[Cite as *State v. Martin*, 2010-Ohio-5968.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 10AP-295 (C.P.C. No. 09CR-1173)
William C. Martin,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on December 7, 2010

Ron O'Brien, Prosecuting Attorney, and *Kimberly Bond*, for appellee.

Todd W. Barstow, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

McGRATH, J.

{¶1} Defendant-appellant, William C. Martin ("appellant"), appeals from the judgment of the Franklin County Court of Common Pleas, whereby a jury convicted appellant of two counts of rape, first-degree felonies in violation of R.C. 2907.02, one count of kidnapping, a first-degree felony in violation of R.C. 2905.01, and one count of felonious assault, a second-degree felony in violation of R.C. 2903.11. For the following reasons, we affirm.

{¶2} The following is a recitation of the facts relative to appellant's convictions, which were adduced at trial. Appellant met A.C., the victim, in 2008, when she was

retrieving some of her belongings from a friend that lived in appellant's apartment complex. Appellant introduced himself to appellant and asked for her phone number. A.C. refused to give appellant her phone number, but he subsequently acquired the same from A.C.'s daughter and began to call her.

{¶3} A.C. testified that she initially did not take or return appellant's calls, but began doing so because, if she did not, appellant would repeatedly call her. A.C. testified that on one occasion, she had 141 missed calls from appellant in a 15-minute interval. A.C. knew that appellant wanted a romantic relationship but testified that she made it clear to appellant that she was not interested in him in that way. Eventually, A.C. broke off contact with appellant in late 2008 because he would not take no for an answer.

{¶4} The two, however, were in contact again in 2009. In early February, police were called following an altercation between A.C. and appellant. According to A.C., she had just left the Hard Road Café and was walking down Hard Road when appellant approached her and then began to grab at her and drag her towards his apartment complex. A slight physical altercation ensued, leaving A.C. with no apparent injuries but left appellant with a bloody lip. No arrests were made as a result of this incident.

{¶5} On February 18, 2009, the date of the incident, A.C. had spoken to appellant on the phone and disclosed that she would be going to a bar with one of her girlfriends later that day. While A.C. was at the bar, appellant showed up. The group drank beer and played pool. A.C. testified that, as they were leaving, appellant asked A.C. to give him a ride home and offered her $20 for gas.

{¶6} A.C. drove appellant to his apartment, where she went inside to use the bathroom and get the money offered to her. As she left the bathroom, A.C. testified that

appellant punched her in the face and cursed at her. He then forced her to the floor and began to pull her clothes off. A.C. struggled with appellant and tried to keep him from ripping her clothes off but was unsuccessful. A.C. testified that, for the next four hours, appellant forced her to submit to vaginal and anal intercourse and also penetrated her vagina with his tongue. During this time, appellant also repeatedly struck A.C., choked her, threatened and jabbed her with a butter knife, and also told A.C. that he was going to kill her. A.C. also testified that appellant had spilt her lip open, which caused bleeding, and that throughout the attack, appellant kept making her wash the blood off her face.

{¶7} A.C. attempted to escape several times but was finally successful when appellant went to make a phone call to call in sick to work. While appellant was on the phone, A.C. broke free, pulled on her shirt and jeans, and ran out the door. A.C. knocked on several doors in the complex seeking assistance, one of which was the apartment of Tracy Becknell.

{¶8} Ms. Becknell testified that she heard A.C. yelling, "Help, help me, somebody please help me. He is coming after me. Somebody please let me in. Help me." (Tr. 93.) Ms. Becknell described A.C.'s screaming as "bone-chilling" and described A.C. as being "terrified." (Tr. 93.) Although scared to open her door, Ms. Becknell listened to her conscience and did so. When she opened her door, Ms. Becknell stated that A.C. had a black eye, was carrying her bra, did not have any shoes on, and appeared to be "very scared." (Tr. 94.) Ms. Becknell called 911 and told the operator that she had just let someone into her apartment that had been raped.

{¶9} Police and emergency personnel responded within ten minutes. Officer Jonathon Hall, a 15-year veteran with the Columbus Division of Police, testified that A.C.

appeared to be "very hysterical" and "very visibly upset." (Tr. 104.) A.C., despite her hysteria, was able to communicate to Officer Hall that she had been raped. Officer Hall described A.C. as "disheveled," had sustained bruising to her face, and was in a state of high agitation. (Tr. 107.)

{¶10} Paramedic Robert Dickson was present at the scene. Mr. Dickson testified that A.C. had injuries to the left side of her face and that she complained of pain to the left side of her jaw, numbness on her left side, blurred vision in her left eye, loss of hearing in her left ear, rectal pain, and neck and back pain. Mr. Dickson described A.C. as anxious and fearful. Mr. Dickson placed A.C. in a cervical collar and, after placing her on a backboard transported her to Riverside Methodist Hospital ("Riverside").

{¶11} Janet Baatz, a registered nurse and sexual assault nurse examiner, conducted an examination of A.C. upon her arrival. Ms. Baatz noted that A.C. had bruises "all over" her head and face, and a "marking on her neck like she was strangled." (Tr. 127.) A.C. cried throughout her interview with Ms. Baatz, during which she told Ms. Baatz that there had been penetration to her vagina and rectum, although appellant did not ejaculate, and that appellant had used his mouth all over her body. Ms. Baatz testified that A.C.'s injuries were consistent with the history she provided. Ms. Baatz explained that there were abrasions and bruising on A.C.'s posterior fourchette, and that this injury was indicative of the use of force.

{¶12} A CAT scan was performed on A.C. and revealed that she suffered a subdural hematoma. Dr. Joseph McElderly, who treated A.C. at Riverside, testified that a subdural hematoma is caused by blunt force trauma to the head that lacerated blood

vessels in the brain. Because the injury can be life threatening, A.C. was admitted to the neurology intensive care unit.

{¶13} Sergeant Eric David, a 15-year veteran with the Columbus Division of Police, testified that he was dispatched to the apartment complex. Once there, he proceeded to appellant's apartment and pounded at the door. No one answered, despite repeated pounds on the door and the announcement of police presence, but Sergeant David heard some shuffling inside. At that point, Sergeant David forced entry into appellant's apartment. Sergeant David explained that, with the crime alleged, he had a fear about the destruction of evidence. Upon entry, Sergeant David found appellant lying facedown, approximately five to six feet in front of the door, next to a couch. Officers immediately went to restrain appellant, who, Sergeant David testified, acted as if he had just been woken up. Inside, Sergeant David noted that A.C.'s shoes and broken pieces of a cell phone were present in the apartment.

{¶14} Detective Amy Welsh attempted to question appellant after his arrest, but appellant was not cooperative. Appellant would not sign a verification that Detective Welsh had read him his Miranda rights, nor would he answer any questions. At the point Detective Welsh indicated that the interview was over, however, appellant began "yelling profanities and racial slurs" at Detective Welsh. (Tr. 235.) He told Detective Welsh that she was "nothing but a white bitch, and that he was only in there [jail] because his girlfriend was white and he was a nigger, and that is the only reason why we were in there and that was the only reason why he was investigated." (Tr. 235.)

{¶15} Appellant testified at trial and gave a different version of the events. According to appellant, he and A.C. were involved in a romantic relationship and that A.C.

frequently would spend the night at his apartment. Appellant testified that on the day of the incident, he and A.C. had gone to several bars, one right after the other, the last of which was Spoonz. They left Spoonz and proceeded to appellant's apartment, arriving at about 9:00 p.m. Once inside the apartment, appellant stated that he felt sick and vomited. A.C. was on the couch texting someone. While she was texting, appellant went to the laundry room to put the shirt in the washer because he had vomited on himself. Appellant testified that, when he got back to the apartment, A.C. had stepped out and left her phone on the heater so appellant picked it up. Appellant testified that A.C. returned to the apartment with a cigar so that she could roll a blunt and went to retrieve a knife to cut the cigar for the blunt.

{¶16} Appellant stated that he then placed a call to his boss to call in sick. A.C. became angry and wanted to know who appellant was talking to on the phone. A.C. then snatched the phone from his hand and threw it against the wall. The two proceeded to argue, and A.C. demanded her phone back from appellant. Appellant testified that he told A.C. he was not going to give her phone back to her, which prompted A.C. to slash appellant in the arm with the knife she had been using to make the blunt. Appellant claimed he then grabbed A.C. by the arm, grabbed the knife, and "rushed her to the floor." (Tr. 368.) The two then "tussled for a little bit," after which appellant picked A.C. up and "threw her out of [his] home." (Tr. 368.) In response to further questioning, appellant denied having raped and strangled A.C. and could not explain A.C.'s other injuries.

{¶17} The case was submitted to a jury, which found appellant guilty of all counts. The trial court sentenced appellant to: ten years on each count of the rape counts, to be

served consecutively, ten years on the kidnapping count, to be served concurrent to the rape counts, and eight years on the felonious assault count, to be served consecutive to the rape counts, for a total sentence of 28 years of incarceration.

{¶18} Appellant filed a timely appeal, asserting the following three assignments of error for our review:

> I. THE TRIAL COURT ERRED AND DEPRIVED APPELLANT OF DUE PROCESS OF LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE ONE SECTION TEN OF THE OHIO CONSTITUTION BY FINDING HIM GUILTY OF RAPE, KIDNAPPING AND FELONIOUS ASSAULT AS THOSE VERDICTS WERE NOT SUPPORTED BY SUFFICIENT EVIDENCE AND WERE ALSO AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.
>
> II. APPELLANT WAS DEPRIVED OF HIS RIGHT TO BE PRESENT AND TO THE PRESENCE AND ASSISTANCE OF HIS COUNSEL DURING A CRITICAL STAGE OF HIS JURY TRIAL, AND HIS RIGHT TO DUE PROCESS AND A FUNDAMENTLALY FAIR JURY TRIAL AS REQUIRED BY THE FIFTH, SIXTH AND FOUREENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE ONE SECTIONS FIVE, TEN AND SIXTEEN OF THE OHIO CONSTITUTION AND CRIMINAL RULE 43(A).
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> III. THE TRIAL COURT ERRED BY IMPOSING CONSECUTIVE SENTENCES WITHOUT MAKING THE REQUISITE FACTUAL FINDINGS; THEREBY DEPRIVING APPELLANT OF DUE PROCESS OF LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUITON AND ARTICLE ONE SECTION SIXTEEN OF THE OHIO CONSTITUTION.

{¶19} In his first assignment of error, appellant contends that his convictions were not supported by sufficient evidence and were against the manifest weight of the evidence. Specifically, appellant attacks A.C.'s credibility, asserting that she gave inconsistent and unbelievable testimony.

{¶20} 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, 1997-Ohio-52, paragraph two of the syllabus. Therefore, we will separately discuss appellant's sufficiency of the evidence and weight of the evidence arguments.

{¶21} The Supreme Court of Ohio delineated the role of an appellate court presented with a sufficiency of the evidence argument in *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus:

> An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction 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. 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. * * *

{¶22} Whether the evidence is legally sufficient is a question of law, not fact. *Thompkins* at 386. Indeed, in determining the sufficiency of the evidence, an appellate court must give "full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Jackson v. Virginia* (1979), 443 U.S. 307, 319, 99 S.Ct. 2781, 2789. Consequently, the weight of the evidence and the credibility of the witnesses are issues primarily determined by the trier of fact. *State v. Yarbrough*, 95 Ohio St.3d 227, 2002-Ohio-2126, ¶79; *State v. Thomas* (1982), 70 Ohio St.2d 79, 80. A verdict will not be disturbed unless, after viewing the evidence in the light most favorable to the prosecution, it is apparent that reasonable minds could not reach the conclusion

reached by the trier of fact. *State v. Treesh*, 90 Ohio St.3d 460, 484, 2001-Ohio-4; *Jenks* at 273.

{¶23} The jury convicted defendant of kidnapping, rape, and felonious assault. As to kidnapping, R.C. 2905.01 provides that "[n]o person by force, threat, or deception * * * shall remove another from the place where the other person is found or restrain the liberty of the other person * * * [t]o facilitate the commission of any felony or flight thereafter [or] [t]o engage in sexual activity * * * with the victim against the victim's will." R.C. 2907.02(A)(2) proscribes rape and provides that "[n]o person shall engage in sexual conduct with another when the offender purposely compels the other person to submit by force or threat of force." Vaginal intercourse is a form of sexual conduct. R.C. 2907.01(A). Regarding felonious assault, R.C. 2903.11(A)(1) provides that "[n]o person shall knowingly * * * [c]ause serious physical harm to another or another's unborn."

{¶24} The basis for appellant's assigned error is that A.C.'s testimony is not credible. To that end, we note that we do not weigh credibility when considering an insufficiency of the evidence argument. Rather, the test is whether the evidence viewed in a light most favorable to the prosecution, if believed, would convince a rational trier of fact that appellant was guilty of kidnapping A.C., raping her, and assaulting her. In this case, A.C. testified that appellant raped and assaulted her over a four-hour period of time. She testified that appellant forced her to submit to vaginal and anal intercourse and that his mouth made contact to her genital area. A.C. also testified that appellant punched her in the face and strangled her.

{¶25} From this evidence, a reasonable trier of fact could have found the elements of kidnapping, rape, and felonious assault were satisfied beyond a reasonable doubt. Therefore, we find appellant's convictions are supported by sufficient evidence.

{¶26} Appellant's manifest weight of the evidence claim requires a different review. A manifest weight of the evidence claim concerns the inclination of the greater amount of credible evidence offered to support one side of the issue rather than the other. *State v. Brindley*, 10th Dist. No. 01AP-926, 2002-Ohio-2425, ¶16. When presented with a challenge to the manifest weight of the evidence, an appellate court, after " 'reviewing 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. An appellate court should reserve reversal of a conviction as being against the manifest weight of the evidence for only the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " Id.

{¶27} A defendant is not entitled to a reversal on manifest weight grounds merely because inconsistent evidence was presented at trial. *State v. Raver*, 10th Dist. No. 02AP-604, 2003-Ohio-958, ¶21. The trier of fact is free to believe or disbelieve all or any of the testimony. *State v. Jackson*, 10th Dist. No. 01AP-973, 2002-Ohio-1257; *State v. Sheppard* (Oct. 12, 2001), 1st Dist. No. C-000553. The trier of fact is in the best position to take into account inconsistencies, along with the witnesses' manner and demeanor, and determine whether the witnesses' testimony is credible. *State v. Williams*, 10th Dist. No. 02AP-35, 2002-Ohio-4503, ¶58; *State v. Clarke* (Sept. 25, 2001), 10th Dist. No.

01AP-194. Consequently, although an appellate court must act as a "thirteenth juror" when considering whether the manifest weight of the evidence requires reversal, it must also give great deference to the fact finder's determination of the witnesses' credibility. *State v. Covington*, 10th Dist. No. 02AP-245, 2002-Ohio-7037, ¶28; *State v. Hairston*, 10th Dist. No. 01AP-1393, 2002-Ohio-4491, ¶74.

{¶28} Appellant claims that his convictions are against the manifest weight of the evidence because A.C. gave inconsistent testimony. Specifically, appellant contends that A.C. characterized appellant as a stalker but also testified that he was her friend. Appellant also points to A.C.'s testimony in which she stated that appellant held her against her will for hours and that he inflicted injuries upon her that caused her to bleed, but no blood was located in the apartment by the police during their investigation. These discrepancies, however, do not render A.C.'s testimony not credible as a matter of law. *State v. Bliss,* 10th Dist. No. 04AP-216, 2005-Ohio-3987, ¶32 (inconsistencies in identification testimony does not render convictions against manifest weight). Neither would the inconsistencies by themselves render appellant's convictions against the manifest weight of the evidence. *State v. Lee,* 10th Dist. No. 06AP-226, 2006-Ohio-5951, ¶12 (noting that a criminal defendant is not entitled to a reversal on manifest weight grounds merely because inconsistent evidence was presented at trial); *State v. Smith,* 10th Dist. No. 04AP-726, 2005-Ohio-1765, ¶27.

{¶29} Additionally, we note that the jury considered these inconsistencies in evaluating A.C.'s credibility. The trier of fact is in the best position to take into account inconsistencies, along with the witnesses' manner and demeanor, in determining the witnesses' credibility. *Columbus v. Dials*, 10th Dist. No. 04AP-1099, 2005-Ohio-6305,

¶73; see also *State v. Williams*, 10th Dist. No. 02AP-35, 2002-Ohio-4503, ¶58. The jury obviously chose to believe A.C.'s version of events, and we will not substitute our judgment for that of the trier of fact. *State v. Day*, 10th Dist. No. 04AP-332, 2005-Ohio-359, ¶17-19.

{¶30} Moreover, A.C.'s testimony was largely consistent. In addition, Ms. Baatz testified that A.C.'s injuries were consistent with the history that A.C. had provided and that the abrasions and bruising on A.C.'s posterior fourchette was indicative of the use of force during intercourse. This is not the exceptional case in which the evidence weighs heavily against the convictions.

{¶31} Based on the foregoing, appellant's convictions are supported by sufficient evidence and are not against the manifest weight of the evidence. Accordingly, we overrule appellant's first assignment of error.

{¶32} In his second assignment of error, appellant claims that his constitutional rights were violated when he was not present for two critical proceedings during jury deliberations. Both proceedings involve questions sent by the jury to the judge during deliberations. One question asked, "Can jury be hung on half the charges and not the other half of the charges?" The trial transcript indicates the word "yes" was written on the question and sent back to the jury but, according to appellant, does not indicate who wrote the answer or whether counsel was present. The second question asked, "Does Count 2 require mouth contact to vagina only or can it include mouth to other parts of body?" The trial transcript is silent as to the content of the answer and whether counsel was present when the court answered the question. Regarding both questions, appellant

asserts that he was not present when the questions were sent to the judge by the jury, nor when the questions were answered.

{¶33} "[A] defendant 'has a fundamental right to be present at all critical stages of his criminal trial.' * * * However, the right to be present is not absolute. * * * Therefore, even if a defendant should have been present at a stage of the trial, 'errors of constitutional dimension are not *ipso facto* prejudicial.' * * * Prejudicial error exists only where 'a fair and just hearing [is] thwarted by [defendant's] absence.' * * *'" *State v. White*, 82 Ohio St.3d 16, 26, 1998-Ohio-363 (citations omitted).

{¶34} After the instant appeal was filed, we granted the state's motion for leave to supplement the record, pursuant to App.R. 9(E), with a transcript of a hearing held on July 28, 2010. The purpose of that hearing was to address the trial court's procedure regarding the two jury questions at issue. The state filed the transcript on September 13, 2010.

{¶35} At the hearing, the trial judge stated that "[i]n every instance, without exception, [he] spoke to both counsel. In every instance, [he] summoned counsel for prosecution and defense to come back to the courtroom so that we could discuss the question." (Hearing Tr. 13.) The judge further stated that each time appellant's counsel waived his presence and all counsel agreed on the answers that were submitted to the jury. With respect to the jury question that asked, "Can jury be hung on half the charges and not the other half of the charges?" the judge stated that he wrote the word "yes" on the question and sent it back to the jury. Regarding the other question, "Does Count 2 require mouth contact to vagina only or can it include mouth to other parts of body?" the judge explained that, after speaking with counsel, all of whom agreed that the answer

should be that the jury should refer back to the jury instructions for the answer, he went into the jury room and advised the jury of the same. The judge also noted that neither counsel for the state nor counsel for appellant objected to the foregoing.

{¶36} Megan Jewett, the assistant prosecuting attorney that tried the case, also testified at the hearing. Ms. Jewett's recollection was identical to that of the trial judge: she testified that appellant's counsel waived appellant's presence, all counsel agreed on the answers to the jury's questions, and that no party objected to the judge verbally advising the jury that they needed to refer back to the jury instructions to answer the last question.

{¶37} Appellant's trial counsel, Joseph Edwards, testified at the hearing. Mr. Edwards could not recall whether he specifically waived his client's presence but stated that he did not believe he deviated from his usual practice, which was that he usually did not discuss jury questions with clients, especially since the questions posed by the jury were simple. Mr. Edwards stated that he may have even suggested the answers to the questions and that, although he could not recall whether he agreed to the judge going back to the jury room to advise the jury, he testified that he would have no reason to object to that procedure. Mr. Edwards also testified that he believed the answers submitted to the jury were legally correct.

{¶38} Based on the foregoing, we find no violation of appellant's fundamental rights. It is well-accepted that counsel may waive a client's presence. *State v. Hale*, 119 Ohio St.3d 118, 2008-Ohio-3426, ¶134. Here, both the trial judge and Ms. Jewett recall that Mr. Edwards waived appellant's presence. Although Mr. Edwards could not recall whether he had specifically waived appellant's presence, Mr. Edwards testified that, given

the simple nature of the questions, he did not believe that he would have deviated from his usual practice in this instance. Most significant, perhaps, is that Mr. Edwards did not state that he did not waive appellant's presence. "Moreover, the Supreme Court of Ohio has stated that a trial court's written response to a jury question is not a critical stage of the criminal proceeding, and a defendant's constitutional rights are not violated when he is absent during the conference regarding the court's response to the jury questions." *State v. Everette*, 2d Dist. No. 22838, 2009-Ohio-5738, ¶15 (internal citations omitted).

{¶39} Accordingly, appellant's second assignment of error is overruled.

{¶40} In his third assignment of error, appellant contends the trial court erred in imposing consecutive sentences without making findings in accordance with R.C. 2929.14(E)(4). In *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, the Supreme Court of Ohio declared that R.C. 2929.14(E)(4), which directed trial courts to make specified findings of fact before imposing consecutive sentences, was unconstitutional based on the United States Supreme Court's decision in *Blakely v. Washington* (2004), 542 U.S. 296, 124 S.Ct. 2531. Therefore, in *Foster*, the Supreme Court of Ohio severed R.C. 2929.14(E), resulting in the ability of trial courts to impose consecutive sentences without making any findings of fact. *State v. Houston*, 10th Dist. No. 06AP-662, 2007-Ohio-423.

{¶41} On appeal, appellant argues the United States Supreme Court's recent decision in *Oregon v. Ice* (2009), 555 U.S. 160, 129 S.Ct. 711, effectively overruled *Foster*, resulting in a resurrection of R.C. 2929.14(E). As recently stated by this court in *State v. Nuh*, 10th Dist. No. 10AP-31, 2010-Ohio-4740, "[t]his court, acknowledging *Ice*, concluded that because the 'Supreme Court of Ohio has not reconsidered *Foster* * * * the case remains binding on this court.' " Id. at ¶11, quoting *State v. Franklin*, 182 Ohio

App.3d 410, 2009-Ohio-2664, ¶18. "Indeed, this court has recognized on several occasions that we are bound to follow *Foster* until the Supreme Court of Ohio directs otherwise." Id., citing *State v. Mickens*, 10th Dist. No. 08AP-743, 2009-Ohio-2554, ¶33; *State v. Russell*, 10th Dist. No. 09AP-428, 2009-Ohio-6420, ¶16; *State v. Crosky*, 10th Dist. No. 09AP-57, 2009-Ohio-4216, ¶8; *State v. Potter*, 10th Dist. No. 09AP-580, 2010-Ohio-372, ¶8. Accordingly, we find appellant's arguments unpersuasive and overrule his third assignment of error.

{¶42} For the foregoing reasons, appellant's three assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Judgment affirmed.

SADLER and CONNOR, JJ., concur.

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