

[Cite as *State v. Murray*, 2009-Ohio-2963.]

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2008-10-125
- vs -	:	<u>OPINION</u> 6/22/2009
RICKY L. MURRAY, JR.,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 07-CR-24626

Rachel A. Hutzal, Warren County Prosecuting Attorney, Mary K. Martin, Andrew Sievers,
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defendant-appellant

POWELL, P.J.

{¶1} Defendant-appellant, Ricky L. Murray, Jr., appeals his conviction and sentence in the Warren County Court of Common Pleas for unlawful sexual conduct with a minor in violation of R.C. 2907.04(A). We affirm.

{¶2} In November 2007, Murray was indicted on four counts of unlawful sexual conduct with a minor in violation of R.C. 2907.04(A). The charges stemmed from

allegations that Murray, when he was 24 years old, engaged in unlawful sexual conduct with a minor who was 15 years old. Prior to trial, Counts 3 and 4 of the indictment were dismissed at the state's request. Murray was tried by jury on the remaining counts on August 7–8, 2008. The jury acquitted Murray on Count 1, but convicted him on Count 2. The trial court sentenced Murray to three years of community control for that offense, classified him as a Tier II Sex Offender, and ordered him to comply with the registration requirements for such offenders.

{¶13} Murray now appeals, assigning the following as error:

{¶14} Assignment of Error No. 1:

{¶15} "THE COURT ERRED IN REFUSING TO ADMIT A JUVENILE DELINQUENCY ADJUDICATION AS EVIDENCE OF BIAS AGAINST THE APPELLANT."

{¶16} Murray argues the trial court erred in refusing to admit evidence of the victim's juvenile delinquency adjudication to support his contention that the victim was biased against him. We disagree.

{¶17} Evid.R. 609(D) provides that "[e]vidence of juvenile adjudications is not admissible except as provided by statute enacted by the General Assembly." R.C. 2151.357(H) provides that evidence of juvenile adjudications "is not admissible to impeach the credibility of a child in any action or proceeding" but is admissible for other purposes, such as sentencing, granting probation, and determining whether the child is a repeat offender under R.C. 2929.01.

{¶18} In some instances, the Confrontation Clause may require that a criminal defendant be permitted to cross-examine a prosecution witness regarding his juvenile

record to show such things as the witness' possible bias, even though allowing such evidence may conflict with the state's interest in preserving the confidentiality of juvenile adjudications. See *Davis v. Alaska* (1974), 415 U.S. 308, 315-321, 94 S.Ct. 1105.

{¶19} However, *Davis* does not require that a defendant be given the opportunity to cross-examine a witness using the witness' prior juvenile record solely for the purpose of discrediting the witness' general character. *State v. Pirman* (1994), 94 Ohio App.3d 203, 210. Instead, in order to have such evidence admitted, a defendant must make a "plausible showing" that he intends to use the evidence for a proper purpose, which does not include an attempt merely to impeach the witness' credibility. *Id.*, quoting *State v. Lukens* (1990), 66 Ohio App.3d 794, 803.

{¶10} In this case, Murray has failed to show that he sought to have evidence of the victim's prior juvenile adjudication admitted for a purpose other than simply to impeach her credibility. During his cross-examination of the victim, Murray's defense counsel made the following statement to the trial court at a side-bar conference:

{¶11} "At this time it's my opinion that [the victim] has put into play the question of her ability to tell the truth. She has some juvenile court adjudication for crimes of dishonesty, and while I recognize the general rule prohibits that [sic] the introduction of those statements are [sic] for impeachment purposes I believe that she has put that issue in play."

{¶12} The foregoing makes it clear that defense counsel did not seek to have evidence of the victim's prior juvenile adjudication admitted to show the victim's bias against him but, instead, to show that the victim was lying. Thus, the record shows that defense counsel sought to introduce evidence of the victim's prior juvenile adjudication

solely to impeach her credibility, which is the exact purpose for which such evidence is inadmissible under R.C. 2151.357(H). Therefore, the trial court did not abuse its discretion in refusing to admit that evidence.

{¶13} Consequently, Murray's first assignment of error is overruled.

{¶14} Assignment of Error No. 2:

{¶15} "THE TRIAL COURT ERRED IN UPHOLDING A VERDICT THAT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶16} Murray argues that his conviction for unlawful sexual conduct with a minor was contrary to the manifest weight of the evidence. We disagree.

{¶17} The victim testified that she and Murray had sexual intercourse on or near the times alleged in the amended indictment. Her testimony was corroborated by several witnesses, including a mutual friend of the victim and Murray, as well as an acquaintance of Murray's family. Murray contends that the testimony of the victim and the state's other witnesses was not credible. In particular, he asserts that the victim's testimony was untrustworthy because she was angry about the fact that he would no longer lend her money or provide transportation for her.

{¶18} However, the credibility of witnesses is primarily a matter for the jury or other trier of fact, since they are in the best position to observe the witnesses and use those observations in determining the witnesses' credibility and what weight, if any, to give to their testimony. See *State v. Fox*, Fayette App. No. CA2008-03-009, 2009-Ohio-556, ¶11. We cannot say in this case that the jury lost its way and created such a manifest miscarriage of justice that Murray's conviction must be reversed and a new trial ordered. *State v. Hancock*, 108 Ohio St.3d 57, 2006-Ohio-160, ¶39.

{¶19} Therefore, Murray's second assignment of error is overruled.

{¶20} Assignment of Error No. 3:

{¶21} "THE COURT ERRED IN SENTENCING APPELLANT PURSUANT TO SENATE BILL 10."

{¶22} Murray argues that the trial court erred in retroactively applying Senate Bill 10, which contains Ohio's version of the Adam Walsh Act, when it sentenced him because applying the statute to cases involving crimes committed prior to January 1, 2008, the statute's effective date, violates the Ex Post Facto Clause of the United States Constitution and the Retroactivity Clause of the Ohio Constitution. This assignment of error is overruled on the authority of *State v. Williams*, Warren App. No. CA2008-02-029, 2008-Ohio-6195.

{¶23} Judgment affirmed.

HENDRICKSON, J., concurs.

RINGLAND, J., concurs separately.

RINGLAND, J., concurring separately.

{¶24} I agree with the court's resolution of all issues raised in this case. I write separately to state that I have no problem with the Adam Walsh Act being applied to this case since Murray had not been previously classified as a sex offender, and therefore, there is no separation of powers issue to present here, as there was no retroactive modification of a judicial order by the legislature when Murray was classified as a Tier II sex offender under the Adam Walsh Act.

