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**FOR IMMEDIATE RELEASE**

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**Court of Appeals Reverses Sentence**

***Counts Do Not Merge for Sentencing***

***State v. Joseph D. Fricke, 2011-CR-3041***

**DAYTON, OH (04/29/2016)** – Prosecuting Attorney Mat Heck, Jr. announced today that the Second District Court of Appeals reversed the defendant’s sentence as ordered by Common Pleas Court Judge Timothy O’Connell.

On February 18, 2015, the defendant, now 32 years of age, was found guilty by a jury of rape of a substantially impaired victim, possession of criminal tools, and contaminating a substance for human consumption. The defendant drugged a 19-year-old college student by putting Lorazepam in her drink. Then, when she was too intoxicated to resist or give consent, he brutally raped her.

At sentencing, Judge O’Connell ruled that all counts merged with the count of rape, and sentenced the defendant to a total of seven years of incarceration.

We appealed the court’s merger of the rape and contaminating a substance for human consumption and the sentence to the Second District Court of Appeals. On August 21, 2015, the Court of Appeals affirmed the merger and sentence, overruling our appeal. During the pendency of the appeal, the Ohio Supreme Court ruled in another case (*State v. Ruff*) that had a direct impact on the issue in this case, so we filed a motion with the Court of Appeals to reconsider its earlier decision.

Today, the Court of Appeals reversed its earlier decision and ruled the counts of rape and contaminating a substance for human consumption are separate and distinct offenses and should be sentenced individually. Accordingly, the case was remanded back to Judge O’Connell for resentencing.

Prosecutor Heck continued, “Now that the Court of Appeals has sustained our appeal, we will be filing a sentencing memorandum asking Judge O’Connell to sentence this defendant to the maximum, consecutive sentence, consistent with the Court of Appeals’ ruling. The actions of this defendant were calculated and ruthless and he should be removed from society for as long as possible.”

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