[Cite as *State v. Williams*, 2010-Ohio-773.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92799

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

BOBBIE M. WILLIAMS

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-507617

BEFORE: Kilbane, P.J., Blackmon, J., and Sweeney, J.

RELEASED: March 4, 2010

JOURNALIZED:

ATTORNEY FOR APPELLANT

Kevin M. Cafferkey
2000 Standard Building
1370 Ontario Street
Cleveland, Ohio 44113

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor
Ronni Ducoff
Lisa M. Stickan
Assistant Prosecuting Attorneys
The Justice Center - 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

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).

MARY EILEEN KILBANE, P.J.:

{¶ 1} Appellant, Bobbie Williams ("Williams"), appeals his conviction on one count of corrupting another with drugs. Williams argues that his conviction was against the manifest weight of the evidence. After a review of the record and pertinent law, we affirm.

{¶ 2} The following facts give rise to the instant appeal.

{¶ 3} In April 2006, Williams's ten-year-old daughter, M.M.,[1] whom Williams had only seen sporadically throughout her life, was living with her mother, Rebecca Chapman ("Chapman"), in Michigan. Chapman was pregnant and planning on moving to northern Michigan with her boyfriend. M.M. did not want to relocate with her mother. (Tr. 197-215.) Around that same time, Williams called Chapman and suggested that M.M. come to Cleveland to visit him.

{¶ 4} During the summer of 2006, M.M. went to Cleveland to visit Williams for two weeks. While in Cleveland, Chapman arranged for M.M. to stay in Cleveland for the 2006-2007 school year. M.M. stayed in Cleveland with Williams and his mother until sometime during the summer of 2007. (Tr. 215-217.) Shortly after M.M. returned to Michigan, she told Chapman

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[1]Minor parties will be referred to by initials in accordance with this court's established policy of not identifying juveniles.

that Williams had sexually abused her when she lived in Cleveland.

{¶ 5} On March 4, 2008, a 31-count indictment was issued against Williams. Counts 1 through 10 and counts 25 through 28 charged Williams with rape, in violation of R.C. 2907.02(A)(1)(b), felonies of the first degree. Counts 11 through 24 charged Williams with gross sexual imposition, in violation of R.C. 2907.05(A)(4), felonies of the third degree. Count 29 charged Williams with corrupting another with drugs, in violation of R.C. 2925.02(A)(4)(a), a felony of the fourth degree. Count 30 charged Williams with gross sexual imposition, in violation of R.C. 2907.05(A)(1), a felony of the fourth degree. Count 31 charged Williams with attempted gross sexual imposition, in violation of R.C. 2907.05(A)(1), a felony of the fourth degree. Counts 1 through 28 all contained sexually violent predator specifications. Counts 1 through 29 were alleged to have been perpetrated against M.M., while Counts 30 and 31 were alleged to have been perpetrated against M.M.'s friend, C.L.[2]

{¶ 6} At trial, M.M. testified that Williams raped her on numerous occasions. She further recalled being with Williams on two occasions when he purchased marijuana, which they smoked in the car.

{¶ 7} At the close of the State's case, the trial court granted Williams's

[2]The trial court ultimately dismissed the two counts pertaining to C.L. after concluding that sufficient evidence was not presented on those charges.

Crim.R. 29 motion and dismissed Counts 18 through 24, 28, 30, and 31.

{¶ 8} On May 21, 2008, the jury convicted Williams of Count 29, corrupting another with drugs, a felony of the fourth degree, and returned verdicts of not guilty on all remaining counts. On June 18, 2008, Williams was sentenced to six months in jail, receiving credit for time served.

{¶ 9} Williams appealed, asserting only one assignment of error for our review.

"THE FINDING OF GUILTY FOR CORRUPTING ANOTHER WITH DRUGS IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶ 10} Williams argues that his conviction for providing M.M. with drugs is against the manifest weight of the evidence because if the jury declined to believe M.M.'s testimony and find Williams not guilty of the rape and gross sexual imposition charges, the jury should have also discredited her testimony regarding the marijuana use. We disagree.

{¶ 11} "Weight of the evidence concerns the inclination of the *greater amount of credible evidence*, offered in a trial, to support one side of the issue rather than the other. It indicates clearly to the jury that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the *greater amount of credible evidence* sustains the issue which is to be established before them." *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541.

(Emphasis in original.)

{¶ 12} This court may not simply substitute its judgment for that of the jury. *State v. Jackson*, Cuyahoga App. No. 88028, 2007-Ohio-823, at ¶15, citing *Thompkins* at 390. The jury is in the best position to assess the credibility of the witnesses. *State v. Hines*, Cuyahoga App. No. 90871, 2009-Ohio-2118. Reversing a conviction based upon the manifest weight of the evidence is reserved for the exceptional case. *Thompkins* at 387.

{¶ 13} A review of the record demonstrates there was ample evidence to support Williams's conviction. M.M. testified that she was with Williams on two separate occasions when he purchased marijuana. On the first occasion M.M. stated that Williams purchased marijuana outside of a Subway restaurant. On the drive home, he smoked it, handed it to M.M., and instructed her to smoke it, which she did. (Tr. 406-408.)

{¶ 14} M.M. also testified that she was with Williams on a second occasion when he drove down a dark street to purchase marijuana. M.M. testified that they smoked the marijuana in Williams's car several days later. M.M. stated that Williams did not smoke marijuana in front of his mother, and he kept air freshener in his car to mask the odor.

{¶ 15} Williams's mother, Hilde Williams, testified that, while she was not positive, she believed Williams was using money she had given him to purchase marijuana. (Tr. 998-1000.) Gina Harrington ("Harrington"), a Michigan social worker, interviewed M.M. shortly after her allegations were reported. Harrington testified that M.M. informed her during an initial interview that Williams had provided her with marijuana and wine coolers. (Tr. 571.)

{¶ 16} Williams alleges that the jury's verdict is inconsistent because the jury did not find M.M.'s testimony credible with regard to the rape and gross sexual imposition charges; however, it relied on M.M.'s testimony in convicting Williams of the charge of corrupting another with drugs. However, this contention lacks merit.

{¶ 17} The factfinder is to gauge the credibility of the witnesses and may believe all, part, or none of a witness's testimony. *State v. Bates*, Cuyahoga App. No. 92323, 2009-Ohio-5819, at ¶22, citing *Hill v. Briggs* (1996), 111 Ohio App.3d 405, 412, 676 N.E.2d 547. Consequently, it is permissible for the jury to find that M.M.'s testimony regarding the marijuana use was credible, even if they determined the rest of her testimony was not. Further, Williams's mother believed that Williams had been purchasing marijuana with her money, corroborating M.M.'s testimony.

{¶ 18} Williams also contends that M.M.'s testimony lacks credibility in light of the fact that neither marijuana nor drug paraphernalia were found at his home during the execution of the search warrant. A conviction may be supported by either direct or circumstantial evidence. *State v. Wilson* (June 9, 1994), Cuyahoga App. Nos. 64442 and 64443, citing *State v. Kulia* (1974), 37 Ohio St.2d 157, 309 N.E.2d 897.

{¶ 19} The conviction is sufficiently supported by direct evidence in the form of M.M.'s testimony. M.M. returned to Michigan sometime during the summer of 2007, and the search warrant was not executed at Williams's home until October 2007. Simply because evidence of marijuana or drug paraphernalia was not at Williams's home several months later does not mean the factfinder lost its way in determining that Williams had given M.M. marijuana at some point when she resided there.

{¶ 20} Therefore, Williams's sole assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from 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.

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

MARY EILEEN KILBANE, PRESIDING JUDGE

PATRICIA A. BLACKMON, J., and
JAMES J. SWEENEY, J., CONCUR