant's first assignment of error is found not well-taken.

{¶ 23} In his second assignment of error, appellant contends that the trial court misapplied the rape shield act by granting the state's motion in limine. In that motion, the state asked the trial court to preclude reports generated by the Sandusky County Department of Job and Family Services in 1994 and 1995 from evidence. Appellee argues that the reports were not relevant to the instant case because they involved allegations of physical-not sexual-abuse of K.C. and her sister by their mother's former boyfriend.

{¶ 24} A motion in limine is a request "that the court limit or exclude use of evidence which the movant believes to be improper, and is made in advance of the actual presentation of the evidence to the trier of fact, usually prior to trial. The motion asks the court to exclude the evidence unless and until the court is first shown that the material is relevant and proper." *State v. Winston* (1991), 71 Ohio App.3d 154, 158. Because a trial court's decision on a motion in limine is a ruling to exclude or admit evidence, our standard of review on appeal is whether the trial court committed an abuse of discretion that amounted to prejudicial error. *State v. Graham* (1979), 58 Ohio St.2d 350. An abuse of discretion connotes more than a mere error of law or judgment, rather, it requires a finding that the trial court's attitude in reaching its decision was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶ 25} According to appellant, the 1994 and 1995 allegations made by K.C., who was approximately two or three years old at the time, involved sexual contact/conduct. In his decision on the state's motion in limine, the trial judge found that appellant failed to

provide the court with the disputed investigative reports and, therefore, granted the state's motion in limine. The judge did, however, state that "if the Defendant is able to provide evidence of a social service agency report that contains false allegations, the Court would be compelled to reconsider its ruling on the State's motion in limine." Appellant never provided any such reports. Consequently, we find that the trial court's grant of the prosecution's motion in limine was not unreasonable, arbitrary, or unconscionable, and appellant's second assignment of error is found not well-taken.

{¶ 26} Appellant's third assignment of error contends that because of prosecutorial misconduct, he was deprived of his constitutional right to a fair trial and due process of law under the Fourteenth Amendment to the United States Constitution and Article I, Section 16, Ohio Constitution. Specifically, he alleges that the prosecutor: (1) told the jury that he wanted a jury that was favorable to the prosecution; (2) pointed out a "big article" about Taylor in the newspaper; (3) made an "objection with no legal basis relating to the rape shield law" to a remark made by appellant's trial counsel during opening statement; (4) asked leading questions to "virtually every witness, which in many cases lacked [a] foundation and constituted testimony on the part of the prosecutor himself;" (5) asserted a "frivolous, improper objection, which interrupted the flow and content of the defense cross of" the victim; (6) failed to qualify those witnesses who provided scientific and medical opinions as experts; (7) asked questions on redirect examination that were outside the scope of cross-examination; (8) referred to

unauthenticated records of school closings and delays; and (9) made improper closing remarks.

{¶ 27} In deciding whether a prosecutor's conduct rises to the level of prosecutorial misconduct, a court determines if the prosecutor's actions were improper, and, if so, whether the defendant's substantial rights were actually prejudiced. *State v. Smith* (1984), 14 Ohio St.3d 13, 14. That is, a jury verdict can be reversed for prosecutorial misconduct only in that circumstance where it deprives the defendant of a fair trial. *State v. Carter* (1995), 72 Ohio St.3d 545, 557. The burden is on the defendant to show that, but for the prosecutor's misconduct, the jury would not have convicted him. *State v. Lollis*, 9th Dist. No. 24826, 2010-Ohio-4457, ¶ 24.

{¶ 28} With regard to appellant's first allegation, the prosecutor, prior to the voir dire of the potential members of the jury, made the remark that both sides, i.e. both the prosecution and the defense, wished to have a jury favorable to its side of the case but, in the process of "competing to get a jury favorably [sic] to their side, they somehow you come out with a neutral one." We do not find this remark improper. The comment about the "big article" is taken out of context and was mentioned by the prosecutor during voir dire only to point out that if any potential jurors saw the article, they must "put that out of your mind" and decide the case on the evidence and the trial judge's instructions. No error occurred with regard to the third comment because after the objection by the prosecutor and after the rape shield law was discussed by the judge with the prosecutor and appellant's counsel, the latter was permitted to state: "The evidence is going to show

that she [K.C.] made up allegations like this before. She has accused her own mother of sexual abuse. Completely unfounded."

{¶ 29} A review of those pages in the transcript of the proceedings below that purportedly contain leading questions reveals appellant failed to object to all but three of these questions. As to these three objections, the prosecutor withdrew two of the disputed questions. The third question occurred on the direct examination of K.C.'s mother and involved what the mother identified as a semen stain that she found on her daughter's comforter in 2007. In attempting to elicit why the mother did not believe that the stain was made by K.C., the prosecutor first asked if it was because of the way the stain was displayed, and she answered: "Yes." The prosecutor then asked: "The way the liquid, that the stain was deposited on the comforter?" Appellant objected to the question as being leading, and the court sustained the objection. The prosecutor then abandoned this line of questioning. We cannot say that based upon this one leading question, that appellant's case was prejudiced.

{¶ 30} With regard to the remaining alleged leading questions, appellant refers only to numerous page numbers, not specific questions posed by the prosecutor. App.R. 12(A)(2) allows a court of appeals to disregard those parts of an assignment of error presented for review if the party raising it fails to identify in the record the error on which the assignment of error is based or fails to argue the assignment separately in the brief, as required under App.R. 16(A). See, also, *State v. Watson* (1998), 126 Ohio App.3d 316, 321 (holding that "it is not the duty of an appellate court to search the record for evidence

to support an appellant's argument as to any error.") Thus, we shall not address the merits of appellant's argument relative to the alleged leading questions.

{¶ 31} According to appellant, the prosecutor made a frivolous, improper objection when appellant's trial counsel attempted to impeach K.C.'s testimony concerning the first person that she told of the sexual abuse. When presented with this question, K.C. answered "Vince." At that point, appellant's trial counsel attempted to ask K.C. whether she initially informed the investigating detective that she first told a different classmate of the sexual abuse. The prosecutor objected, stating that pursuant to Evid.R. 613(B)(1) the defense had to provide K.C. with a copy of the statement. After a discussion, trial counsel did ask the question and showed K.C. a transcript of the interview with the detective. K.C. explained that she told this other person named Teddy that "something was going on" but did not tell him "what actually happened." Accordingly, we cannot find that the actions of the prosecutor relative to this matter constituted misconduct.

{¶ 32} Appellant next argues that the prosecutor failed to qualify Dr. Randall Schlievert, Mary Kay Baumgartner, Julie Cox, and Jennifer Akbar as experts before obtaining medical or scientific opinions from them. Evid.R. 702 governs the admissibility of expert testimony, and provides:

{¶ 33} "A witness may testify as an expert if all of the following apply:

{¶ 34} "(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;

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

{¶ 36} "(C) The witness' testimony is based on reliable scientific, technical, or other specialized information. 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:

{¶ 37} "(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;

{¶ 38} "(2) The design of the procedure, test, or experiment reliably implements the theory;

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

{¶ 40} Contrary to appellant's allegations, a review of the relevant portions of the trial transcript reveals that the prosecutor qualified Dr. Schlievert as an expert in child sexual abuse; Mary Kay Baumgartner as an expert in counseling victims of sexual abuse; Julie Cox as an expert (forensic scientist) qualified to perform DNA testing for the Ohio

Bureau of Criminal Investigations; and Jennifer Akbar as an expert (forensic scientist), who also is employed by the Ohio Bureau of Criminal Identification and Investigation.

{¶ 41} Appellant also claims that upon redirect examination, the prosecutor asked some of these experts questions that were outside the scope of cross-examination. We disagree. A review of the record in this cause reveals that the questions posed were not outside the scope of cross-examination. Moreover, with regard to appellant's meritless claim that the prosecutor improperly referred to unauthenticated records of school closings and delays, the prosecutor did make this reference to these records, but they were subsequently entered into evidence.

{¶ 42} Additionally, appellant asserts that the prosecutor made improper, prejudicial remarks during closing arguments. The test applicable to this allegation "is whether remarks were improper and, if so, whether they prejudicially affected substantial rights of the accused." *State v. Smith* (1984), 14 Ohio St.3d 13, 14. The touchstone of this analysis is not the culpability of the prosecutor but the fairness of the trial. *State v. Smith* (2000), 87 Ohio St.3d 424, 442. (Citation omitted.)

{¶ 43} Appellant argues that the following remarks made by the prosecutor in closing are: (1) that the DNA from another person could not have been on the outside of the condom retrieved from the kitchen waste basket; (2) that the defense contended that K.C.'s DNA on the outside of the condom was snatched from thin air; (3) that he reminded the jurors to fill out all of the 140 verdict forms by stating "I don't think we are asking too much of you to write your names on those forms for each time that that

nine-year-old to 15-year-old was raped by her perverted stepfather." Appellant claims that this was "guessing"; (4) that the police should be commended because they admitted that they, using rubber gloves, picked up the condom from the kitchen waste basket and then dropped it back into the waste basket; (5) that the prosecutor falsely stated that Dr. Schlievert said K.C. was sexually abused; and (6) that he asked the jury whether any one of them would allow appellant to baby sit his or her child. All of these remarks, except for comment 6 were made in rebuttal to trial counsel's closing argument and were confirmed by the evidence offered in this cause. For example, Dr Schlievert did opine that K.C. was subjected to "sexual contact or sexual abuse." As for comment 6, it was unnecessary, but not so prejudicial to appellant that it could be characterized as outweighing the fairness of the trial afforded to Taylor. Therefore, we find appellant's third assignment of error not well-taken.

{¶ 44} In his fourth assignment of error, Taylor maintains that his convictions were not supported by sufficient evidence and that the jury's verdict is against the manifest weight of the evidence. The legal concepts of sufficiency of the evidence and weight of the evidence are both quantitatively and qualitatively different. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. In reviewing sufficiency, an appellate court must examine the evidence offered at trial to determine whether such evidence, if believed, would support a conviction. *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus, superseded by state constitutional amendment on other grounds as stated in *State v. Smith* (1997), 80 Ohio St.3d 89. "The relevant inquiry

is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *Id.* at paragraph two of the syllabus, following *Jackson v. Virginia* (1979), 443 U.S. 307. In determining whether a conviction is against the manifest weight of the evidence, a reviewing court examines the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines "whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *Thompkins* at 387, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

{¶ 45} Without addressing each and every allegation² set forth by appellant, we find that based upon the evidence offered at trial, as set forth above, sufficient believable evidence was offered to prove, beyond a reasonable doubt, that appellant committed the offenses set forth in the indictment. Likewise, upon reviewing all the evidence adduced in this cause and in consideration of the credibility of the witnesses, we cannot say that the jury clearly lost its way and created a manifest miscarriage of justice in finding appellant guilty of the charged offenses. Accordingly, appellant's fourth assignment of error is found not well-taken.

{¶ 46} In his fifth assignment of error, appellant claims that his sentence is contrary to law because the trial court made a finding that he "committed the worst forms

²Some of these allegations have no basis in the record of this cause, e.g., K.C. "lied" and "doctored a condom" so that her DNA was on the outside of it.

of the crimes that he has been convicted of " and, therefore, imposed maximum sentences. In *State v. Foster*, ten9 Ohio St.3d 1, 2006-Ohio-856, the Supreme Court of Ohio found portions of Ohio's sentencing scheme unconstitutional and severed those provisions from the sentencing statute. One of these provisions was R.C. 2929.14(C), which required a court to make a finding that defendant committed the worst form of the offense before sentencing him or her to a maximum sentence. *Id.* at paragraph one of the syllabus. Trial courts now have full discretion in imposing a sentence within the statutory range. *Id.* at paragraph seven of the syllabus. Because the trial court relied on R.C. 2929.14(C) in imposing maximum sentences for each of appellant's crimes, appellant's fifth assignment of error is found well-taken as to all of the maximum sentences imposed except the mandatory life sentences. See *State v. Jones*, 6th Dist. No. WD-05-045, 2007-Ohio-2670, ¶ 8.

{¶ 47} Appellant's sixth assignment of error complains that he was not afforded effective assistance of counsel as required by the Sixth Amendment to the United States Constitution. In order to substantiate a claim for ineffective assistance of counsel, Taylor must demonstrate: (1) deficient performance, that is, "errors so serious that counsel was not functioning as counsel" and (2) prejudice; specifically, "errors * * * so serious as to deprive [appellant] of a fair trial, a trial whose result is reliable." *Strickland v. Washington* (1984), 466 U.S. 668, 68. Appellant alleges numerous ways in which his trial counsel was ineffective. Nonetheless, a review of the record reveals that counsel was not deficient in the way he represented appellant. For reasons of strategy, he opted

not to pursue certain matters which were not relevant to the case at hand, e.g., purported prior allegations of abuse, but did pursue others that were important to undermine the prosecution's case, e.g., his vigorous cross-examination of Dr. Schlievert. Of great importance is the fact that appellant fails to demonstrate that absent any error made by his trial counsel the result of his trial would have been different. Therefore, appellant's sixth assignment of error is found not well-taken.

{¶ 48} On consideration whereof, the judgment of the Ottawa County Court of Common Pleas is reversed, in part, and affirmed, in part, and this cause is remanded to that court solely for the purpose of re-sentencing Raymond E. Taylor, Jr. on all of his convictions but the mandatory life sentences. The lower court's judgment is affirmed in all other respects. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24(A).

JUDGMENT REVERSED, IN PART,
AND AFFIRMED, IN PART.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.