

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

STATE OF OHIO,	:	APPEAL NO. C-170050
	:	TRIAL NO. B-1605870
Plaintiff-Appellee,	:	
vs.	:	
	:	<i>JUDGMENT ENTRY.</i>
BRANDON WILSON,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant, Brandon Wilson, appeals his conviction, following a no-contest plea, for felonious assault for engaging in sexual conduct without first disclosing to his partner that he was HIV positive. In two assignments of error, he argues that the trial court erred by overruling his motion to dismiss because the statute violates his equal protection rights and his right to refrain from speaking. Pursuant to *State v. Batista*, \_\_\_ Ohio St.3d \_\_\_, 2017-Ohio-8304, \_\_\_ N.E.3d \_\_\_, Wilson's arguments are without merit, and the judgment of the trial court is affirmed.

On October 17, 2016, Wilson was indicted for felonious assault in violation of R.C. 2903.11(B)(1) for engaging in sexual conduct with the victim without disclosing to her that he had tested positive for HIV. Wilson moved to dismiss the indictment, arguing that the statute violated the Equal Protection Clause by treating individuals with

**OHIO FIRST DISTRICT COURT OF APPEALS**

---

HIV differently than other individuals with sexually transmitted diseases, and violated the First Amendment for compelling speech.

After the court denied the motion, Wilson pleaded no contest, and the trial court found him guilty and imposed an agreed sentence of two years. His sentence was stayed pending resolution of the appeal.

While this appeal was pending, the Ohio Supreme Court considered these constitutional arguments in *Batista* and concluded that the statute “does not violate the First Amendment right to freedom of speech because it regulates conduct and any speech compelled by the statute is incidental to the regulated conduct. The statute also does not violate the Equal Protection Clauses of the United States or Ohio Constitutions because it is rationally related to the state's legitimate interest in preventing the transmission of HIV to sexual partners who may not be aware of the risk.” *Id.* at ¶ 28.

Accordingly, we overrule the assignments of error and affirm the judgment of the trial court.

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

**MOCK, P.J., CUNNINGHAM and ZAYAS, JJ.**

To the clerk:

Enter upon the journal of the court on February 14, 2018

per order of the court \_\_\_\_\_.

Presiding Judge