

[Cite as *State v. Page*, 2010-Ohio-436.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92719

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

SCOTT PAGE

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-505085

BEFORE: Jones, J., McMonagle, P.J., and Celebrezze, J.

RELEASED: February 11, 2010

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

LARRY A. JONES, J.:

{¶ 1} Defendant-appellant, Scott Page (“Page”), appeals his conviction. Finding no merit to the appeal, we affirm.

{¶ 2} In 2007, Page was charged with eight counts of rape and two counts of gross sexual imposition. He pled not guilty, and the matter proceeded to a jury trial.

{¶ 3} The following pertinent evidence was adduced at trial.

{¶ 4} In October 2007, “T.Z.” went to the homecoming dance with her friends.¹ After the dance, she and three girlfriends went to Page’s house, a place the girls frequented to drink alcohol. Page and his roommate, Tristan Ingram (“Ingram”), were former students of the school T.Z. attended. While at Page’s house, T.Z., who was 17 years old at the time, consumed approximately 10 to 15 shots of rum and vodka. After consuming the alcohol, T.Z. went into the bathroom to throw up. She blacked out and remembered someone helping her to Page’s bedroom.

{¶ 5} T.Z. testified that she passed out and awoke to Ingram kissing her and touching her breasts and vagina. She passed out again and was awakened by a girlfriend who asked her if she wanted to leave with her, but testified that she was too intoxicated to move. She passed out and the next time she woke up, Ingram had her hand down his pants. She remembered that at some point Page came into the room and Ingram suggested to Page that they “run a train on her.”

¹ The victim is referred to herein by her initials in accordance with this court’s established policy regarding nondisclosure of identities in cases involving sexual

To “run a train,” T.Z. explained, is for more than one man to have sexual intercourse with a woman, each penetrating a different orifice. T.Z. testified that she told both men “no” multiple times and that her boyfriend would kill them. She further testified that she was scared but unable to yell or move due to her intoxicated state. T.Z. stated that she tried to move away from them and turned her head when they kissed her.

{¶ 6} Page turned off the lights, and the men took turns having vaginal intercourse with T.Z. Ingram also had digital and oral sex with T.Z. During the initial assault, neither man used a condom. T.Z. testified that after about 30 minutes, she told them that they “should have at least used a condom.” Both men laughed and said “no,” but Page put on a condom and resumed having sex with T.Z., while Ingram attempted to have oral sex with her. At some point, T.Z. said she was on top of one of the men, but fell off because she was too drunk.

{¶ 7} Afterwards, Page gave T.Z. a pair of shorts, telling her that her pants were wet. T.Z. called her friend to find out when she was coming back and then fell asleep on Page’s bed. T.Z. woke up the next morning next to one of her girlfriends and Page.

{¶ 8} T.Z. stated that she did not go to the police because she was afraid of what Page and Ingram would do to her and her family. Later that day, T.Z. told her boyfriend, Robert Styers (“Styers”), what had happened to her.

offenses.

{¶ 9} Styers's father testified that he received a call from his son, who was working out of state at the time, telling him what had happened to T.Z. He called T.Z.'s mother and asked her to meet him to relay the information. After he spoke with T.Z.'s mother, Styers's father called 911 to report the assault.

{¶ 10} The police arrived at T.Z.'s house to interview her and collect evidence. T.Z. and her parents went to the hospital for an examination. The nurse practitioner who performed the examination noted a bruise on T.Z.'s arm and skin tears in her vaginal area. The nurse testified that the skin tears could be consistent with either sexual assault, consensual sexual intercourse, or self-stimulation.

{¶ 11} Styers testified that over the next several days he received phone calls from Page, which he did not answer. Finally, he answered a call from a "restricted" caller, and it turned out to be Page. Page asked Styers not to hang up; told Styers that he could not remember what happened the night of the assault; and that it was the first time "he had ten bottles at his house." Page also repeatedly asked Styers to tell him what had happened because Page could not remember. The phone conversation disintegrated into an argument that ended with Page threatening Styers by telling him he was sending ten people to Styers's house "right now."

{¶ 12} Styers was not at home at the time, but his father and brothers were at the house when, a few minutes later, Ingram knocked at the door. Styers's father saw that Ingram was accompanied by a few other men and told Ingram to leave his property. Ingram started to walk away from the house but yelled to

Styers's father, "tell that b*** a*** n*** he better keep his mouth shut and he better come see me." At that point, Styers pulled up in his car and Ingram ran around to the passenger side of the car and started punching the passenger in the head. A fight ensued and a neighbor called police.

{¶ 13} T.Z. testified that she received several threats from female classmates after the incident and that her girlfriends who were with her on homecoming night no longer spoke to her.

{¶ 14} Three of T.Z.'s former girlfriends testified for the defense. Madalyn Kolarik testified that she went to the dance with T.Z., but only remained at Page's house a short time. She also testified that she and T.Z. were no longer friends and that when she tried to reach out to T.Z., T.Z. ignored her. She also testified that she remained friends with Page and Ingram and admitted she had had sex with Ingram in the past.

{¶ 15} Brittany Fleming ("Fleming") testified that she attended the homecoming dance with T.Z. and was drinking with her at Page's house. She testified that she was with T.Z. while T.Z. was vomiting, and she was the person who helped T.Z. to Page's bedroom and left her on Page's bed. Fleming left to pick up a friend but returned later and climbed into bed with T.Z., Page, and Ingram.

{¶ 16} Fleming testified that Page and Ingram admitted having sex with T.Z. on the night in question, but both men told Fleming the sex was consensual. Fleming admitted that she continued to go to Page's house to drink alcohol after the assault.

{¶ 17} Finally, Ashley Nadson (“Nadson”) testified that she was with T.Z. the night of the assault, spent the night at Page’s house, and had lunch with T.Z. the next day. Nadson testified that during lunch, T.Z. did not tell her that she was raped or forced to have sex. Instead, she testified that T.Z. said that she “might have had her first threesome last night.” She also testified that T.Z. told her details about the sex and that the two girls spent the rest of the day together at T.Z.’s house. She testified that she was no longer friends with T.Z. because what T.Z. told her boyfriend about the assault was different from what T.Z. told Nadson at lunch the day after the assault.

{¶ 18} Nadson further testified that both Page and Ingram admitted to having sex with T.Z., but told Nadson the sex was consensual because T.Z. was on top and “wanted it.” Nadson stated that she was still friends with Page and Ingram, continued to party at their house, and even had sex with Ingram a few months after the assault on T.Z.

{¶ 19} The forensic scientist testified that she identified DNA from Page on the internal and external vaginal swabs done on T.Z. and identified DNA from both Page and Ingram on T.Z.’s underwear and jeans.

{¶ 20} The jury convicted Page of four counts of sexual battery, the lesser included offense of rape, one count of gross sexual imposition, and acquitted him of all other charges. The court sentenced Page to a total of one year in prison.

Ingram was convicted of four counts of sexual battery and two counts of gross sexual imposition and sentenced to one year in prison.²

{¶ 21} Page appeals, raising one assignment of error for our review, in which he argues that his conviction was against the manifest weight of the evidence.

{¶ 22} In reviewing a claim challenging the manifest weight of the evidence, the question to be answered is whether “there is *substantial* evidence upon which a jury could reasonably conclude that all the elements have been proved beyond a reasonable doubt. In conducting this review, we must examine the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.” (Internal citations and quotations omitted.) *State v. Leonard*, 104 Ohio St.3d 54, 68, 2004-Ohio-6235, 818 N.E.2d 229.

{¶ 23} Page argues that the jury lost its way in convicting him because T.Z.’s testimony was not credible and defense witnesses told a different version of events from what T.Z. had testified to. Page claims that because T.Z.’s testimony differed from that of her former friends, she cannot be believed. We disagree.

{¶ 24} Contrary to Page’s contentions, he “is not entitled to a reversal on manifest weight grounds merely because inconsistent evidence was offered at

²Ingram has also appealed his conviction. See *State v. Ingram*, Cuyahoga App. No. 92785.

trial.” as “[t]he trier of fact is free to believe or disbelieve any or all of the testimony presented.” *State v. Favor*, Franklin App. No. 08AP-215, 2008-Ohio-5371, ¶10.

{¶ 25} The defense witnesses testified that T.Z. was inebriated, and each detailed how drunk T.Z. was. They testified that they were not present during the assault and only saw T.Z. before and after the incident. The defense witnesses testified that they remained friends with Page and Ingram after the assault and continued to drink alcohol and smoke marijuana at Page’s house.

{¶ 26} The witnesses further detailed how Page and Ingram made a habit of inviting high school girls over, supplying them with alcohol and marijuana, and how the men kept a tally of the number of high school girls they had sex with. Nadson testified that when Page sends a text, his “signature” is a number that indicates the number of women with which he has had sex. When she received a text from Page the day before she testified in court, the number was 26.

{¶ 27} T.Z. testified that she consumed 10 to 15 shots of hard liquor at Page’s house, vomited, and passed out. She explained that she lost and regained consciousness many times throughout the night, detailed which man performed which sexual acts on her, and stated that even though she was too weak to physically resist Page and Ingram, she told them “no” three times.

{¶ 28} As a general rule, this court may not substitute its opinion of what the evidence showed for that of the factfinder, which in this case was the jury. It is worth noting, especially in a case like this where the evidence was largely testimonial in nature, that the role of the jury is to weigh the evidence and the credibility of the witnesses is paramount. As the reviewing court, we cannot

possibly review a cold transcript and see what the jurors saw or hear what the jurors heard; therefore, we grant substantial deference to the jury's assessment of witness credibility. Even though the defense witnesses did not believe T.Z., the jury chose to believe her, and this record presents no basis to set aside the jury's assessment.

{¶ 29} Therefore, we find that the verdict was not against the manifest weight of the evidence and overrule the sole assignment of error.

{¶ 30} Accordingly, judgment is affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

LARRY A. JONES, JUDGE

CHRISTINE T. MCMONAGLE, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR