

**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

<b>STATE OF OHIO</b>	)	<b>CASE NO. CR 11 549274</b>
	)	
<b>Plaintiff,</b>	)	<b>JUDGE JOHN P. O'DONNELL</b>
	)	
<b>vs.</b>	)	<b><u>JOURNAL ENTRY</u></b>
	)	
<b>ELIJAH FRAZIER</b>	)	
	)	
<b>Defendant.</b>	)	

*John P. O'Donnell, J.:*

On April 20, 2011, defendant Elijah Frazier was indicted on two counts of rape and one count of kidnapping. He was then arraigned, deemed indigent, and provided with assigned defense counsel. Discovery proceeded and on September 21 the prosecutor and the defendant, with his counsel, advised the court that a plea bargain had been reached. The terms of the plea bargain are that the kidnapping count would be amended to abduction, the defendant would plead guilty to abduction, and the two rape counts would be dismissed.

Whether to approve the proposed plea bargain is the question before the court.

**SUMMARY OF THE EVIDENCE**

The State of Ohio alleges that Frazier raped victim D. S. on April 12. The two rapes one for sexual conduct by digital penetration; the other by vaginal intercourse and the kidnapping all allegedly occurred in the same encounter.

The prosecutor expects to prove at trial that the defendant called or text-messaged the victim, whom he knew, to say that he was coming over to meet her. When he arrived, the victim came out to his car. It was in the car that the state alleges the rapes occurred when the defendant engaged in the two forms of sexual conduct with the victim by purposely compelling

her to submit by force or threat of force. The state concedes that the kidnapping, *i.e.*, the restraint of the victim's liberty, occurred in the course of the sexual conduct, making it almost certainly an allied offense of similar import to the rapes.

The defendant made a voluntary statement after being arrested. The gist of his statement is that he had consensual sexual conduct with the victim. Both parties anticipate that some evidence will be introduced at trial to suggest the defendant and the victim had a dating relationship before April 12 but that it did not necessarily involve sexual conduct.

The allegations came to light on April 13 when the victim confided in a friend that the defendant had sex with her against her will. The state expects to produce physical evidence corroborating that sexual conduct happened.

#### **RATIONALE FOR THE PROPOSED PLEA BARGAIN**

The state is confident that, upon a full presentation of the evidence, a jury would find the defendant guilty as charged. However, the state acknowledges that the consequences of such a verdict to the defendant, who is only 19 years old (and was 18 at the time of the alleged offenses), might be too harsh. In particular, the state acknowledges that the collateral consequence of being deemed a Tier III sex offender upon conviction, which would require the defendant to register with the sheriff four times a year for the rest of his life, is likely excessive.

the jury could return guilty verdicts. Because a guilty verdict on either rape charge comes with a mandatory prison term pursuant to section 2929.13(F)(2) of the Ohio Revised Code and the lifetime quarterly sex offender registration duties, the defendant reasons that it is better to admit to a lesser, but still serious, offense than go to trial.

## LAW AND ANALYSIS

It is well-established that the decision whether or not to accept a plea bargain is within the sound discretion of the trial court. *Akron v. Ragsdale*, 61 Ohio App.2d 107, 109, (9<sup>th</sup> Dist. 1978). In fact, it is the trial court's responsibility to evaluate plea agreements, and it is free to reject them whenever the facts do not support the prosecutor's decision to dismiss or reduce the charges, when the prosecutor's reasons for the plea are not substantial, or when the plea is not compatible with the public interest. *State v. Ligon*, 12<sup>th</sup> Dist. App. No. CA 2009-09-056, 2010-Ohio-2054, 2010 WL 1851057, ¶ 8.

Based on the evidence described by counsel here there are only two possibilities: the defendant and the victim engaged in consensual sexual activity or they engaged in non-consensual sexual activity. If they consented then whatever conduct happened was not a crime and any restraint of D.S.'s liberty incidental to the activity was not a crime. On the other hand, if D.S. did not consent, then the defendant is guilty of rape or, if the sexual activity was sexual contact but not sexual conduct and the element of force or threat of force is present, he is guilty of gross sexual imposition. If he is guilty of rape or gross sexual imposition he is also guilty of kidnapping as charged in count three. Despite that narrow universe of possibilities, the prosecutor proposes that the defendant plead guilty to abduction, *i.e.* by force or threat restraining D.S.'s liberty or removing her from the place where she was found.

But that crime can only have been committed if there was non-consensual sexual activity. In other words, the state is advocating a guilty plea that is inconsistent with anything that could have occurred between Frazier and D.S. on April 12. While the defendant's willingness to go along with such a plea bargain in the face of the possibility of a far worse

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Ohio Rules of Professional Conduct, “a prosecutor has the responsibility of a minister of justice and not simply that of an advocate” and is obligated “to see that the defendant is accorded justice.” Justice here demands either that the defendant be convicted of a sex offense or nothing because the evidence cannot support a conviction for kidnapping or abduction without a conviction for a sex offense. Similarly, the court is not bound to put its imprimatur on a plea bargain by accepting the defendant’s guilty plea where it is inconsistent with any reasonable jury’s possible decision on the issues of fact.

The court recognizes that there are times when the state offers a defendant a plea bargain despite its confidence that the defendant is actually guilty as charged simply to minimize the range of possible penalties at sentencing because the state is persuaded that the defendant deserves a break under the circumstances. This appears to be one of those cases. But if it is, the state can either propose a plea bargain that comports with some reasonable possible outcome on the questions of fact or can dismiss the indictment without prejudice upon the defendant’s compliance with an extra-judicial agreement between him and the state. Since the proposed plea bargain does not fit either of those categories, the court declines to accept it as unsupported by the facts.

**IT IS SO ORDERED:**

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Date: \_\_\_\_\_

**SERVICE**

A copy of this Journal Entry was sent by e-mail, this 28th day of December, 2011, to the following:

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