

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-060864
	:	TRIAL NO. B-0510554
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
TIMOTHY SCHULER,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Timothy Schuler appeals his conviction for rape. We conclude that his assignments of error do not have merit, and we therefore affirm the judgment of the trial court.

The state presented the following evidence at trial. Schuler is the adopted son of the victim's uncle. The victim testified that, on October 20, 2005, around 4:00 p.m., Schuler had come to her apartment and had asked to use her phone. When she went into her bedroom to stop running a movie that she had been watching, Schuler followed her into the room, removed his clothing, and removed her clothing. The victim testified that Schuler then forced her to have intercourse with him.

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

**OHIO FIRST DISTRICT COURT OF APPEALS**

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The victim's half-brother, Tony Schuler, testified that the victim had been born with fetal-alcohol syndrome, that she was mentally retarded, and that she functioned at the level of a nine-year-old child. Tony stated that he had acted as the caregiver for his half-sister after his father had died in January 2005. He was the payee for her social-security benefits. According to Tony, he had seen Schuler in the victim's apartment on October 12. Because he believed that Schuler was a manipulator who took advantage of people, Tony told Schuler not to contact the victim. Nearly a week later, on October 20, the victim called Tony around 6:00 p.m. Tony testified that the victim was crying, and that he knew something was wrong. When he got to the victim's apartment, she was still crying and was very emotional. The victim managed to tell Tony that Schuler had been in her apartment. Tony took her to the Greenhills police station and told officers that he suspected that a rape had occurred.

The victim recounted the story to the police officers. She was then taken to a hospital where a rape examination was conducted. The examination revealed a laceration consistent with vaginal penetration, but no bodily fluid from Schuler was recovered from the victim's body. The victim told Sergeant Timothy Roberts that Schuler had wiped his body with a blue towel after he had completed intercourse. Roberts recovered a towel that matched the victim's description from the victim's apartment. The towel contained sperm from Schuler.

When Roberts questioned him, Schuler denied that he had had sexual intercourse with the victim. During his interview with Roberts, Schuler indicated that the victim was his cousin, and that she was "socially handicapped." He later told Roberts that he believed that the victim functioned at sixth-grade level at best.

The state also presented the testimony of Tami Gasper, who was a case manager for the Hamilton County Board of Mental Retardation and Developmental Disability. According to Gasper, she had recently been assigned to oversee the victim's welfare. Gasper stated that her records indicated that the victim had mild to moderate retardation.

Schuler testified on his own behalf. He stated that the victim had visited him several times at work, and that he had had consensual intercourse with the victim on October 12. He stated that when he was interviewed by Roberts, he had denied having had intercourse with the victim because he was embarrassed that she was his cousin. Joan Schuler, who is the aunt of both Schuler and the victim, testified that the victim was emotionally retarded. But according to Joan Schuler, the victim was a good talker and knew the difference between right and wrong.

Schuler was indicted for rape in violation of R.C. 2907.02(A)(2) and for rape in violation of R.C. 2907.02(A)(1)(c). At the conclusion of a bench trial, the court found Schuler not guilty of rape in violation of R.C. 2907.02(A)(2), but guilty of rape in violation of R.C. 2907.02(A)(1)(c). After a hearing, Schuler was adjudicated a sexual predator and was sentenced to nine years in prison.

We consider Schuler's second assignment of error first. In it, Schuler asserts that the state failed to prove every element of rape beyond a reasonable doubt. Schuler challenges both the sufficiency and the weight of the evidence. When an appellant challenges the sufficiency of evidence, we must determine whether the state presented adequate evidence on each element of the offense.<sup>2</sup> On the other hand, when reviewing whether a judgment is against the manifest weight of the

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<sup>2</sup> See *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541.

evidence, we must determine whether the trier of fact clearly lost its way and created a manifest miscarriage of justice.<sup>3</sup>

A person is guilty of rape under R.C. 2907.02(A)(1)(c) if he “engage[s] in sexual conduct with another who is not [his] spouse \* \* \*, when \* \* \* [t]he other person’s ability to resist or consent is substantially impaired because of a mental or physical condition \* \* \*, and the offender knows or has reasonable cause to believe that the other person’s ability to resist or consent is substantially impaired because of a mental or physical condition[.]”

Schuler argues that the state did not present sufficient evidence that the victim was “substantially impaired.” The state need not present expert testimony that the victim was substantially impaired.<sup>4</sup> “[R]ather, [substantial impairment] can be shown to exist by the testimony of people who have interacted with the victim, and by allowing the trier of fact to do its own assessment of the person’s ability to appraise or control \* \* \* her conduct.”<sup>5</sup>

We conclude that the state presented sufficient evidence of every element of the offense, including the victim’s substantial impairment and Schuler’s knowledge of her impairment. The court was also able to observe the victim as she testified, to weigh the testimony of Tony, Joan Schuler, and Gasper about the victim’s mental capabilities, and to hear Schuler’s statements about the victim’s mental capabilities. We conclude that the trial court’s findings that the victim was substantially impaired and that Schuler knew or had reasonable cause to believe that the victim was substantially impaired were not against the manifest weight of the evidence. And we

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<sup>3</sup> See *id.* at 387.

<sup>4</sup> *State v. Robinson*, 9th Dist. No. 21317, 2003-Ohio-5360, ¶10.

<sup>5</sup> *Id.*

further conclude that the trial court did not lose its way when it found Schuler guilty of rape in violation of R.C. 2907.02(A)(1)(c). The second assignment of error is overruled.

Schuler's first assignment of error is that the trial court erred when it adjudicated him a sexual predator. To determine whether Schuler was a sexual predator, the trial court had to consider all relevant factors, including those listed in R.C. 2950.09(B)(3), to determine whether he was "likely to engage in the future in one or more sexually oriented offenses."<sup>6</sup> The evidence that a defendant is a sexual predator must be clear and convincing.<sup>7</sup>

Dr. Emily Davis testified that she had interviewed Schuler. She stated that, based on the Static-99 evaluation, Schuler was at a moderate to high risk to reoffend. She also stated that she had administered a test called the Minnesota Multiphasic Personality Inventory ("MMPI"). Schuler had obtained the highest score on the MMPI, indicating an antisocial personality. And Schuler's results on the Psychopathic Personality Inventory indicated "a pattern of antisocial behaviors, a tendency to be impulsive, \* \* \* a pattern of disrespecting the rights and property of other people, [and] \* \* \* [the] inability to delay personal gratification of needs." In adjudicating Schuler a sexual predator, the trial court cited Davis's testimony and the evidence that the victim functioned at the level of a nine-year-old child. The court also cited Schuler's criminal record, noting that it did not contain a previous sexual offense. We conclude that the trial court's determination that Schuler was likely to engage in one or more sexually oriented offenses in the future was not against the manifest weight of the evidence. The first assignment of error is not well taken.

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<sup>6</sup> R.C. 2950.09(B)(3) and 2950.01(E)(1).

<sup>7</sup> R.C. 2950.09(B)(4).

**OHIO FIRST DISTRICT COURT OF APPEALS**

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The judgment of the trial court is, therefore, affirmed.

Further, a certified copy of this Judgment Entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**PAINTER, P.J., SUNDERMANN and DINKELACKER, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on October 31, 2007  
per order of the Court \_\_\_\_\_.  
Presiding Judge