[Cite as *State v. Wilkins*, 2026-Ohio-4420.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF LORAIN	)	

STATE OF OHIO	C.A. No. 24CA012158
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
PAUL WILKINS, JR.	COURT OF COMMON PLEAS COUNTY OF LORAIN, OHIO
Appellant	CASE No. 23CR109115

DECISION AND JOURNAL ENTRY

Dated: November 9, 2026

HENSAL, Judge.

{¶1} Paul Wilkins appeals his convictions for rape from the Lorain County Court of Common Pleas. For the following reasons, this Court affirms.

I.

{¶2} J.P., who has an intellectual disability, testified that he was riding his bike to a store when Mr. Wilkins, a former co-worker, approached him in a van. Mr. Wilkins told J.P. that there was someone interested in him and invited J.P. to his house to meet the person. J.P. agreed and when they got to Mr. Wilkins's house, Mr. Wilkins admitted that the person interested in J.P. was himself.

{¶3} According to J.P., he was not comfortable engaging in sexual conduct with Mr. Wilkins, but Mr. Wilkins pulled J.P.'s pants down and engaged in oral sex with J.P. J.P. had to use the bathroom, but when he was finished, J.P. asked if Mr. Wilkins wanted to remove J.P.'s clothes. They entered Mr. Wilkins's room and J.P. said that he was open to kissing but he did not

want to perform oral sex on Mr. Wilkins or engage in anal sex. Mr. Wilkins engaged in anal sex with J.P., however, which J.P. said was against his wishes and that he told Mr. Wilkins to stop multiple times. After Mr. Wilkins ejaculated, J.P. got dressed and returned to the group home where he lives. The following morning, he told a staff member about what had happened, and the staff member accompanied J.P. to the police station.

{¶4} The Grand Jury indicted Mr. Wilkins on two counts of rape under Revised Code Section 2907.02(A)(1)(c). A jury found Mr. Wilkins guilty of the offenses, and the trial court sentenced him to a total of 18 to 22-and-a-half years imprisonment. Mr. Wilkins has appealed his convictions, assigning six errors.

II.

ASSIGNMENT OF ERROR I

> THE JURY'S VERDICT ON COUNTS 1 AND 2, FOR RAPE, WAS NOT SUPPORTED BY SUFFICIENT EVIDENCE BECAUSE THE EVIDENCE PRESENTED AT TRIAL WAS INSUFFICIENT TO PROVE THAT J.P. WAS SUBSTANTIALLY IMPAIRED.

{¶5} In his first assignment of error, J.P. argued that his convictions are not supported by sufficient evidence. Whether a conviction is supported by sufficient evidence is a question of law, which we review de novo. *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997). In carrying out this review, our "function . . . is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt." *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus. "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*.

{¶6} Section 2907.02(A)(1)(c) provides that "[n]o person shall engage in sexual conduct with another when . . . [t]he other person's ability to resist or consent is substantially impaired because of a mental . . . condition . . . and the offender knows or has reasonable cause to believe that the other person's ability to resist or consent is substantially impaired because of a mental . . . condition . . . ." Mr. Wilkins argues that the State presented insufficient evidence to establish that J.P. was substantially impaired because of a mental condition.

{¶7} The meaning of "substantially impaired" is not defined by statute. *State v. Jordan*, 2023-Ohio-3800, ¶ 21. In *Jordan*, the Ohio Supreme Court explained that "'[s]ubstantially' has been defined as 'in a substantial manner' or 'so as to be substantial.' To better understand these definitions, we examine the word 'substantial,' which means 'constituting substance' or 'not seeming or imaginary.'" *Id.* at ¶ 22, quoting Webster's Third New International Dictionary 2280 (2002). It also noted that "'[i]mpaired' means 'to make worse' or 'diminish in quantity, value, excellence, or strength.'" *Id.*, quoting Webster's Third New International Dictionary at 1131. The Ohio Supreme Court has also explained that "substantial impairment must be established by demonstrating a present reduction, diminution or decrease in the victim's ability, either to appraise the nature of his conduct or to control his conduct." *State v. Zeh*, 31 Ohio St.3d 99, 103-104 (1987). "[E]vidence of a permanent mental condition may be used to establish substantial impairment . . . ." *State v. Gasper*, 2024-Ohio-4782, ¶ 15. "Expert testimony is not required." *State v. Daniels*, 2011-Ohio-6414, ¶ 6 (9th Dist.). "Instead, a substantial impairment may be proven by the victim's own testimony, allowing the trier of fact to observe and evaluate the victim's ability to perceive the nature of or to control her conduct, and by the testimony of others who have interacted with the victim." *Id.*

{¶8} J.P.'s mother testified that J.P. had been diagnosed with a mild intellectual disability and that his measurements were comparable to a seven-year-old. She said that he is unable to live on his own and often makes poor decisions. Although he can say yes and no, he might not always know when to say no. He cannot drive and he wears a diaper under his clothes for comfort. The house manager for the group home where J.P. lives testified that J.P. is not able to make rational decisions and is easily swayed by others. He has had trouble keeping employment because of his poor social communication skills and enjoys carrying around a baby blanket, baby bottles, and pacifiers.

{¶9} Mr. Wilkins notes that the house manager also testified that J.P. has the mental capacity of a teenager, has no curfew, and has the right to date if he wants. J.P.'s mother acknowledged that J.P. would know how to say no to sexual conduct if he did not want something. J.P. also does not have a court-appointed guardian. Mr. Wilkins argues that J.P.'s own testimony established that he has a high level of cognitive functioning, noting that he did not go along with every suggestion posed by defense counsel. He also testified about his ability to consent or resist throughout the encounter and understood the risks of contracting sexually transmitted diseases.

{¶10} Although there may be some uncertainty about J.P.'s exact level of cognitive function, viewing the facts in a light most favorable to the State, there is sufficient evidence in the record from which a reasonable jury could find that J.P.'s ability to resist or consent to sexual conduct with Mr. Wilkins was substantially impaired. We, therefore, conclude that Mr. Wilkins's convictions are supported by sufficient evidence. His first assignment of error is overruled.

ASSIGNMENT OF ERROR II

> MR WILKIN['S] CONVICTION IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE[.]

{¶11} In his second assignment of error, Mr. Wilkins argues that his convictions are against the manifest weight of the evidence. When considering a challenge to the manifest weight of the evidence, this Court is required to consider the entire record, "weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *State v. Otten*, 33 Ohio App.3d 339, 340 (9th Dist. 1986). "A reversal on this basis is reserved for the exceptional case in which the evidence weighs heavily against the conviction." *State v. Croghan*, 2019-Ohio-3970, ¶ 26 (9th Dist.).

{¶12} Mr. Wilkins points out that J.P.'s mother testified that J.P. knows how to say yes and no and could say that he did not want to do something in a sexual scenario. J.P.'s house manager testified that J.P. has the mental capacity of a teenager, is permitted to date, and is the one who decides how far a dating relationship should go. J.P., meanwhile, demonstrated his ability to consent or resist conduct by choosing to turn off his phone when the encounter began, refusing to perform certain acts that Mr. Wilkins requested, and choosing alternatives that he was comfortable with. Mr. Wilkins argues that J.P. established that he has the cognitive function to appreciate what he was doing and the risks, and he did not simply go along with whatever was asked by defense counsel. He notes that J.P.'s mother admitted disapproving of homosexuality, even though she knew J.P. had displayed homosexual tendencies, and believes J.P. may merely feel regret or shame following what happened because of the judgment of others.

{¶13} As the trier of fact, the jury was "free to believe all, part, or none of the testimony of each witness." *Prince v. Jordan*, 2004-Ohio-7184, ¶ 35 (9th Dist.), citing *State v. Jackson*, 86 Ohio App.3d 29, 33 (4th Dist. 1993). "A conviction is not against the manifest weight because

the [trier of fact] chose to credit the State's version of events." *State v. Peasley*, 2010-Ohio-4333, ¶ 18 (9th Dist.). Upon review of the record, we cannot say that the jury lost its way when it found that J.P.'s ability to resist or consent to sexual conduct with Mr. Wilkins was "substantially impaired because of a mental . . . condition . . . ." R.C. 2907.02(A)(1)(c). We conclude that Mr. Wilkins's convictions are not against the manifest weight of the evidence. His second assignment of error is overruled.

ASSIGNMENT OF ERROR III

> THE TRIAL COURT ERRED WHEN IT FAILED TO GRANT MR. WILKIN[S]'S MOTION FOR MISTRIAL AFTER EVIDENCE OF MR WILKINS'[S] PRIOR FELONY RECORD WAS IMPROPERLY PRESENTED TO THE JURY[.]

{¶14} In his third assignment of error, Mr. Wilkins argues that the trial court should have declared a mistrial after the jury learned that the Elyria police department had his DNA on file at the time it interviewed him about his encounter with J.P. According to Mr. Wilkins, the jury, which had a police officer on it, could infer from the information that he had a prior felony record. Mr. Wilkins, therefore, argues that it was improper other acts evidence under Evidence Rule 404(B). We review the denial of a motion for a mistrial for an abuse of discretion. *State v. Morris*, 2011-Ohio-6594, ¶ 29 (9th Dist.). "An abuse of discretion implies that the trial court's attitude was 'unreasonable, arbitrary or unconscionable.'" *Id*., quoting *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶15} The information about Mr. Wilkins's DNA came from a recording of his interview with Elyria police. The trial court did not admit the recording into evidence after Mr. Wilkins objected to it, and it has not been made part of the appellate record. Without the recording, we cannot conclude that the trial court exercised its discretion improperly when it denied Mr. Wilkins's motion for mistrial. We are also unable to review whether the part of the recording that

was played to the jury was unfairly prejudicial to Mr. Wilkins. *See State v. Tench*, 2018-Ohio-5205, ¶ 177 (explaining that the improper admission of other acts testimony may be harmless error). Mr. Wilkins's third assignment of error is overruled.

ASSIGNMENT OF ERROR IV

> THE STATE'S USE OF J.P.'S MENTAL CAPACITY ASSESSMENT VIOLATED MR. WILKINS'[S] DUE PROCESS RIGHTS[.]

{¶16} In his fourth assignment of error, Mr. Wilkins argues that the State improperly used a report about J.P.'s intellectual capacity at trial. He notes that the State agreed before trial that it would not use the report, and the trial court granted a motion in limine to exclude the report. Mr. Wilkins argues that the report was hearsay, that its use violated his right to confrontation, and that its use violated the rules for expert witnesses.

{¶17} Regarding hearsay, the State initially agreed that the report could not be introduced because it was hearsay. On cross-examination of J.P.'s mother, however, Mr. Wilkins asked her whether J.P.'s diagnosis in 2018 indicated that his intellectual disability was mild. The State requested a sidebar and argued that Mr. Wilkins had opened the door to questions about the content of the report, which is where the "mild" diagnosis came from. The trial court agreed, noting that defense counsel had been "flashing" and "peeling through" the report in front of the jury. *See State v. Dunivant*, 2005-Ohio-1497, ¶ 12 (9th Dist.) ("[T]he introduction of inadmissible evidence by one party allows an opponent, in the court's discretion, to introduce evidence on the same issue to rebut any false impression that might have resulted from the earlier admission."), quoting *United States v. Whitworth*, 856 F.2d 1268, 1285 (9th Cir. 1988). When asked about the contents of the report on redirect, J.P.'s mother answered that it said that J.P. was like a seven-year-old and that many of his academic skills were at grade school level.

{¶18} The questions that the State asked J.P.'s mother about the report provided context to the answer she gave on cross-examination about J.P.'s diagnosis. Upon review of the record, we conclude that the trial court did not err when it allowed the State to follow up about the contents of the report, even if the statements in it were hearsay. *Dunivant* at ¶ 12-13.

{¶19} Regarding Mr. Wilkins's right to confrontation, the Confrontation Clause applies to testimonial statements. *State v. Mignano*, 2024-Ohio-5463, ¶ 7. "[T]estimonial statements are those made for 'a primary purpose of creating an out-of-court substitute for trial testimony.'" *State v. Maxwell*, 2014-Ohio-1019, ¶ 40, quoting *Michigan v. Bryant*, 562 U.S. 344, 358 (2011). The report, created several years before the events at issue to evaluate J.P.'s mental condition, is not testimonial. We, therefore, reject Mr. Wilkins's Confrontation Clause argument.

{¶20} Regarding the rules for expert witnesses, we note that Mr. Wilkins did not make this argument to the trial court. He, therefore, has forfeited his argument for appeal. *State v. Hill*, 2026-Ohio-1840, ¶ 9. Although Mr. Wilkins may argue plain error, he has not developed a plain-error argument, and we decline to create one for him. *Id*. Mr. Wilkins's fourth assignment of error is overruled.

ASSIGNMENT OF ERROR V

R.C. 2907.02 IS UNCONSTITUTIONAL WHEN APPLIED TO THE FACTS OF THIS CASE[.]

{¶21} In his fifth assignment of error, Mr. Wilkins argues that applying Section 2907.02(A)(1)(c) to the facts of this case is unconstitutional because it interferes with J.P.'s right to consent to sexual activity. Mr. Wilkins notes that J.P. does not have a legal guardian and that his house manager recognized that J.P. has the right to make relationship decisions. Prosecuting him, therefore, places the decision of who J.P. dates in the hands of the county prosecutor.

{¶22} Mr. Wilkins did not challenge the constitutionality of Section 2907.02(A)(1)(c) to the facts of his case in the trial court. He, therefore, has forfeited review of this issue except for plain error. *State v. Mingo*, 2024-Ohio-543, ¶ 58 (9th Dist.). Mr. Wilkins has not developed a plain error argument, however, and this Court again declines to create one for him. *Id*. at ¶ 59. Mr. Wilkins's fifth assignment of error is overruled.

ASSIGNMENT OF ERROR VI

> THE CUMULATIVE ERRORS DEPRIVED MR. WILKINS OF A FAIR TRIAL[.]

{¶23} In his sixth assignment of error, Mr. Wilkins argues that his convictions should be reversed under the doctrine of cumulative error. "Under the doctrine of cumulative error, 'a conviction will be reversed when the cumulative effect of errors in a trial deprives a defendant of a fair trial even though each of the numerous instances of trial-court error does not individually constitute cause for reversal.'" *State v. Froman*, 2020-Ohio-4523, ¶ 156, quoting *State v. Powell*, 2012-Ohio-2577, ¶ 223. Mr. Wilkins argues that he should have been allowed to question J.P.'s reputation for truthfulness, that the State improperly disclosed his prior criminal record, and that the jury was improperly allowed to hear that J.P. had the intellectual capacity of a seven-year-old.

{¶24} Mr. Wilkins has not previously developed an argument regarding whether he should have been allowed to question witnesses about J.P.'s character and reputation for truthfulness. This Court, however, has rejected his arguments about the disclosure of his prior criminal record and the evidence about his intellectual capacity. Accordingly, even if Mr. Wilkins is correct about the questioning of J.P.'s character, the doctrine of cumulative error would not apply to this case because Mr. Wilkins has not demonstrated the presence of multiple errors. *See State v. Hunter*, 2011-Ohio-6524, ¶ 132. Mr. Wilkins's sixth assignment of error is overruled.

III.

{¶25} Mr. Wilkins's assignments of error are overruled. The judgment of the Lorain County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

JENNIFER HENSAL
FOR THE COURT

SUTTON, J.
STEVENSON, J.
CONCUR.

APPEARANCES:

BENJAMIN R. SORBER, Attorney at Law, for Appellant.

ANTHONY CILLO, Prosecuting Attorney, and SPENCER J. LUCKWITZ, Assistant Prosecuting Attorney, for Appellee.