

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

STATE OF OHIO,	:	APPEAL NO. C-150322
	:	TRIAL NO. B-1206039
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
TERRELL TOOLES,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Terrell Tooles was indicted on nine counts of rape in violation of R.C. 2907.02. The victim of each offense was his niece A.S., who was between five and nine years old when the offenses took place. Following a jury trial, Tooles was convicted of eight counts of rape. The trial court sentenced him to 15 years' to life imprisonment on each offense. These sentences were made consecutive, resulting in an aggregate sentence of 120 years' to life imprisonment. Tooles has appealed, raising five assignments of error for our review.

In his first assignment of error, Tooles argues that the trial court erred in admitting hearsay statements given by A.S. during her interview at the Mayerson Center. But because A.S.'s statements were given for the purpose of medical

diagnosis and treatment, we hold that they were properly admissible under Evid.R. 803(4). *See State v. Lukacs*, 188 Ohio App.3d 597, 2010-Ohio-2364, 936 N.E.2d 506, ¶ 5-6 (1st Dist.). Further, because A.S. testified and was subject to cross-examination, no error occurred in the admission of A.S.'s statements given during the interview. *See State v. Woodruff*, 1st Dist. Hamilton Nos. C-140256 and C-140257, 2015-Ohio-2422, ¶ 19-21. The first assignment of error is overruled.

Tooles argues in his second assignment of error that the trial court erred in permitting Detective Hollis Hudepohl to testify about the grand jury process and to vouch for the credibility of A.S. Detective Hudepohl had testified about numerous meetings that had occurred between the prosecutor, the victim, and her prior to the presentation of Tooles' case to the grand jury. She explained that these meetings were held for the purpose of determining what charges to bring against Tooles. Detective Hudepohl did not improperly testify about the grand jury process. Nor did she vouch for the credibility of A.S. The trial court did not abuse its discretion in admitting this testimony. *See State v. Truitt*, 1st Dist. Hamilton No. C-050188, 2011-Ohio-1885, ¶ 8. The second assignment of error is overruled.

In his third assignment of error, Tooles argues that the trial court erred in allowing the prosecutor to make improper remarks to the jury that prejudiced his right to a fair trial. We have reviewed all statements cited by Tooles and find none to be improper. The prosecutor did not vouch for the credibility of A.S., and, as we have already determined, did not improperly question Detective Hudepohl about the grand jury process. Nor were any of the prosecutor's remarks during closing argument improper or prejudicial. *See State v. Smith*, 130 Ohio App.3d 360, 366, 720 N.E.2d 149 (1st Dist.1998). The third assignment of error is overruled.

In his fourth assignment of error, Tooles argues that his convictions were not supported by sufficient evidence and were against the manifest weight of the evidence. Following our review of the record, we conclude that after viewing all the evidence and reasonable inferences in the light most favorable to the prosecution, the jury could reasonably have found all the elements for each count of rape proven beyond a reasonable doubt. *See State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). Nor was this the rare case in which the jury so lost its way and committed such a manifest miscarriage of justice in convicting Tooles that his convictions must be reversed. *See State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). The jury was in the best position to judge the credibility of the witnesses, and it was entitled to find the testimony offered by A.S. to be credible. The fourth assignment of error is overruled.

In his fifth assignment of error, Tooles raises various challenges to the sentences imposed by the trial court. He first argues that several of his convictions for rape were allied offenses of similar import that should have merged for sentencing purposes. But because each of Tooles' rape convictions either occurred on separate dates, or occurred on the same date but involved different types of sexual conduct, we hold that they were not allied offenses of similar import. *See R.C. 2941.25; State v. Drummonds*, 1st Dist. Hamilton No. C-110011, 2011-Ohio-5915, ¶ 8.

Tooles next argues that the trial court erred by failing to inform him that he would not be eligible to earn days of credit while incarcerated pursuant to R.C. 2967.193. His argument is without merit. While former R.C. 2929.14(D)(3) required trial courts to provide such information at sentencing, that statute has been repealed and trial courts are no longer required to inform defendants about the eligibility to

earn days of credit. *See State v. Graham*, 1st Dist. Hamilton No. C-130375, 2014-Ohio-1024, ¶ 9.

But Tooles has identified two errors in his entry of conviction that require correction. First, the entry incorrectly states that he had been found guilty following a trial by the court, rather than a trial by jury. Second, the entry omitted language reflecting that Tooles had been classified as a Tier III sexual offender and informed of his reporting requirements. Consequently, the fifth assignment of error is sustained in part and overruled in part. This cause is remanded with instructions for the trial court to correct the entry of conviction to reflect that Tooles had been found guilty following a jury trial and to reflect that Tooles had been classified as a Tier III sexual offender and had been notified of his reporting requirements. The judgment of the trial court is otherwise affirmed.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**FISCHER, P.J., HENDON and CUNNINGHAM, JJ.**

To the clerk:

Enter upon the journal of the court on April 20, 2016  
per order of the court \_\_\_\_\_.  
Presiding Judge