

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-08-1390

Appellee

Trial Court No. CR-0200802090

v.

Benjanell Butler, Jr.

DECISION AND JUDGMENT

Appellant

Decided: January 22, 2010

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and Michael Bohner,
Assistant Prosecuting Attorney, for appellee.

Nicole Fech, for appellant.

* * * * *

OSOWIK, P.J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas which convicted appellant on one count of kidnapping, one count of abduction, and one count of rape. Appellant was sentenced to a nine-year term of incarceration for kidnapping and a nine-year term of incarceration for rape, to be served consecutively to

one another and currently to a three-year term of incarceration for abduction. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, Benjanell Butler Jr., sets forth the following two assignments of error:

{¶ 3} "A. The Appellant's Conviction Was Against The Manifest Weight of the Evidence.

{¶ 4} "B. The Trial Court Erred When It Failed to Grant Appellant's Motion for Acquittal Pursuant to Criminal Rule 29."

{¶ 5} The following undisputed facts are relevant to the issues raised on appeal. On April 26, 2008, a 28-year-old woman was found on the sidewalk in the Collingwood Boulevard area of central Toledo exhibiting physical injuries and in an emotionally distraught state, seeking emergency help. Emergency medical personnel transported the woman to St. Vincent Mercy Medical Center where she underwent treatment for various physical injuries.

{¶ 6} Consistently throughout the course of her emergency medical treatment, the victim disclosed to treating personnel that she had been held against her will and repeatedly anally raped for several days by her boyfriend, the appellant. The two have been involved in a tumultuous off and on relationship. The victim revealed to treating personnel that she was ultimately able to escape the apartment where she was being held to seek help after appellant fell asleep.

{¶ 7} Based upon the Toledo Police Department investigation of these events, appellant was indicted on two counts of kidnapping, in violation of R.C. 2905.01, felonies of the first degree, and two counts of rape, in violation of R.C. 2907.02, likewise felonies of the first degree.

{¶ 8} On September 24, 2008, the case proceeded to jury trial. The state of Ohio presented detailed testimony from the responding Toledo police officer, the emergency paramedic, the emergency SANE nurse, and the Toledo police detective responsible for investigating the incident. At trial, the victim wholly recanted her statements made at the time of the events and furnished testimony wholly inconsistent with the clear and concise statements that she had initially conveyed to the treating medical personnel and police officers.

{¶ 9} The jury weighed the conflicting testimony and evidence and ultimately found the victim's trial recantation unpersuasive when weighed against the conflicting, objective physical evidence and the corroborating testimony furnished by the numerous professionals involved in the medical treatment and criminal investigation of this matter. Appellant was found guilty of one count of kidnapping, one count of the lesser included offense of abduction, and one count of rape. On October 17, 2008, appellant was sentenced to a nine-year term of incarceration for kidnapping to be served consecutively to a nine-year term of incarceration for rape, both sentences to be served concurrent with a three-year term of incarceration for abduction. Timely notice of appeal was filed.

{¶ 10} In his first assignment of error, appellant asserts that his convictions were against the manifest weight of the evidence. A criminal conviction may be overturned on appeal if it is determined to be against the manifest weight of the evidence.

{¶ 11} When examining whether a conviction was contrary to the manifest weight of the evidence, the appellate court serves as a "thirteenth juror" to conclude whether the trial court lost its way so significantly as to result in a manifest miscarriage of justice, necessitating that the conviction be overturned. *State v. Tompkins* (1997), 78 Ohio St.3d 380, 387. In reaching this determination, we grant substantial deference to the trial court's decision given its unique opportunity to consider the evidence presented and to closely observe and assess the demeanor and credibility of the witnesses. *State v. Mickles*, 6th Dist. No. L-05-1206, 2006-Ohio-3803.

{¶ 12} In applying these principles to this case, we note that the record demonstrates that appellee presented four primary witnesses who furnished clear and unambiguous testimony that the victim conveyed that she had been held captive by her boyfriend for several days, was beaten, and repeatedly anally raped. The victim possessed numerous fully consistent physical injuries. Detailed and consistent testimony was furnished by the responding police officer, the emergency paramedic who transported the victim to St. Vincent Mercy Medical Center, the emergency nurse, and the police detective who investigated the case.

{¶ 13} In conjunction with this testimony, appellee entered into evidence ample corroborating documentation including medical reports documenting the injuries and the

victim's description of how they were sustained, as well as close-up photographs of the injuries themselves sustained by the victim when she was beaten and raped. The record establishes that the victim was not hesitant or ambiguous whatsoever at the time of these events in conveying to the police officers and medical personnel that she had been brutally beaten, raped, and held captive by appellant. Her timely representations were totally consistent with her physical condition and the medical findings made in the course of treatment.

{¶ 14} By contrast, we note that appellant's contention that he had simply spent "quality time" with the victim, in conjunction with the victim's unconvincing recantation, both wholly at odds with the physical evidence, initial statements, and all other testimony, is transparent and unpersuasive.

{¶ 15} We find that there is no evidence in the record from which to conclude that the trial court lost its way so as to cause a manifest miscarriage of justice. We find appellant's first assignment of error not well-taken.

{¶ 16} In his second assignment of error, appellant maintains that the trial court erred in failing to grant his Crim.R. 29 motion for acquittal. In support, appellant again restates his contention that the victim's recantation somehow requires a finding that appellee did not meet its burden and that the Crim.R. 29 motion should have been granted.

{¶ 17} This conclusory approach ignores the wealth of objective and compelling evidence indicative of appellant's guilt discussed in response to the first assignment of

error. Having already concluded above that the convictions were not against the manifest weight of the evidence, we find appellant's second assignment of error not well-taken.

{¶ 18} On consideration whereof, we find that substantial justice has been done in this matter. The judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

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