

IN THE OHIO SUPREME COURT

08-0568

STATE OF OHIO
Appellee.

CASE NO: 06 AP-1272
(C.P.C. No. 03CR-1637)

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ON APPEAL FROM THE
FRANKLIN
COUNTY COURT OF APPEALS
TENTH APPELLATE DISTRICT

VS

:
:
:

RONALD DUDLEY
Appellant ,

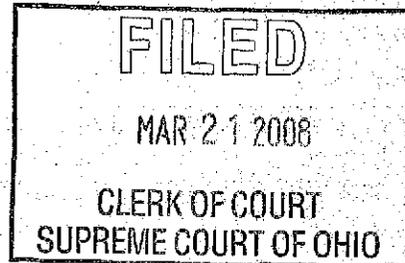
COURT OF APPEALS
CASE NO.: 06AP-1272

NOTICE OF APPEAL

Ronald O'Brien
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COUNSEL FOR APPELLEE

Ronald E. Dudley #449-195
PO Box 5500
Chillicothe, OH 45601



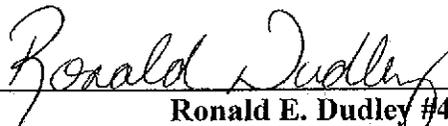
APPELLANT / PRO-SE

NOTICE OF APPEAL OF APPELLANT RONALD E. DUDLEY

Appellant, Ronald E. Dudley, does hereby give notice to the Supreme Court of Ohio from the judgment of the Franklin County Court of Appeals, Tenth Appellate District, entered in Court of Appeals, case no. 06AP-1272, on February 5, 2008

This case raises a substantial Constitutional question, is a felony and is one of public or great general interest. This Court has the jurisdiction to hear and decide this case on it's merits, and it poses a great Constitutional question to be considered for all Ohio defendants on appeal.

Respectfully Submitted,



Ronald E. Dudley #449-195
PO Box 5500
Chillicothe, OH 45601

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing notice of appeal, has been sent to the clerk of courts for the Ohio supreme court, 65 s. front st, Columbus, Ohio on this 18th day of March, 2008, hand delivery from a family member.

Respectfully Submitted,



Ronald Dudley #449-195
PO Box 5500
Chillicothe, OH 45601

TABLE OF CONTENTS

EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION.....	1-2
STATEMENT OF THE CASE AND FACTS.....	2-5
ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW	
<u>Proposition of Law No. I: Was Appellant was denied his Constitutional rights when appellate counsel failed to represent his Pro Se motion at re-sentencing.....</u>	5-7
<u>Proposition of Law No. II: Did the Tenth District Court of Appeals err in regarding the second, third and fourth assignments of error barred by Doctrine of Res Judicata.....</u>	7-8
<u>Proposition of Law No. III: Were Appellant's Sixth Amendment Rights violated when he was not permitted to be represented by paid counsel?.....</u>	8-10
<u>Proposition of Law No. IV: Did the cumulative errors throughout Mr. Dudley's trial and sentencing violate Mr. Dudley's right to a fair trial?.....</u>	10-11
<u>Proposition of Law No. V: Did newly discovered evidence/ information warrant a new trial?.....</u>	11-13
<u>Proposition of Law No. VI: Did trial Counsel's failure to seek sanction for late blood discovery, constitute a Brady violation?.....</u>	13-14
CONCLUSION.....	14-15
PROOF OF SERVICE.....	
APPENDIX.....	
Opinion of the Tenth District Court of Appeals (Feb 5, 2008).....	A
Judgment Entry Tenth District Court of Common Pleas (Feb 5, 2008).....	B
Judgment Entry Franklin County Court of Common Pleas (Aug 25, 2006).....	C
Opinion of Tenth District Court of Appeals (Dec 8, 2005).....	D
Judgment Entry Tenth District (Dec 8, 2005).....	E
Judgment Entry Franklin County Common Pleas (Jun 24, 2003).....	F
Judgment Entry Franklin County Common Pleas (Jan 21, 2005).....	G
Judgment Entry Franklin County Common Pleas (Aug 24, 2006).....	H
Decision to Deny Motion for new trial Franklin County Common Pleas (Aug 2006).....	I
Computer aided dispatch report Columbus Police Department.....	J

EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

This case presents several critical Constitutional questions of Law. In this case there are several substantial Constitutional questions being challenged which have a significant general interest to the public in several aspects to assure fundamental fairness is administered in trials. such as in defendant's trial; (1) Was Defendant denied his Constitutional Rights when Appellate Counsel failed to represent his Pro-se Motion at re-sentencing hearing. did Trial Court err in failing to hold a hearing to determine if Defendant was unavoidably able to have obtained the information he relied on? (2) Did the Tenth District Court of Appeals err in regard to Mr. Dudley's second, third and fourth assignments being barred by the Doctrine of Res Judicata. Further violation of his Sixth and Fourteenth Amendment to the U.S. Constitution. (3) Was Defendant's Sixth Amendment rights violated when he was not permitted to be represented by paid counsel? Did the Trial Court abuse it's discretion in failing to allow Defendant to be represented by paid counsel during Trial? (4) Did the cumulative errors throughout Mr. Dudley's Trial and sentencing violate his Constitutional Rights to a Fair Trial and Due Process of Law where the errors obviate a fair proceeding warranting a new trial? (5) Did newly discovered evidence/information warrant a new trial? Did the Trial Court err in failing to hold a hearing to determine if Mr. Dudley was unavoidably able to have known about the evidence he relies on as newly discovered evidence? (6) Did Trial Counsel's failure to seek sanctions for late blood discovery violation, disclosed in violation of Brady v Maryland, violate Mr. Dudley's Constitutional Right to Due Process?

This case was a very close call; the jury lasted over four days. The Constitutional questions presented herein, represent a totality of errors the Defendant's Trial Counsel committed during trial. The Ohio Supreme Court, after careful review of the complete and

cumulative errors, can determine the Fundamental Unfairness in this case. The Ohio Supreme Court would be reasonable to accept jurisdiction, considering this case has been dismissed, remanded, affirmed and reversed by this Honorable Court in May of 2006, pursuant to *Foster*.

Defendant's case stands in violation by the Tenth District's decision pertaining to Constitutional questions and the decisions, provided the Tenth District's ruling is allowed to stand. The decision of the Tenth district threatens the structure of Appeals on remand for re-sentencing. Moreover the Court of Appeals ignores entirely the ruling of this Honorable Court to allow individuals on re-sentencing to receive new hearings.

The Tenth District's decision to barr Defendant's arguments to the Doctrine of Res Judicata on re-sentencing are simply incorrect and violates Defendant's Constitutional Rights on re-sentencing hearings. Furthermore, the implication of the decision in this case concerning Res Judicata are unfair and touch the lives of thousands of appeals on remand and re-sentencing hearings. In this case, barring Defendant from issues after re-sentencing hearing would sabotage the integrity of criminal conviction on appeals. Apart from these errors, the Tenth District has created in this case, which makes this case one of great public interest that the Constitutional violation such as in this case be addressed by this Honorable Court to prevent fundamental unfairness, and also has a broad general significance to Criminal Appeals in Ohio Courts. This Court would be reasonable to accept Jurisdiction to settle and clarify these Questions of Law.

STATEMENT OF THE CASE AND FACTS

Following a jury trial, Defendant was found guilty of rape and kidnapping. The Trial Court merged those two offenses for sentencing purposes and sentenced Defendant to the maximum allowable prison term of ten years. The trial court also classified Defendant as sexual predator, but that finding was not included in the Court's June 24, 2003 judgment entry.

Defendant timely appealed to the Tenth District Court of Appeals, his conviction and sentence, but The Tenth District dismissed that appeal for want of a final appealable order because of the trial court's failure to journalize its sexual predator finding. *State v Dudley*, Franklin App. No 03AP-744, 2004-Ohio-5661. On January 14, 2005, the trial court re-sentenced Defendant .The trial court imposed the same ten year sentence and classified Defendant as a sexual predator. Both the sentence and sexual predator finding were journalized in a judgment entry. Defendant appealed to the Tenth District Court of Appeals and the court affirmed both Defendant's conviction and sentence. *State v. Dudley*, Franklin App No. 05ap-144, 2005-Ohio-6503.

Defendant appealed to the Supreme Court of Ohio. The Supreme Court of Ohio accepted his case for review. On May 3, 2006, the Supreme Court of Ohio reversed Defendant's sentence and remanded the case for re-sentencing pursuant to *Foster*, in re *Ohio Criminal Sentencing Statutes Cases*, 109 Ohio St. 3d 313, 2006-Ohio-2100. Prior to re-sentencing, on May 18, 2006, defendant filed a pro-se motion for a new trial based upon a claim that his trial counsel was ineffective for having failed to introduce at trial, a document which reflects information broadcast to police vehicles by the police dispatcher indicating that the victim knew her assailants name, which contradicts the victim's testimony at trial. The trial court denied defendant's motion for a new trial on August 9, 2006.

Defendant subsequently filed a pro-se motion for reconsideration of the trial court's decision denying his motion for a new trial. Defendant's motion for reconsideration was filed. August 25, 2006, the same day Defendant was re-sentenced in accordance with the Supreme Court of Ohio's mandate. At that re-sentencing hearing, the trial court again imposed the same ten-year sentence as before, and again classified Defendant as a sexual predator. The court also held a hearing and heard argument on Defendant's motion to reconsider his request for a new trial, following which the trial court denied that motion.

When Defendant expressed a desire to appeal the August 25, 2006 judgment, counsel was appointed for that purpose. However, a timely notice of appeal was never filed. On December 21, 2006, Defendant filed a notice of appeal and a motion seeking leave to file a delayed appeal from the re-sentencing held on August 25, 2006. On February 6, 2007, the court granted Defendant leave to file a delayed appeal. On May 7, 2007 Defendant filed his appeal. On February 5, 2008 Tenth District affirmed the judgment from the lower court.

The facts presented in the trial court indicated that in the early morning hours of February 27, 2003, Tiffany D. Hamilton was heard screaming that she needed help. She was eventually allowed into a residence in the neighborhood. She claimed that she had been raped.

Tiffany gave a description of a car in which she claimed she had been held and forced to perform oral sex. A police officer responding to the scene radio aired to all cars Defendant's name, Robert Dudley, as well as the description to his car. (Showing the victim knew Mr. Dudley) Tiffany told police and later a jury that she had been drinking earlier in the evening at home with her boyfriend. At least partially drunk, she went out by herself looking for more beer sometime after midnight. She went to a bar shortly before closing time, but did not buy any beer there. Tiffany then went to a gas station where she encountered Ronald Dudley. She gave conflicting accounts about whether or not she had known Ronald Dudley before then. She referred to him as "Dudley" in open court as if she knew him, but then denied having met him before. Tiffany acknowledged following Ronald Dudley from after-hours club to after-hours club on the eastside of Columbus, supposedly in a continuing effort to find more beer. Finally, she followed him into a secluded, dead-end alley. She got out of her car and got into Mr. Dudley's car to have a beer with him. She claimed that Mr. Dudley then threatened her with a box-cutter and forced her to perform oral sex for over an hour. She later fled, crying for help.

Based upon her accusation, Ronald Dudley was arrested and charged. At trial his defense was that everything Tiffany did that night, she did willingly. When she realized that she had been

gone from the home she shared with her boyfriend and their four children for almost two hours and had voluntarily consumed more alcohol, she claimed a rape rather than face the consequences of her actions.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Proposition of Law No. I Appellant was denied his Constitutional Rights when Appellate counsel failed to represent his Pro-se Motion at the re-sentencing hearing. Did Trial Court err in failing to hold a hearing to determine if Appellant was unavoidably able to have obtained the information he relied on?

In the Case at Bar, the Trial Court abused it's discretion by denying the Motion for new trial without holding a hearing of whether Defendant was unavoidably able to have know about the newly discovered evidence he presented to the Trial Court, motions for a new trial are addressed to the sound discretion of Appeal absent an abuse of discretion. State v Schieble (1990), 55 Ohio St 3d 71, 76. The usefulness of the newly discovered evidence must be more than a mere tool to impeach or corroborate the trial evidence. The Ohio Supreme Court has considered the requirements that must be met before a motion for a new trial based upon newly discovered evidence may be granted. In State v Petro (1947), 148 Ohio St. 505. The Court stated in part;

To warrant the granting of a motion for a new trial in a criminal case, based on the ground of newly discovered evidence, it must be shown that the new evidence (1) Discloses a strong probability that it will change the result if a new trial is granted, (2) Has been discovered since the trial, (3) Is such as could not in the exercise of due diligence have been discovered before the trial, (4) Is material to the issues, (5) Is not merely cumulative to former evidence, and (6) Does not merely impeach or contradict the former evidence.

In Petro the Defendant supported his motion with the affidavit of a police officer who heard the coroner opine, while at the homicide scene. The Ohio Supreme Court affirmed the denial of the motion, finding that the officer's testimony would be merely impeaching or at the most cumulative. In the case at bar, Defendant supported his motion with a computerized police dispatch report labeled Exhibit No. 1 Clearly showing that the Defendant was misled by counsel

that this document would be admitted into evidence for the jury to review and to decide his case. Defendant was not informed that this document had not been admitted to his jury until the State responded in a memorandum contra, three years later. Clearly showing that the Defendant was unavoidably unable to have known about this newly discovered evidence, that he relied on.

Defendant's trial was a close call...the jury lasted a total of five days and became deadlocked in making a decision on two counts. Defendant was found not guilty of aggravated robbery and the jury asked the Court a questions; **What happens if we can't make a decision on the remaining counts?** The jury had already reached a decision on count 1 in the three count indictment and the Trial Court never answered the question, which violates Defendant's Constitutional Rights at trial. Considering the problems the jury had in deciding this case, all information would have assisted in a decision on Defendant's guilt or innocence. Furthermore, Defendant had a right to have this evidence submitted to his jury for a fair and just decision. Defendants counsel acted in a deficient manner by failing to submit Defendant's only Exhibit, to his jury. Additionally counsel's performance was deficient by misleading Defendant in believing that his exhibit would be reviewed by the jury. Defendant was unavoidably unable to have discovered the jury never received this document detailing the victim knew his name. In the case at bar, the victim maintained that she did not know Defendant. Clearly had the jury been able to review this document, it would have shown the victim did know the Defendant.

The Tenth District Court of Appeals decision to affirm the trial court's denial of his criminal rule 33 motion, without holding a hearing to determine whether the Defendant was unavoidably unable to have obtained this new information of the jury never receiving this document, violated Defendant's Constitutional Right to Due Process and Equal Protection under the Law, as provided by the U.S. Constitutions Sixth and Fourteenth Amendments. The Tenth District nor this court could know from the record whether the outcome would have been

different had the trial counsel submitted this document or whether it would have resulted in a totally different outcome. Therefore the error cannot be said to be harmless.

The Tenth District's decision was simply incorrect and the Defendant is entitled to a hearing as well as a new trial to protect his right to a fair trial.

Proposition of Law No. II Did the Tenth District Court of Appeals err in regard to Mr. Dudley's second, third and fourth assignment being barred by the Doctrine of Res Judicata, further violate his Sixth and Fourteenth Amendment Rights?

In the case at bar, this court should be advised of the many attorneys filing briefs in this case. Subsequently, the Defendant's case was and has been remanded, reversed and dismissed, clearly making this case rise to the exception. It should be noted that this jurisdiction has reversed this case in line with Foster Supra, in May of 2006.

The Doctrine of Res Judicata is meant to ensure consistency of results in a case, to avoid endless litigation by settling the issues and to preserve the structure of superior and inferior courts as designed by the Ohio Constitution. The Tenth District Court of Appeals' decision fails to recognize the impact it's decision would have on thousands of appeals in the State of Ohio that have been reversed as many times as this case at bar. Subsequently, Appellant asks this Honorable Court to accept jurisdiction in determining if the Doctrine applies in this case. The record is clear; some of these issues were raised in Defendant's first appeal, although Defendant did not directly raise these issues. The Doctrine of Res Judicata does not apply in the case at bar. The record was enhanced by motions the Defendant filed and then became part of the record during re-sentencing, which makes them ripe for adjudication after the trial court ruled on Defendant's motions. Defendant filed a 26-b application as provided by Appellate rules to litigate his claims, however upon being reversed by the Ohio Supreme Court, Defendant's issues became a part of the record once in open court. This Court would be reasonable to accept jurisdiction to settle the Constitutional question pertaining to questions of law in cases that have been reversed and remanded very similarly.

This case raises the Constitutional issue of whether the Constitution allows cases to be litigated fully after re-sentencing. This case should be viewed with exceptions due to the record being enhanced at re-sentencing where Defendant 's issues now become part of the record., not subject to the Doctrine of Res Judicata as the Tenth District Court of Appeals incorrectly affirmed and dismissed.

Proposition of Law No. III Was Appellant's Sixth Amendment Rights violated when he was not permitted to be represented by paid counsel? did the Trial Court abuse it's discretion by failing to allow Defendant to be represented by paid counsel during trial?

The decision of the Tenth District Court of Appeals fails to answer the Constitutional question the Defendant puts before this Court. Nor does the Tenth District's decision protect Defendant's right to the Sixth Amendment of the U.S. Constitution. In the case at bar, the Trial Court is entitled to control its court room, to manage the case flow, to ensure the fair and just administration of justice. This case was up against a 90 day speedy trial time limitation for criminal felony cases. Although the trial was about to commence and a public defender had been appointed for Mr. Dudley, once he requested to have private paid counsel, the Trial Court should have afforded him that opportunity. This becomes more apparent throughout the trial based upon all the arguments presented to the Court Supra. This case puts in issue District Court of Appeals, the Constitutional question of structural error. If the Tenth District Court of Appeals decision was allowed to stand, the right to private counsel would be sabotaged as a matter of law. Simply put, failure to allow Mr. Dudley's private attorney to represent him, resulted in a structural, not plain error. Thus, is Mr. Dudley entitled to another trial as a matter of law, is a question for this Honorable Court to decide.

Constitutional questions arise from the case due to the fact that during the trial Mr. Dudley repeated that he did not believe that his counsel was advocating in a manner suitable for his defense. Therefore Mr. Dudley asserted his constitutional right to have paid counsel several

times during his trial and he presented to the trial court that his mother had retained counsel to represent him, by stating in part:

....My Mom sought an attorney, and I like Ms. Munson, but she [his Mother] also wanted this attorney to assist. She [his Mother] paid for it, bless her heart. (Emphasis added). (TR. 6)

He indicated that he desired different counsel; “[B]ut within my rights if it was at all possible to be able to have another attorney assist me. (TR.8) but due in part to Mr. Dudley’s indigent status, the Trial Court denied said counsel’s retention:

You’re either indigent and the taxpayers pay for your lawyer, or you or your family or whoever pays for your family [I think this was supposed to say lawyer], but it’s not both ways...[but] the other lawyer is not going to participate actively in front of this jury or in this trial, and that’s my ruling.

During the trial Mr. Dudley again addressed his request for private counsel:

“I have nothing personal against her [Ms. Munson- appointed defense counsel] at all, nothing personal, and I don’t think it’s a prejudice situation, none of that stuff. But I just feel like I should have been able to have that attorney.” [referring to Mr. Henderson] (TR.190)

Concluding this interlude, Mr. Dudley finally asked, “So do I have to keep this attorney?”

To which the Court responded, “Yes.” (TR.197) During sentencing, Mr. Dudley remarked:

Although even in court, I asked this Court I wanted to get rid of her. I had another attorney back there and you said: Mr. Dudley, do you want a speedy rights trial, do you want your 90 days, something to that effect. I’m not going to let you hire the other attorney, this or whatever. (STR.38)

Mr. Dudley also stated, “We came back out and we did it and I said I am not satisfied with the representation.” (STr.3 at 9)

This case surely has constitutional questions to be determined by this Honorable Court. Mr. Dudley asks this Honorable Court to accept his memorandum in support in solving the Constitutional question of whether he was entitled to hire his private attorney during and at his trial. This case has great public interest to all defendants wanting to hire private counsel or have

someone hire private counsel at trial. The Sixth Amendment to the U.S. Constitution guarantees that, "In all criminal prosecutions, the accused shall enjoy the rightto have the assistance of counsel for his defense." In the case at bar, Mr. Dudley was denied his Constitutional right to hire private counsel and now seeks this Court's determination with case law to support the Tenth District's decision in the case at bar. See Wheeler v United States, 486 U.S. 153: 108 S.Ct. 1692 100 L.ED 0d 140: 1988 U.S. Lexis 2306: 56 U.S.L.W. 4441.

Mr. Dudley's Constitutional Right under the Sixth Amendment, to paid counsel, was violated by the Trial Court. This becomes more apparent throughout the trial based upon all the arguments presented to the Court Supra. Failure to allow Mr. Dudley's private attorney assistance, resulted in structural not plain error. Thus, Mr. Dudley is entitled to another trial as a matter of law.

Proposition of Law No. IV Did the cumulative errors throughout Mr. Dudley's trial and sentencing violate Mr. Dudley's Constitutional Rights to a Fair Trial and due Process of Law? Did the errors obviate a fair proceeding warranting a new trial?

Mr. Dudley strongly suggests to this Honorable Court that when taken together, all the cumulative errors at trial, as well as at the re-sentencing denies him a fair trial and warrants reversal and a new trial. Cumulative harmless errors can justify the reversal of a conviction if the Defendant was denied his Constitutional Right to a Fair Trial. State v Demarco (1987), 31 Ohio St. 3d 191, 509 N.E.2d 1256, paragraph two of the syllabus. Example: "The prosecution in Mr. Dudley's case implied that Ms. Hamilton [Ms. Hamilton] has no motive to be making up, no reason to by lying to you. "In *DeMarco*, the Ohio Supreme Court stated:

"In this case we believe the State was impermissibly allowed to imply that Appellant was involved in a large-scale operation to defraud banks and insurance companies without establishing a proper evidential predicate or nexus with the Appellant for the admission of this matter."

This implication was sufficient to warrant reversal of the Defendant's conviction. In the case at bar, defense counsel failed to object to the Appellee's closing statement implying that

Ms. Hamilton was telling the truth. Mr. Dudley believes that this statement obviated his receipt of a fair trial and moves this Court to remand his case for a new trial on that basis. The Tenth District Court of Appeals decision ignores all of the violations in this case. If allowed to stand, the Tenth District's decision would allow Mr. Dudley's rights to be violated against case law doctrine as well as the rights of the Fourteenth Amendment of the U.S. Constitution

The cumulative errors in this case resulted in more than harmless error. Mr. Dudley lists the following errors to demonstrate his counsel's deficient performance: (1) Counsel repeatedly failed to object during trial, (2) she failed to object to the Howard charge, (3) she failed to preserve and present exculpatory evidence, (4) she failed to seek sanctions for late blood discovery and she failed to request lesser included offenses. Therefore this Honorable Court can see from the record that Mr. Dudley's rights to a fair trial were compromised by trial counsel. Mr. Dudley poses Constitutional questions for this Honorable Court to determine his right to Due Process and Equal Protections of Law as provided by the Six and Fourteenth Amendment to the U.S. Constitution.

Proposition of Law No. V Did newly discovered evidence/information warrant a new trial? Did the Trial Court err in failing to hold a hearing to determine if Mr. Dudley was unavoidably unable to have know about the evidence he relied on as newly discovered evidence.

Mr. Dudley asserts that the police dispatch report entered into evidence during his third sentencing hearing was newly discovered information and that had it been given/disclosed to the jury, it would have resulted in his acquittal

In State v Seiber (1990), 56 Ohio St 3d 4, 17, the Ohio Supreme Court held; "To warrant the granting of a motion for a new trial in a criminal case, based on the ground of newly discovered evidence, it must be shown that the new evidence (1) discloses a strong possibility that it will change the result if a new trial is granted, (2) has been discovered since the trial, (3) is such as could not in the exercise of due diligence have been discovered before the trial, (4) is

material to the issues, (5) is not merely cumulative to former evidence and (6) does not merely impeach or contradict the former evidence.”

Mr. Dudley has maintained that he was unaware that the dispatch report was not submitted as evidence. Mr. Dudley asserts that defense counsel, not Mr. Dudley, labeled the dispatch report as defense exhibit no. 1. This was a close case and no one can know how the jury would have reacted to that information. Furthermore Mr. Dudley had a right to have his only exhibit presented to the jury in this case. Counsel was acting in a deficient manner when she failed to submit Mr. Dudley’s only exhibit. Essentially the jury continued to believe that Ms. Hamilton did not know Mr. Dudley. Guilty, because guilt beyond a reasonable doubt is the standard would not be the probable result were this matter retried. Constitutional right to a fair proceeding and fundamental fairness was violated because this document was not submitted.

Mr. Dudley moves this Honorable Court to protect his rights in this case. During re-sentencing Mr. Dudley was forced to argue his own motion, another violation of his Constitutional rights. He stated at the re-sentencing hearing;

“Your Honor, basically I don’t even know how I can do a motion Pro-se, but I guess.....”

Mr. Dudley had a right to have his counsel argue his motion. It is obvious from the record that Mr. Dudley wanted his counsel to argue his motion, because Mr. Dudley did not present the proper argument of requesting a hearing to determine if his newly discovered evidence was unavoidably discovered. The record is clear about when Mr. Dudley found out that his exhibit was not entered into evidence, because the State in it’s response to Mr. Dudley’s 26-b Motion, stated that the evidence Mr. Dudley presents was dehoed from the record, making it clear that he was unaware that this document had not been entered as evidence in his trial and therefore never seen by the jury. Mr. Dudley, Therefore, moves this Court to grant him a new trial to determine

the outcome with the above information and protect his right to have his exhibit to be presented to a jury.

Proposition of Law No. VI Did Trial counsel's failure to seek sanction for late blood discovery constitute a Brady violation?

On May 27, 2003 defense counsel noted that she had just received a blood standard in the discovery from prosecution (Tr.10). As stated by the defense,

"We feel a crucial element of Mr. Dudley's defense involves whether or not there was the presence of cocaine in the victim's system. All along we were under the impression that, we looked at the meds we had, there was no indication that they ever took place, blood. That there was ever a toxicology screen." (Tr.10)

Preparation of Mr. Dudley's case necessitated that he receive discovery in a timely manner. Being that Mr. Dudley's defense was that he knew Ms. Hamilton and that the complaint was really a drug deal gone bad. The blood standard had been kept in a refrigerator, which may or may not have enable the defense to adequately analyze the sample to determine whether or not cocaine metabolize were still within it. To compound the issue, rather than placing the blood standard in the appropriate storage facility, it was placed in the Judge's refrigerator (Tr.13) See California v Trumbetta, 467, U.S. 479, 104 S.Ct 2528 Where that court stated in part:

"The U.S. Supreme Court imposes a duty on the State to preserve evidence which might be expected to play a significant role in the suspect's defense." Citing Arizona v Youngblood.

Mr. Dudley attempted to move for such dismissal, but as a layperson failed to persuade the Court to do so. In fact he stated:

"What I'm saying to you is that I didn't even know the blood existed. I have been looking for the blood. The blood has a lot to do with this victim and her state of mind and actually what happened that night.

**So if at all possible, when Friday comes and I got the blood actuallyif it's just inkling, I want it tested. It's not my fault that we'd just now are getting it Friday. I read the forensic report. It was sealed in a kit on the 3rd of March, so why I don't have it...I mean, so now that I didn't have it....I mean, so now that I didn't have it until Friday it's becoming an issue where we are not going to continue it. "
[his trial] (Tr.15)**

The failure to disclose the blood standard would be in contravention of the tenets of Brady v Maryland (1963), 373 U.S. (Suppression by the prosecution of evidence favorable to an accused upon request constitutes violation of Due Process where evidence is material to guilt or punishment irrespective of good faith or bad faith of the prosecution.)

Mr. Dudley was prejudiced by the failure of the State to provide him with this blood evidence. There was no reason given for why he was not provided with the blood sample earlier than Friday before trial. Failure to provide this discovery resulted in a manifest injustice to Mr. Dudley. i.e.; it was unfair to not disclose this information so that he could have verified for himself that the blood was not testable prior to trial. and as such violates U.S. Supreme Court holding in Brady., requiring the State to turn over exculpatory evidence. This is especially true given that it is unknown how the sample was stored prior to trial .and especially since at trial it was stored in the Judge's common refrigerator in the courthouse. At trial it was never determined by defense experts that the sample could have been tested. (Tr.209-210, Tr. 273) Had Mr. Dudley been given the blood standard earlier, he may have been able to prove that the witness was lying at trial about being his cocaine customer. (Tr.81)

At sentencing Mr. Dudley expressed his frustration with this representation:

"I requested the motion for the blood test. She [Ms. Munson] never filed. I wanted Larry Brown called.

Your Honor, I feel that blood had exculpatory evidence....I made a confession. In my confession I stated it was a drug deal gone bad. She never subpoenaed the detective....the victim had a prostitution conviction. She never mentioned it....I have maps of the crime scene she never admitted as evidence."

CONCLUSION

All Mr. Dudley asks of this Court is that he be given a fair chance to determine his Constitutional claims. Failure by counsel to seek some kind of redress was ineffective assistance of counsel. Mr. Dudley believes that the totality of the circumstances presented herein support his assertion that he received ineffective assistance of counsel and that his Sixth Amendment

Rights were violated. The cumulative effect of all errors, harmless or otherwise, resulted in an unfair trial, warranting reversal and the imposition of a new trial. Defendant prays that this Honorable Court will accept Jurisdiction of Defendant's appeal and does not allow the Tenth District Court of Appeals to misapply already existing laws and Rules of Practice. Appellant states that his case is one of great Public Interest and serious Constitutional question for all defendants with cases such as his.

Respectfully, Defendant Ronald E. Dudley, acting pro-se, requests that his case be decided based on the answers to Constitutional questions set forth in this Memorandum In Support of Jurisdiction. This case has taken on several stages of justice; Mr. Dudley was sentenced in 2003, and again in 2005 after a dismissal for the Trial Court's failure to journalize his sexual predator status. In 2006 Mr. Dudley was re-sentenced pursuant to this Honorable Court's ruling, in State v Foster. Subsequently newly discovered evidence was presented to the Court and now Mr. Dudley seeks this Court's guidance on the Constitutional questions herein. Mr. Dudley in no way wishes to waste this Court's time, however this case poses several Constitutional issues/questions that will affect many pro-se litigants and also those going thru re-sentencing hearings and newly discovered evidence issues.

This Court has jurisdiction to remand / reverse the Tenth District's opinion for failure to protect the Appellant's Constitutional Right to Counsel, as well as protection from other actions which the Constitution forbids.

In summary; Mr. Dudley wishes to have this Court's ruling if his newly discovered evidence required a hearing to determine if he was unavoidably unable to have discovered the evidence he relied on, along with the cumulative errors committed both by trial counsel and appellate counsel. This case has significant Constitutional questions to be determined by this Honorable Court. Mr. Dudley moves that this Court grant him a reversal of his conviction, a hearing on newly discovered evidence, or barring these, a new trial.

PROOF OF SERVICE

I hereby certify that a true copy of the Memorandum in Support and Notice of Appeal, has been sent to the clerk of courts for the Ohio supreme court, 65 s. front st, Columbus, Ohio on this 18th day of March, 2008, hand delivery of a family member.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Ronald Dudley", is written over a horizontal line.

Ronald Dudley #449-195
PO Box 5500
Chillicothe, OH 45601

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[Cite as *State v. Dudley*, 2008-Ohio-390.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 06AP-1272
v.	:	(C.P.C. No. 03CR-1637)
	:	
Ronald E. Dudley,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

O P I N I O N

Rendered on February 5, 2008

Ron O'Brien, Prosecuting Attorney, and *Richard Termuhlen, II*, for appellee.

Robert C. Bannerman, for appellant.

APPEAL from the Franklin County Court of Common Pleas

GRADY, J.

{¶1} Defendant, Ronald E. Dudley, appeals from the judgment of the Franklin County Court of Common Pleas, resentencing him on the mandate of the Supreme Court of Ohio pursuant to *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856.

{¶2} The facts of this case are set forth in detail in *State v. Dudley*, Franklin App. No. 05AP-144, 2005-Ohio-6503 at ¶¶4-21, and need not be repeated in full here. Briefly stated, the victim followed defendant in their respective vehicles on a late night errand to buy beer. Defendant eventually lured the victim into his vehicle by claiming that he had acquired the beer. Once the victim entered defendant's vehicle, defendant locked the

doors and forced the victim at knife point to perform fellatio on him. Defendant also threatened the victim with a club.

{¶3} Following a jury trial, defendant was found guilty of rape and kidnapping. The trial court merged those two offenses for sentencing purposes and sentenced defendant to the maximum allowable prison term, ten years, for rape. The trial court also classified defendant as a sexual predator, but that finding was not included in the court's June 24, 2003 judgment entry.

{¶4} Defendant timely appealed to this court from his conviction and sentence, but we dismissed that appeal for want of a final, appealable order because of the trial court's failure to journalize its sexual predator finding. *State v. Dudley*, Franklin App. No. 03AP-744, 2004-Ohio-5661. On January 14, 2005, the trial court resentenced defendant. The trial court imposed the same ten-year sentence and classified defendant as a sexual predator. Both the sentence and sexual predator finding were journalized in a judgment entry. Defendant appealed to this court and we affirmed both defendant's conviction and sentence. *State v. Dudley*, Franklin App. No. 05AP-144, 2005-Ohio-6503.

{¶5} Defendant appealed to the Supreme Court of Ohio. The Supreme Court of Ohio accepted his case for review. On May 3, 2006, the Supreme Court of Ohio reversed defendant's sentence and remanded the case for resentencing pursuant to *Foster*. *In re Ohio Criminal Sentencing Statutes Cases*, 109 Ohio St. 3d 313, 2006-Ohio-2109.

{¶6} Prior to resentencing, on May 18, 2006, defendant filed a pro se motion for a new trial based upon a claim that his trial counsel was ineffective for having failed to introduce at trial a document which reflects information broadcast to police vehicles by the police dispatcher indicating that the victim knew her assailant's name, which contradicts

the victim's testimony at trial. The trial court denied defendant's motion for a new trial on August 9, 2006.

{¶7} Defendant subsequently filed a pro se motion for reconsideration of the trial court's decision denying his motion for a new trial. Defendant's motion for reconsideration was filed on August 25, 2006, the same day defendant was resentenced in accordance with the Supreme Court of Ohio's mandate. At that resentencing hearing, the trial court again imposed the same ten-year sentence as before, and again classified defendant as a sexual predator. The court also held a hearing and heard argument on defendant's motion to reconsider his request for a new trial, following which the trial court denied that motion.

{¶8} When defendant expressed a desire to appeal the August 25, 2006 judgment, counsel was appointed for that purpose. However, a timely notice of appeal was never filed. On December 21, 2006, defendant filed a notice of appeal and a motion seeking leave to file a delayed appeal from the resentencing held on August 25, 2006. On February 6, 2007, we granted defendant leave to file a delayed appeal.

FIRST ASSIGNMENT OF ERROR

DEFENSE COUNSEL'S ACTIONS AND OMISSIONS AT MR. DUDLEY'S TRIAL AND SENTENCING HEARING DEPRIVED HIM OF THE EFFECTIVE ASSISTANCE OF COUNSEL.

{¶9} In his first assignment of error defendant raises two separate issues. Defendant first complains that his counsel performed in a constitutionally deficient manner at the August 25, 2006 resentencing hearing. We shall separately address that issue below. Defendant further argues that his trial counsel rendered ineffective assistance

during defendant's 2003 trial. We shall address that issue in conjunction with defendant's second, third and fourth assignments of error.

Ineffective Counsel at the August 25, 2006 Resentencing Hearing

{¶10} Defendant's motion for a new trial was based upon a police dispatch that contained information broadcast to police vehicles by the police dispatcher which identified a "Robert Dudley" as the suspect in this case. Defendant claims that although his counsel at trial had this document marked as an exhibit, counsel failed to use the document or have it admitted into evidence, even though the document would have helped exonerate him because it contradicted (impeached) both the victim's testimony that she did not know her assailant's name and Officer Paden's testimony that he did not know the name of the suspect he was searching for because the victim was unable to provide a name. The trial court denied defendant's motion for a new trial on August 9, 2006, but on the same day that defendant's resentencing hearing was held, August 25, 2006, defendant filed a pro se motion for reconsideration of his motion for a new trial.

{¶11} Defendant argues that his counsel performed deficiently at the August 25, 2006 resentencing hearing because he did not argue defendant's motion to reconsider the motion for a new trial. Instead, counsel simply reminded the trial court of defendant's pending motion and stated: "this is his motion, not mine, and he will present whatever after we're done with the sentencing." Defendant himself then argued the merits of his motion to reconsider his request for a new trial.

{¶12} Counsel's performance will not be deemed ineffective unless and until counsel's performance is proved to have fallen below an objective standard of reasonable representation and, in addition, prejudice arises from counsel's performance. *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052. To show that a defendant has been prejudiced by counsel's deficient performance, the defendant must affirmatively

demonstrate to a reasonable probability that were it not for counsel's errors, the result of the trial would have been different. *Id.*, *State v. Bradley* (1989), 42 Ohio St.3d 136.

{¶13} A court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *Strickland*, at 697; *Bradley*, at 143. If an ineffective assistance of counsel claim is more readily rejected for lack of sufficient prejudice, that alternative should be followed. *Id.*; *State v. Winterbotham* (Aug. 4, 2006), Greene App. No. 05CA100, 2006-Ohio-3989.

{¶14} At the August 25, 2006 resentencing hearing, defendant repeatedly claimed that his motion for a new trial was not based upon "newly discovered evidence." Therefore, in accordance with Crim.R. 33(B), defendant's motion for a new trial, in order to be timely, had to be filed within 14 days after the verdict, unless it is made to appear by clear and convincing evidence that the defendant was unavoidably prevented from filing his motion for a new trial, in which case the motion must be filed within seven days from the order of the court finding that the defendant was unavoidably prevented from timely filing the motion.

{¶15} Defendant never requested that the trial court find whether he was unavoidably prevented from timely filing his motion for a new trial. The verdict in this case was rendered on June 4, 2003. Defendant's pro se motion for a new trial was filed nearly three years later, on May 18, 2006. Defendant's motion for a new trial was obviously untimely. That is also true even if defendant's motion for a new trial is based upon a claim of newly discovered evidence, because defendant's motion was still not filed within 120 days after the verdict, as required by Crim.R. 33(B).

[Cite as *State v. Dudley*, 2008-Ohio-390.]

{¶16} In its August 9, 2006 decision denying defendant's motion for a new trial, the trial court found that defendant had not demonstrated that the document in question would have been valuable for anything other than impeachment, or that there was a strong probability that the outcome of the trial would have been different had the document been admitted at trial. We agree. The document would, at best, be useful to impeach the victim and one of the responding police officers. It does not exonerate defendant. Neither does it create a strong probability that it would have changed the result of the trial had the document been admitted in evidence. Therefore, the requirements that must be met before a motion for a new trial may be granted are not satisfied. *State v. Petro* (1947), 148 Ohio St. 505. Accordingly, the trial court did not abuse its discretion in denying defendant's motion for a new trial. *State v. Schiebel* (1990), 55 Ohio St.3d 71.

{¶17} Under those circumstances, where the motion for a new trial is untimely and does not satisfy the requirements for being granted a new trial, the motion is devoid of merit, and counsel does not perform deficiently by failing to argue defendant's pro se motion to reconsider the trial court's decision denying that motion for a new trial. Ineffective assistance of counsel has not been demonstrated.

Ineffective Assistance of Counsel during the 2003 Trial

SECOND ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN LABELING MR. DUDLEY A
SEXUAL PREDATOR.

THIRD ASSIGNMENT OF ERROR

MR. DUDLEY'S FEDERAL SIXTH AMENDMENT RIGHTS TO COUNSEL WERE VIOLATED AS HE WAS NOT ALLOWED TO HAVE HIRED COUNSEL REPRESENT HIM AT TRIAL.

FOURTH ASSIGNMENT OF ERROR

DID CUMULATIVE HARMLESS ERRORS WARRANT REVERSAL AND NEW TRIAL.

{¶18} In the second portion of his first assignment of error, defendant argues that his counsel at his 2003 trial performed deficiently in several different ways. He contends that his counsel failed to object to the portion of the State's closing argument in which the prosecutor vouched for the credibility of the victim; that counsel also failed to object to the "Howard" charge (*State v. Howard* [1989], 42 Ohio St.3d 18), that the trial court gave the jury; that counsel failed to offer certain evidence that defendant wanted introduced at the trial, such as diagrams and photographs of the area where the crime occurred and the testimony of an alibi witness (Defendant's girlfriend); that counsel failed to seek sanctions for a discovery violation, the State's late disclosure of blood test evidence; and, that counsel failed to request any jury instructions on lesser included offenses.

{¶19} In his second assignment of error defendant argues that the trial court erred in designating him a sexual predator. In his third assignment of error defendant argues that the trial court violated his Sixth Amendment rights by not allowing defendant to be simultaneously represented at trial by both appointed and retained counsel. In his fourth assignment of error defendant argues that the cumulative effect of the errors occurring during his trial deprived him of a fair trial.

{¶20} All of these issues are now barred from consideration and are not subject to review pursuant to the doctrine of res judicata. Under the doctrine of res judicata, a final judgment of conviction bars the convicted defendant who was represented by counsel from raising and litigating in any proceeding, except an appeal from that judgment, any defense or any claimed lack of due process that was raised or could have been raised by defendant at the trial, or on an appeal from that judgment of conviction. *State v. Morgan* (Apr. 10, 2007), Franklin App. No. 06AP-620, 2007-Ohio-1700 at ¶10, citing *State v. Perry* (1967), 10 Ohio St.2d 175 at paragraph nine of the syllabus. See, also, *State v. Saxon*, 109 Ohio St.3d 176, 2006-Ohio-1245 at ¶16.

{¶21} The "voucher" issue, the *Howard* charge issue, and the sexual predator classification issue were all previously raised and litigated in defendant's direct appeal from his conviction and sentence. See *State v. Dudley*, Franklin App. No. 05AP-144, 2005-Ohio-6503 at ¶54, 65 and 83. The prior judgment on those issues was "valid," because the Supreme Court of Ohio's reversal and remand was limited to the matter of sentencing. Res judicata therefore prevents those other issues from being re-litigated again in a subsequent proceeding. *Id.* All of the further issues presented in these assignments of error could have been raised on direct appeal from defendant's conviction and sentence in case No. 05AP-144, and therefore they also are now res judicata and not subject to review in subsequent proceedings. *Saxon; Perry; Morgan*. See, also, *State v. D'Ambrosio* (1995), 73 Ohio St.3d 141, 143.

{¶22} Defendant's first, second, third, and fourth assignments of error are overruled.

FIFTH ASSIGNMENT OF ERROR

DID THE TRIAL COURT ERR WHEN IT DENIED MR. DUDLEY'S MOTION FOR A NEW TRIAL PREDICATED UPON NEWLY DISCOVERED EVIDENCE.

{¶23} Defendant argues that the trial court erred when, at the August 25, 2006 resentencing hearing, the court denied his motion for reconsideration of the court's earlier ruling denying his motion for a new trial. Defendant now claims that the police dispatch document upon which his motion for a new trial is based constitutes "newly discovered evidence."

{¶24} Motions for a new trial are addressed to the sound discretion of the trial court and the court's ruling will not be disturbed on appeal absent an abuse of discretion. *Schiebel*, supra. An abuse of discretion means more than a mere error of law or an error in judgment. It implies an arbitrary, unreasonable, unconscionable attitude on the part of the court. *State v. Adams* (1980), 62 Ohio St.2d 151.

{¶25} Defendant acknowledges that his trial counsel possessed the police dispatch document that is the basis for his motion for a new trial. Accordingly, that evidence is obviously not "newly discovered" since the trial, and the trial court correctly so found in overruling Defendant's motion for a new trial. *State v. Murrell*, Hamilton App. No. C-020333, 2003-Ohio-2068. Furthermore, as we have already concluded in overruling the first portion of defendant's first assignment of error, defendant's motion for a new trial was untimely, and in any event did not satisfy the requirements for a new trial based upon newly discovered evidence. The police dispatch document was, at best, useful merely to impeach or contradict the testimony of the victim and one of the responding police officers, and does not portray a strong probability that it would have changed the outcome

of the trial if it had been admitted at trial. *Petro*, supra. Under those circumstances, the trial court did not abuse its discretion in denying defendant's motion for a new trial.

{¶26} Defendant's fifth assignment of error is overruled.

SIXTH ASSIGNMENT OF ERROR

APPELLANT WAS INCORRECTLY SENTENCED TO FIRST DEGREE KIDNAPPING IN CONTRAVENTION OF R.C. 2945.75.

{¶27} Defendant was convicted of kidnapping in violation of R.C. 2905.01. A violation of that section is a felony of the first degree unless the offender releases the victim in a safe place unharmed, in which case kidnapping is reduced to a felony of the second degree. R.C. 2905.01(C).

{¶28} R.C. 2945.75 provides:

(A) When the presence of one or more additional elements makes an offense one of more serious degree:

(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.

(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.

{¶29} Defendant argues that he was improperly convicted and sentenced for first degree felony kidnapping because the verdict form did not include either the degree of the offense of which defendant was convicted or a statement that the additional aggravating element making the offense one of more serious degree was found to be present by the jury. *State v. Pelfrey*, 112 Ohio St.3d 422, 2007-Ohio-256.

{¶30} Unlike *Pelfrey*, the degree of the offense at issue in this case was not made more serious by the presence of an additional aggravating element. Just the opposite is true. This offense becomes less serious when the additional element is present.

{¶31} Defendant's offense of kidnapping is not a felony of the second degree which is elevated to a felony of the first degree if defendant fails to release the victim in a safe place unharmed. Rather, defendant's offense of kidnapping under any and all circumstances in R.C. 2905.01(A) and (B) constitutes a felony of the first degree. Only if defendant releases the victim in a safe place unharmed does the offense then become a second degree felony. R.C. 2905.01(C). Accordingly, by its very terms, R.C. 2945.75(A) and the rule of *Pelfrey* does not apply to this situation.

{¶32} In any event, we note that defendant was never sentenced on the kidnapping offense because the trial court merged that offense and defendant's rape conviction for sentencing purposes and the State elected to have defendant sentenced on the rape charge, whereupon the trial court imposed a ten-year sentence only for the rape charge. Therefore, defendant suffered no prejudice from the error assigned, which did not occur in any event.

{¶33} Defendant's sixth assignment of error is overruled. The judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

WOLFF and BROGAN, JJ., concur.

Judge James A. Brogan, Judge William H. Wolff, Jr., and
Judge Thomas J. Grady of the Second Appellate District,
sitting by assignment in the Tenth Appellate District.

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FILED
COURT OF APPEALS
FRANKLIN CO. OHIO

2008 FEB -5 PM 3:57

CLERK OF COURTS

IN THE COURT OF APPEALS OF FRANKLIN COUNTY, OHIO
TENTH APPELLATE DISTRICT

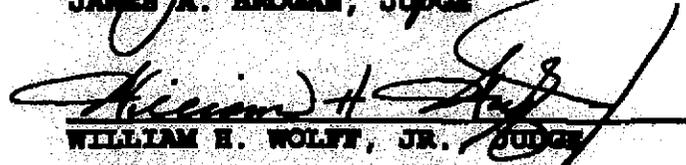
STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 06AP-1272
vs.	:	T.C. CASE NO. 03CR1637
RONALD E. DUDLEY	:	<u>FINAL ENTRY</u>
Defendant-Appellant	:	

.....

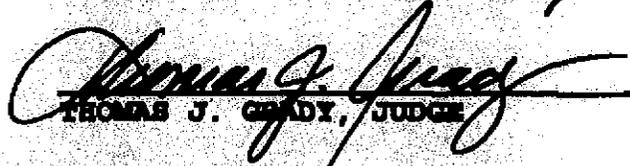
Pursuant to the opinion of this court rendered on the
5th day of February, 2008 the judgment of the trial
court is Affirmed. Costs are to be paid as provided in App.R.
24.



JAMES A. BROGAN, JUDGE



WILLIAM H. WOLFF, JR., JUDGE



THOMAS J. GRADY, JUDGE

Hon. James A. Brogan, Hon. William H. Wolff, Jr., and Hon.
Thomas J. Grady, Second District Court of Appeals, sitting by
assignment of the Chief Justice of the Supreme Court of Ohio.

52670012

FILED
IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CRIMINAL DIVISION

DECEMBER 27 2:47

State of Ohio,

CLERK OF COURTS

Termination No. ____ by ML

Plaintiff,

vs.

Case No. 03CR-1637(Hogan, J.)

Ronald E. Dudley,

Defendant.

JUDGMENT ENTRY
(Prison Imposed)

On June 4, 2003, the State of Ohio was represented by Assistant Prosecuting Attorney David Zeyen and the Defendant was represented by Attorney, Sheryl Munson. The case was tried by a jury which returned a verdict finding the Defendant guilty of the following offenses: Count One of the Indictment, to wit: Kidnapping, in violation of Section 2905.01 of the Revised Code, a Felony of the First Degree and Count Two of the Indictment, to wit: Rape, in violation of Section 2907.02 of the Revised Code, a Felony of the First Degree. The jury found the Defendant not guilty of Count Three of the Indictment, to wit: Aggravated Robbery.

Upon appeal to the Tenth District Court of Appeals, this matter was remanded and Defendant was resentenced on January 14, 2005.¹

On August 25, 2006, a re-sentencing hearing was held. The State of Ohio was represented by Assistant Prosecuting Attorney Jennifer Rausch and the Defendant was present and represented by Attorney Gary Tyack.

The Court conducted a sexual predator hearing on June 24, 2003. For purposes of this sentencing, the evidence and argument from that date are incorporated herein, and the Court finds by clear and convincing evidence that Defendant is a Sexual Predator pursuant to R.C. 2950.09(B).

The Court afforded counsel an opportunity to speak on behalf of the Defendant and addressed the Defendant personally affording Defendant an opportunity to make a statement on Defendant's own behalf in the form of mitigation and to present information regarding the existence or non-existence of the factors the Court has considered and weighed.

¹ Subsequently this matter went to the Ohio Supreme Court which remanded it for resentencing on May 3, 2006.

52670013

The Court has considered the purposes and principles of sentencing set forth in R.C. 2929.11 and the factors set forth in R.C. 2929.12. In addition, the Court has weighed the factors as set forth in the applicable provisions of R.C. 2929.13 and R.C. 2929.14. The Court further finds that a prison term is mandatory pursuant to R.C. 2929.13(F).

For the purposes of sentencing, Counts One and Two merge and the State elects that Defendant be sentenced on Count Two. The Court hereby imposes the following sentence: TEN (10) YEARS as to Count Two at the OHIO DEPARTMENT OF REHABILITATION AND CORRECTIONS.

The Court has considered the Defendant's present and future ability to pay a fine and financial sanction and does, pursuant to R.C. 2929.18, order the following fine and/or financial sanctions: No fine or costs imposed.

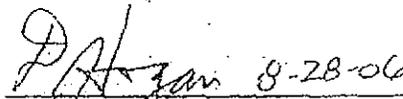
The total fine and financial sanction judgment is \$ 0 and the Court hereby renders judgment for the amount.

After imposing sentence, the Court stated its reasons as required by R.C. 2929.19 and consistent with State v. Foster, 2006-Ohio-856.

The Court notified the Defendant pursuant to R.C. 2929(B)(3) that the applicable period(s) of post-release control is up to five (5) years mandatory.

The Court **disapproves** of the Defendant's placement in a shock incarceration program or an intensive prison program.

The Court finds that the Defendant has 1281 days of jail credit and hereby certifies the time to the Ohio Department of Rehabilitation and Corrections. This includes the Defendant's jail time credit as well as the prison time already served on this case. The Defendant is to receive jail time credit for all additional jail time served while awaiting transportation to the institution from the date of the imposition of this sentence.


8-28-06
DANIEL T. HOGAN, JUDGE

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 05AP-144
v.	:	(C.P.C. No. 03CR03-1637)
	:	
Ronald E. Dudley,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

O P I N I O N

Rendered on December 8, 2005

Ron O'Brien, Prosecuting Attorney, and *Richard Termuhlen, II*, for appellee.

G. Gary Tyack, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶1} Defendant-appellant, Ronald E. Dudley, appeals from the judgment of the Franklin County Court of Common Pleas, whereby a jury convicted appellant of kidnapping and rape.

{¶2} The Franklin County Grand Jury indicted appellant of rape, a first-degree felony, in violation of R.C. 2907.02, kidnapping, a first-degree felony, in violation of R.C.

2905.01, and aggravated robbery, a first-degree felony, in violation of R.C. 2911.01. The charges stem from appellant sexually assaulting a victim during the early morning hours of February 27, 2003.

{¶3} Appellant pled not guilty, and a jury trial commenced. During voir dire, appellant's defense counsel asked prospective jurors if they felt comfortable with the possibility that they might be the "last person to hold out on the jury" and vote not guilty. Plaintiff-appellee, the State of Ohio, addressed defense counsel's question, by stating during voir dire:

[Defense counsel] was asking a lot about being an individual holdout * * *. While she is absolutely right, you should stick to your guns so to speak, what the good judge is going to instruct you and what we ask you to do, all of you, is to make a group decision. Right or wrong, at the end of all of this you're going to take an oath to follow the law and reach a decision and that is either going to be unanimously guilty or unanimously not guilty. * * *

(Tr. at 112.)

{¶4} At trial, the victim testified to the following during direct examination. On February 27, 2003, the victim was watching television at home with her boyfriend. She and her boyfriend were drinking alcohol, and the victim decided to go to a nearby bar to get some beer around 1:45 a.m. The victim was "buzzed" from drinking, but was not drunk. (Tr. at 34.)

{¶5} The victim drove to the bar, but did not purchase any beer because the bar was closed. The victim then drove to a gas station to get gas and cigarettes. While the victim walked to the salesperson to pay for the gas and cigarettes, appellant asked the victim if she would give him money for gas. The victim did not know appellant, but gave him a dollar for gas. Eventually, the victim and appellant started talking, and the

victim told appellant that she was trying to get some beer. Appellant offered to buy the victim beer at a "bootleg joint." (Tr. at 36.) The victim gave appellant money for the beer and the two individuals drove separately to the "bootleg joint," with the victim following appellant.

{¶6} No one was present at the "bootleg joint," and appellant proposed that they drive to another "bootleg joint." The victim agreed and followed appellant to the second location.

{¶7} At the second location, appellant went into the "bootleg joint," but returned with no beer. Appellant stated that he wanted to go to his son's house to get beer. Appellant asked the victim to get into his automobile, but the victim refused and decided to follow appellant instead.

{¶8} At the third location, appellant went into the house and returned with a bag in his hand. Next, appellant rushed to his automobile and the victim saw two men with black hoods walking down an alley. Appellant started driving away in his automobile and the victim followed. Appellant drove down a dead-end street. The victim pulled up behind appellant, and appellant convinced her to get in his automobile to retrieve the beer.

{¶9} The victim entered appellant's automobile and shut the door. After the victim shut the door, she heard appellant lock the automobile with the automatic locks. Thereafter, appellant grabbed the victim, told her not to move and held a box cutter knife to her face.

{¶10} According to the victim, "[a]t that point I was terrified. I was so scared I didn't know what to do." (Tr. at 43.) Appellant proceeded to force the victim to perform

fellatio. The victim complied because she "didn't know what [appellant] was going to do." (Tr. at 43.) The victim "felt like [appellant] was going to kill [her]." (Tr. at 43.)

{¶11} While the victim performed fellatio, appellant grabbed a cane and gestured in such a way that the victim thought that appellant was going to beat her. Moreover, during the sexual encounter, appellant did not ejaculate, and the victim ultimately offered to get money from her car so that they could pick up a female prostitute. The victim made this suggestion because appellant had fantasized during the incident about the victim having sexual encounters with women.

{¶12} Appellant exited the automobile to get money from the victim's automobile. Appellant instructed the victim to remain in his automobile. While appellant was searching for money in the victim's automobile, the victim "sprung out" of appellant's automobile. (Tr. at 49.) Appellant came up to the victim and started "digging in his pocket[.]" possibly looking for the box cutter knife. (Tr. at 49.) The victim went to her automobile, gave appellant the money and "took off like a bat out of hell." (Tr. at 50.)

{¶13} Next, the victim ran toward a house, cried for help, and the resident called law enforcement. A law enforcement officer arrived, and the victim told the officer about the sexual assault. The victim then went to the hospital.

{¶14} The victim sustained bruises on her thigh and abrasions on her knees from the incident. The entire encounter with appellant lasted approximately two hours.

{¶15} On cross-examination, the victim testified as follows. The victim admitted that she originally told law enforcement that she left her house at 12:30 a.m., not 1:45 a.m., as she testified. The victim also conceded that she told law enforcement that the rape occurred at 1:00 a.m. The victim also confirmed that appellant slapped her during

the incident and that the bag that appellant retrieved from his son's home contained empty cans.

{¶16} On re-direct examination, the victim indicated that, when she provided law enforcement with a time frame of the incident, she estimated the times. The victim also confirmed that she was not wearing a watch that night.

{¶17} Next, Nurse Cheryl Minke testified on appellee's behalf. Nurse Minke spoke with the victim at the hospital on February 27, 2003. The nurse testified that the victim described the sexual assault. The nurse noted that the victim did not mention appellant brandishing a cane during the incident, and the nurse stated that the victim did not mention appellant slapping her during the incident. Additionally, Nurse Minke stated that, when the victim described how she fled from appellant, the victim stated: "I told him I had money in my car. He wanted me to get on the car floor, but he left the car open, and ultimately," the victim ran. (Tr. at 122.) Lastly, the nurse mentioned that she took photographs of the victim's injuries, and the nurse indicated that the injuries were consistent with what the victim told her had occurred.

{¶18} Lealia Bunch also testified on appellee's behalf. Bunch testified that she heard the victim outside her home during the early morning hours of February 27, 2003. According to Bunch, the victim was crying for help and appeared nervous. Bunch also confirmed that she called for law enforcement.

{¶19} Appellee also called Officer Donald W. Paden to testify. Officer Paden testified as follows. Officer Paden arrived on the scene after Bunch called for law enforcement. The victim was crying, upset, and traumatized. The victim told Officer Paden about the forced fellatio. The victim also mentioned appellant brandishing a

cane and box cutter knife, but did not mention appellant slapping her during the incident. Officer Paden also confirmed that the victim appeared "very disoriented as to her times as to when this did occur." (Tr. at 148.) However, Officer Paden explained that "[i]t is not uncommon in my experience that whenever a person has been involved in a situation to where they're excited that the time is incorrect." (Tr. at 149.) In addition, Officer Paden indicated that he spoke with the victim to get basic information "and then I allow the detective to go ahead and get specifics." (Tr. at 154.) According to the officer, he spoke with the victim "to get just a vague description so that I can radio it to other units." (Tr. at 154.)

{¶20} Next, Officer Mark Henson testified for appellee. Officer Henson testified that he searched appellant's automobile and found a box cutter knife and cane.

{¶21} Lastly, appellee admitted into evidence, among other things, a copy of the hospital social worker's report. In the report, the social worker indicated that the victim claimed that her "[m]ain concern was that [her] boyfriend didn't know where she was and neither did her children." Moreover, according to the social worker in the report, the victim stated that appellant forced oral sex "before she could get out of [the] car and run away." Additionally, the report denotes that appellant slapped the victim in the face and that appellant brandished a box cutter knife. However, the report does not mention appellant brandishing a cane during the incident.

{¶22} Appellant did not testify, and the parties gave closing arguments. During closing arguments, appellant's defense counsel suggested that the victim was lying and that her testimony did not make sense. In response, appellee stated during the rebuttal portion of its closing argument that the victim "gave detail about what happened to her,

who did it, and how[.]” (Tr. at 42.) Appellee also stated that “[a]ll of the testimony, physical evidence, and testimony before you * * * buttresses what [the victim] tells you.”

(Tr. at 41.) Moreover, appellee argued:

* * * [The victim] has no motive to be making this up, no reason to be lying to you. She told you the truth. The inconsistencies, they are expected in a case like this, in human affairs, and they're not significant as to what happened, the truth of what happened to her that night.

(Tr. at 45.) Appellant's defense counsel did not object to the above statement.

{¶23} After deliberating for two and one-half days, the jury asked the following question:

We've reached a verdict on one count. We are very disparate on the other two counts. What happens if we cannot reach a verdict on the remaining two counts?

{¶24} The trial court responded by giving an instruction pursuant to *State v. Howard* (1989), 42 Ohio St.3d 18. In the instruction, the trial court noted, in part:

Although the verdict must reflect the verdict of each individual juror and not mere acquiescence in the conclusion of your fellows, each question submitted to you should be examined with proper regard and deference to the opinions of others. You should consider it desirable that the case be decided.

* * *

It is your duty to decide the case if you can conscientiously do so. You should listen to one another's arguments with a disposition to be persuaded. Do not hesitate to reexamine your views and change your position if you're convinced that it is erroneous.

If there is disagreement, all jurors should reexamine their positions given that a unanimous verdict has not been reached.

(Tr. at 240-241.) Appellant's defense counsel did not object to the trial court providing the above instruction.

{¶25} Approximately one and one-half days later, the jury found appellant guilty of rape and kidnapping, but not guilty on aggravated robbery. Thus, the trial court set the case for a sexual predator hearing and for sentencing on June 13, 2003.

{¶26} At the sexual predator hearing, appellee asked the trial court to consider evidence and testimony from appellant's trial. Appellee also admitted into evidence a sentencing memorandum that detailed appellant's criminal history, which included: (1) 1983 convictions for gross sexual imposition, attempted aggravated trafficking in drugs, and attempted drug abuse; (2) 1989 convictions for drug abuse and felony theft; (3) a 1992 conviction for misdemeanor attempted drug abuse; (4) a 1993 conviction for theft; (5) a 1996 conviction for theft; (6) 1997 convictions for misdemeanor attempted drug abuse, felony receiving stolen property, felony drug trafficking, felony unauthorized use of a motor vehicle, felony failure to obey an order of a police officer, and felony receiving stolen property; (7) a 1999 misdemeanor conviction for failure to comply with an officer's order; and (8) 2001 misdemeanor convictions for unauthorized use of property and disorderly conduct. According to the sentencing memorandum, appellant received prison time for some of the above convictions.

{¶27} Next, appellee admitted into evidence documents pertaining to the 1983 gross sexual imposition conviction. The documents consisted of police reports containing statements from the victim and appellant. The documents also consisted of the indictment and guilty plea.

{¶28} According to the documents, appellant was indicted on three counts of rape, and appellant pled guilty to one count of gross sexual imposition. In the police report, the victim mentioned the following. Appellant and a female co-defendant approached the victim and took her to an apartment. At the apartment, appellant slapped the victim and told her to remove her clothes and get into bed. Appellant then forced the victim to perform fellatio on him and to engage in vaginal intercourse. Appellant also forced the victim to engage in sexual activity with the female co-defendant. At one point during the incident, appellant took a stick and threatened to beat the victim if she did not engage in the sexual activity.

{¶29} At the sexual predator hearing, appellant acknowledged that he had a "lengthy criminal history[.]" (Tr. at 254.) Ultimately, the trial court found appellant to be a sexual predator. The trial court noted that it had "no evidence that [appellant] participated in any sexual offender programming while he was in the institution after having pled guilty to the sexual offense" in 1983. (Tr. at 260-261.) The trial court also recognized that appellant used a box cutter knife and cane during the incident and, therefore, "displayed cruelty or made one or more threats of cruelty." (Tr. at 261.) Lastly, the trial court concluded that the underlying sexual assault in this case was identical to the 1983 sex offense involving a different victim.

{¶30} After the trial court made the sexual predator finding, appellant's defense counsel stated that appellant did participate in a sex offender treatment program after the 1983 sex offense. The trial court stated that it would "allow that into evidence[.]" but that the information "does not materially impact [its] decision. There are other factors as well." (Tr. at 262.)

{¶31} Next, the trial court held a sentencing hearing. The trial court merged the kidnapping into the rape conviction and sentenced appellant to ten years imprisonment on the rape conviction, which, as noted below, is the maximum prison sentence for the first-degree felony offense. The trial court concluded that, "I do not find that this was the worst form of the offense, but I do find based upon [appellant's] prior record, * * * that [appellant] poses the greatest likelihood of committing future crimes[.]" (Tr. at 282.)

{¶32} The trial court issued a judgment entry that included appellant's conviction and sentence, but did not include the sexual predator finding. Appellant appealed, but this court dismissed the appeal for lack of a final appealable order because the trial court did not journalize the sexual predator finding. *State v. Dudley*, Franklin App. No. 03AP-744, 2004-Ohio-5661.

{¶33} On January 14, 2005, the trial court held additional sexual predator and sentencing hearings. The parties agreed to have additional sexual predator and sentencing hearings "as opposed to simply amending the journal entry to reflect a finding of sexual predator." (Tr. at 3.)

{¶34} At the subsequent sexual predator hearing, the parties agreed to "[incorporate] all of the evidence that was presented at the earlier hearing into" the January 14, 2005 hearing. (Tr. at 11.) Additionally, at the January 14, 2005 hearing, appellant reiterated that he participated in a sex offender treatment program, and appellant's defense counsel confirmed that appellant had been in prison four previous times.

{¶35} The trial court proceeded to find appellant to be a sexual predator. The trial court considered appellant's assertion that he took a sex offender treatment

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COMMON PLEAS COURT

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CLERK OF COURT

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

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50429801

State of Ohio,

Plaintiff-Appellee,

v.

Ronald E. Dudley,

Defendant-Appellant.

No. 05AP-144
(C.P.C. No. 03CR03-1637)
W. J. French
(REGULAR CALENDAR)

JUDGMENT ENTRY

For the reasons stated in the opinion of this court rendered herein on December 8, 2005, appellant's assignments of error are overruled, and it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is affirmed. Costs shall be assessed against appellant.

FRENCH, J., BROWN, P. J., and McGRATH, J.

By *Judith L. French*
Judge Judith L. French

APPENDIX AAM F

03APA07-- 744

COMMON PLEAS COURT, FRANKLIN COUNTY, OHIO
CRIMINAL DIVISION 0

2003 JUN 24 PM 3:40

State of Ohio,

Plaintiff,

vs.

Ronald E. Dudley,

Defendant.

Termination No. _____ by ML
CLERK OF COURTS

Case No. 03CR-1637(Hogan,

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03 JUL 23 AM 11:41
CLERK OF COURTS

JUDGMENT ENTRY
(Prison Imposed)

On June 4, 2003, the State of Ohio was represented by Assistant Prosecuting Attorney David Zeyen and the Defendant was represented by Attorney, Sheryl Munson. The case was tried by a jury which returned a verdict finding the Defendant guilty of the following offenses: Count One of the Indictment, to wit: Kidnapping, in violation of Section 2905.01 of the Revised Code, a Felony of the First Degree and Count Two of the Indictment, to wit: Rape, in violation of Section 2907.02 of the Revised Code, a Felony of the First Degree. The jury found the Defendant not guilty of Count Three of the Indictment, to wit: Aggravated Robbery.

The Assistant Prosecuting Attorney and the Defendant's Attorney did not recommend a sentence.

On June 13, 2003, a sentencing hearing was held pursuant to R.C. 2929.19. The State of Ohio was represented by Assistant Prosecuting Attorney David Zeyen and the Defendant was represented by Attorney, Sheryl Munson.

The Court afforded counsel an opportunity to speak on behalf of the Defendant and addressed the Defendant personally affording Defendant an opportunity to make a statement on Defendant's own behalf in the form of mitigation and to present information regarding the existence or non-existence of the factors the Court has considered and weighed.

The Court has considered the purposes and principles of sentencing set forth in R.C. 2929.11 and the factors set forth in R.C. 2929.12. In addition, the Court has weighed the factors as set forth in the applicable provisions of R.C. 2929.13 and R.C. 2929.14. The Court further finds that a prison term is mandatory pursuant to R.C. 2929.13(F).

For the purposes of sentencing, Counts One and Two merge and the State elects that Defendant be sentenced on Count Two. The Court hereby imposes the following

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IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CRIMINAL DIVISION

State of Ohio,

Termination No. 5 by ML 47662D17

Plaintiff,

vs.

Case No. 03CR-1637(Hogan, J.)

Ronald E. Dudley,

Defendant.

CLERK OF COURTS
2005 JAN 21 PM 3:15
COMMON PLEAS COURT
FRANKLIN CO., OHIO

JUDGMENT ENTRY
(Prison Imposed)

On June 4, 2003, the State of Ohio was represented by Assistant Prosecuting Attorney David Zeyen and the Defendant was represented by Attorney, Sheryl Munson. The case was tried by a jury which returned a verdict finding the Defendant guilty of the following offenses: Count One of the Indictment, to wit: Kidnapping, in violation of Section 2905.01 of the Revised Code, a Felony of the First Degree and Count Two of the Indictment, to wit: Rape, in violation of Section 2907.02 of the Revised Code, a Felony of the First Degree. The jury found the Defendant not guilty of Count Three of the Indictment, to wit: Aggravated Robbery.

Upon appeal to the Tenth District Court of Appeals, this matter was remanded.

On January 14, 2005, a re-sentencing hearing was held. The State of Ohio was represented by Assistant Prosecuting Attorney Sean McCarthy and the Defendant was present and represented by Attorney Jonathan Tyack.

The Court conducted a sexual predator hearing on June 24, 2003. For purposes of this sentencing, the evidence and argument from that date are incorporated herein, and the Court finds by clear and convincing evidence that Defendant is a Sexual Predator pursuant to R.C. 2950.09(B).

The Court afforded counsel an opportunity to speak on behalf of the Defendant and addressed the Defendant personally affording Defendant an opportunity to make a statement on Defendant's own behalf in the form of mitigation and to present information regarding the existence or non-existence of the factors the Court has considered and weighed.

The Court has considered the purposes and principles of sentencing set forth in R.C. 2929.11 and the factors set forth in R.C. 2929.12. In addition, the Court has weighed

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COMMON PLEAS COURT
IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CRIMINAL DIVISION

06 AUG 30 PM 2:47

State of Ohio, CLERK OF COURTS Termination No. _____ by ML

Plaintiff,

vs.

Case No. 03CR-1637(Hogan, J.)

Ronald E. Dudley,

Defendant.

JUDGMENT ENTRY
(Prison Imposed)

On June 4, 2003, the State of Ohio was represented by Assistant Prosecuting Attorney David Zeyen and the Defendant was represented by Attorney Sheryl Munson. The case was tried by a jury which returned a verdict finding the Defendant guilty of the following offenses: Count One of the Indictment, to wit: Kidnapping, in violation of Section 2905.01 of the Revised Code, a Felony of the First Degree and Count Two of the Indictment, to wit: Rape, in violation of Section 2907.02 of the Revised Code, a Felony of the First Degree. The jury found the Defendant not guilty of Count Three of the Indictment, to wit: Aggravated Robbery.

Upon appeal to the Tenth District Court of Appeals, this matter was remanded and Defendant was resentenced on January 14, 2005.

On August 25, 2006, a re-sentencing hearing was held. The State of Ohio was represented by Assistant Prosecuting Attorney Jennifer Rausch and the Defendant was present and represented by Attorney Gary Tyack.

The Court conducted a sexual predator hearing on June 24, 2003. For purposes of this sentencing, the evidence and argument from that date are incorporated herein, and the Court finds by clear and convincing evidence that Defendant is a Sexual Predator pursuant to R.C. 2950.09(B).

The Court afforded counsel an opportunity to speak on behalf of the Defendant and addressed the Defendant personally affording Defendant an opportunity to make a statement on Defendant's own behalf in the form of mitigation and to present information regarding the existence or non-existence of the factors the Court has considered and weighed.

Subsequently this matter went to the Ohio Supreme Court which remanded it for resentencing on May 31, 2006.

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The Court has considered the purposes and principles of sentencing set forth in R.C. 2929.11 and the factors set forth in R.C. 2929.12. In addition, the Court has weighed the factors as set forth in the applicable provisions of R.C. 2929.13 and R.C. 2929.14. The Court further finds that a prison term is mandatory pursuant to R.C. 2929.13(F).

For the purposes of sentencing, Counts One and Two merge and the State elects that Defendant be sentenced on Count Two. The Court hereby imposes the following sentence: TEN (10) YEARS as to Count Two at the OHIO DEPARTMENT OF REHABILITATION AND CORRECTIONS.

The Court has considered the Defendant's present and future ability to pay a fine and financial sanction and does, pursuant to R.C. 2929.18, order the following fine and/or financial sanctions: No fine or costs imposed.

The total fine and financial sanction judgment is \$ 0 and the Court hereby renders judgment for the amount.

After imposing sentence, the Court stated its reasons as required by R.C. 2929.19 and consistent with State v. Foster, 2006-Ohio-856.

The Court notified the Defendant pursuant to R.C. 2929(B)(3) that the applicable period(s) of post-release control is up to five (5) years mandatory.

The Court **disapproves** of the Defendant's placement in a shock incarceration program or an intensive prison program.

The Court finds that the Defendant has 1281 days of jail credit and hereby certifies the time to the Ohio Department of Rehabilitation and Corrections. This includes the Defendant's jail time credit as well as the prison time already served on this case. The Defendant is to receive jail time credit for all additional jail time served while awaiting transportation to the institution from the date of the imposition of this sentence.


8-28-06
DANIEL T. HOGAN, JUDGE



IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

STATE OF OHIO,

Plaintiff(s),

v

Case No. 03CR-1637 (Hogan, J.)

RONALD DUDLEY,

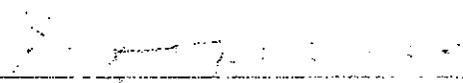
Defendant(s)

DECISION AND ENTRY DENYING DEFENDANT'S MOTION FOR A NEW TRIAL

The Defendant has filed a motion for a new trial alleging newly discovered evidence

The Defendant has not met his burden as this Court is not convinced that the evidence was newly discovered or that it would be valuable for anything other than impeachment or that there is a strong probability that the outcome would be different if the jury had access to this document

The Defendant's motion is DENIED


DANIEL T. HOGAN, JUDGE

Copies to

Richard A. Termuhler
Assistant Prosecuting Attorney

Ronald E. Dudley
Defendant Pro se

City of Columbus
Division of Police
120 Marconi Boulevard
Columbus, Ohio 43215-0009



5/17/2003



Computer Aided Dispatch Report

User: POLICENETRDudley
Date: 5/6/2003 - Time: 12:14:36 PM

Incident Number	030154539	Ten Code	16	Date Received	030227
E911 Time	041035	Time Received	041123	Time Dispatched	041207
Time Enroute		Time Arrived	050036	Time Cleared	054453
Location	923 E FULTON ST				
Apartment					
Call Taker ID	T26	Dispatcher ID	T38		
Disposition		Closing Ten Code			
Primary Unit	122C	Shift	C	Related Police Incident	
Complainant Name	BUNCH, ERNEST & LALIA (RES)				
Complainant Address	923 E FULTON ST				
Complainant Area Code	614	Complainant Phone	2538866		
Comments	<p>PG, 122C AT SCENE -0412, POSSIBLY A 44 OLDER MODLE GRY LINCOLN WITH TEMP TAG IN THE WINDOW, SOMETYPE OF WRITING ON FRONT PASSENGER SIDE WINDOW WRITTEN IN SHOE, (WHITE) POLISH POSSIBLY DRIVEN BY A ROBERT DUDLEY, **AIRED CH 1 -0430, AIRED CH2, MB ABOUT 45 YOA PER 122C, PER 122C DONT NEED A 24, 122C ENR TO GRANT PER SAS FROM FULTON/GILBERT BEG MIL 36615, 122'S ENDING MIL 36616 -0445, 122C WATCHING VICTS CAR IN THE AREA OF GILBERT/FULTON, VICT THANKS SUSP MIGHT OF ALSO TAKEN THE KEYS TO HER CAR, SAYS ON THE OTHER HALF OF HER DOUBLE SHE HEARS A MALE AND, EM ARGUING UNKNOWN IF 17 FOR SURE OR NOT.</p>				

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