[Cite as *State v. Goudlock*, 2010-Ohio-3600.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93392

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CLAYTON GOUDLOCK

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-516316

BEFORE: Cooney, J., Blackmon, P.J., and Boyle, J.

RELEASED AND JOURNALIZED: August 5, 2010

ATTORNEY FOR APPELLANT

James E. Valentine
323 Lakeside Avenue, Suite 450
Cleveland, Ohio 44113

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

By: T. Allan Regas
Assistant County Prosecutor
8th Floor, Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

COLLEEN CONWAY COONEY, J.:

{¶ 1} Defendant-appellant, Clayton Goudlock ("Goudlock"), appeals his convictions for rape and sexually violent predator specifications. We find no merit to the appeal and affirm.

{¶ 2} In October 2008, Goudlock was charged with six counts of rape, one count of kidnapping, and one count of gross sexual imposition. The rape counts included sexually violent predator specifications, repeat violent offender specifications, and notices of prior convictions. The case proceeded to a jury trial, at which the following evidence was presented.

{¶ 3} The victim, S.D.,[1] testified that in the early morning hours of September 6, 2008, her car ran out of gas at the intersection of Franklin Boulevard and Fulton Avenue in Cleveland. She attempted to push her car to the curb when Goudlock appeared and helped her push the car away from the tow-away zone. S.D.'s apartment was located several blocks west of this area so she asked Goudlock if she could use his cell phone to call someone for a ride. He told her he did not have a cell phone but that she could use a cordless phone located inside his house, which he indicated was directly behind them. The victim was waiting at the side of the house when Goudlock suddenly grabbed her from behind, covered her nose and mouth with one hand, and held a knife to her throat with the other.

{¶ 4} S.D. explained that there were bright security lights in the backyard so Goudlock dragged her to the side of the house where it was dark and ordered her to remove her clothes. Although she did not immediately comply, when he threatened her with the knife, she removed her clothes because she feared for her life. S.D. explained that Goudlock forced his penis into her mouth, licked her buttocks, and penetrated her vagina with both his tongue and his penis. After ejaculating onto the ground, Goudlock instructed her to wipe herself off. Before he left, he told her to wait five minutes before leaving the scene.

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[1]The anonymity of the victim is preserved in accordance with this court's guidelines for protecting the identity of sex crimes victims.

{¶ 5} S.D. was searching for her cell phone and shoes when Goudlock returned, stating, "I'm horny again." He held the knife to her forehead and forced his penis into her mouth. Goudlock removed her shirt, licked and kissed her breasts and asked if she wanted to be his girlfriend. He then pulled her pants down, thrust his penis inside her vagina, turned her around, and thrust his penis into her vagina again from behind her. After ejaculating on the ground, he again instructed S.D. to wipe herself off with her clothing. He ordered her to wait five minutes after he left before she could leave the scene.

{¶ 6} After Goudlock left, S.D. called the police. EMS transported her to Lutheran Hospital where nurses checked her vitals before transferring her to Fairview Hospital for a rape examination with a Sexual Assault Nurse Examiner ("SANE"). On the way to Fairview Hospital, S.D. went with police back to the scene to show them where the attack had occurred.

{¶ 7} Several detectives, a fingerprint examiner, and medical experts testified as to the collection of forensic evidence. Goudlock's fingerprints were found on S.D.'s car, and his semen was identified on her clothing and on the ground at the scene.

{¶ 8} At the conclusion of the trial, the jury found Goudlock guilty of all charges. The trial court convicted him of the sexually violent predator specifications, repeat violent offender specification, and notices of prior convictions, which had been bifurcated and tried to the court by jury waiver. The

court sentenced Goudlock to the maximum of ten years on each of the six rape convictions and the kidnapping conviction, with a consecutive sentence of eight years on each of these counts, pursuant to the repeat violent offender specification, for a total of 18 years on each of these counts. By virtue of Goudlock's sexually violent predator convictions, each of these counts became 18 years to life. The court ordered the sentences for Counts 1 through 3 to be served concurrently with each other, and Counts 4 through 6 to be served concurrently with each other but consecutive to Counts 1 through 3. The sentence for kidnapping was ordered to run consecutive to all other counts. Finally, the court sentenced Goudlock to 18 months in prison for the gross sexual imposition conviction, to run concurrently with the other counts. The aggregate sentence was therefore 54 years to life.

{¶ 9} Goudlock now appeals raising three assignments of error.

Manifest Weight of the Evidence

{¶ 10} In the first assignment of error, Goudlock argues the guilty verdicts are against the manifest weight of the evidence. He contends that because irreconcilable conflicts existed in the State's case, the jury lost its way when it found him guilty on all counts. Specifically, Goudlock contends the evidence proved the sexual conduct was consensual. We disagree.

{¶ 11} In *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, ¶25, the Ohio Supreme Court restated the standard of review for a criminal manifest weight challenge as follows:

> "The criminal manifest-weight-of-the-evidence standard was explained in *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52, 678 N.E.2d 541. In *Thompkins*, the court distinguished between sufficiency of the evidence and manifest weight of the evidence, finding that these concepts differ both qualitatively and quantitatively. Id. at 386, 678 N.E.2d 541. The court held that sufficiency of the evidence is a test of adequacy as to whether the evidence is legally sufficient to support a verdict as a matter of law, but weight of the evidence addresses the evidence's effect of inducing belief. Id. at 386-387, 678 N.E.2d 541. In other words, a reviewing court asks whose evidence is more persuasive — the state's or the defendant's? We went on to hold that although there may be sufficient evidence to support a judgment, it could nevertheless be against the manifest weight of the evidence. Id. at 387, 678 N.E.2d 541. 'When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a "thirteenth juror" and disagrees with the factfinder's resolution of the conflicting testimony.' Id. at 387, 678 N.E.2d 541, citing *Tibbs v. Florida* (1982), 457 U.S. 31, 42, 102 S.Ct. 2211, 72 L.Ed.2d 652."

{¶ 12} Moreover, an appellate court may not merely substitute its view for that of the jury, but must find that "in resolving conflicts in the evidence, 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." *Thompkins* at 387. Accordingly, reversal on manifest weight grounds is reserved for "the exceptional case in which the evidence weighs heavily against the conviction." Id., quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717.

{¶ 13} At trial, Goudlock did not deny that he engaged in sexual conduct with S.D. Investigators found his semen on the ground where she reported the rape had occurred. They also found Goudlock's semen on her clothing and in swabs obtained during her sexual assault examination. Goudlock's girlfriend, Aisha Behlin ("Behlin"), testified that Goudlock admitted pushing S.D.'s car and having sex with S.D.

{¶ 14} Although Goudlock argues on appeal that the sexual conduct was consensual, the evidence does not support this contention. S.D.'s testimony and previous statements are remarkably consistent. She called the police immediately after the rape occurred. The policewoman who responded to her call testified that S.D. was crying, scared, and appeared to be in distress. The SANE nurse who examined S.D. several hours later also testified about the emotional state she observed as follows:

> "Q: When you were asking [S.D.] what had happened, what was her demeanor when she was speaking to you?
>
> "A: She was at times just talking. Other times when the realization would set in since it happened, she became tearful. She had whole range of different affects. She had a normal affect, then crying, then a little tremorous, but she had a range of emotions.
>
> "Q: She was shaking?
>
> "A: Yes."

{¶ 15} The behavior described by the police and the SANE nurse is not consistent with consensual sexual conduct.

{¶ 16} Further, S.D. testified that she had never met nor even seen Goudlock before this incident occurred, and the record is devoid of any motive for her to fabricate these events. The physical and forensic evidence was overwhelming and further corroborated her testimony. For example, although Goudlock claims the lack of physical injuries proves the sexual conduct was consensual, S.D. never alleged that she was "injured" other than complaining that her knee was sore because Goudlock forced her to kneel and perform oral sex. The nurse's notes corroborate S.D.'s story, indicating that her knee reacted to palpation.

{¶ 17} Therefore, with such overwhelming evidence of Goudlock's guilt, we cannot say that the jury lost its way and created such a manifest miscarriage of justice that the convictions are against the manifest weight of the evidence.

{¶ 18} Accordingly, the first assignment of error is overruled.

Mistrial

{¶ 19} In the second assignment of error, Goudlock claims the trial court erred in denying his motion for mistrial when a detective made unfairly prejudicial statements to the jury. Specifically, Detective Andrew Ezzo ("Det. Ezzo") testified that another detective informed him "that there were actually a number of cases in the Ohio City area with the similar method of operation." Det. Ezzo also testified that he sent a parole officer to Goudlock's residence to arrest Goudlock.

Goudlock maintains that these statements unfairly prejudiced the jury into thinking that he was a serial rapist with prior criminal convictions.

{¶ 20} The decision whether to grant a mistrial rests within the sound discretion of the trial court and will not be disturbed absent an abuse of discretion. *State v. Treesh*, 90 Ohio St.3d 460, 480, 2001-Ohio-4, 739 N.E.2d 749; Crim.R. 33. A mistrial should not be ordered in a criminal case merely because some error or irregularity has intervened * * *." *State v. Reynolds* (1988), 49 Ohio App.3d 27, 33, 550 N.E.2d 490. The granting of a mistrial is necessary only when a fair trial is no longer possible. *State v. Franklin* (1991), 62 Ohio St.3d 118, 127, 580 N.E.2d 1.

{¶ 21} In the instant case, Goudlock's trial counsel objected as soon as Det. Ezzo mentioned other similar cases in the Ohio City area, and the trial court instructed the jury to disregard that statement. We presume that the jury followed the court's instructions, including instructions to disregard the testimony. *State v. Loza* (1994), 71 Ohio St.3d 61, 75, 641 N.E.2d 1082; *State v. Zuern* (1987), 32 Ohio St.3d 56, 61, 512 N.E.2d 585. Moreover, this statement was isolated and brief and did not link Goudlock to any other crimes. It was not clear from Det. Ezzo's statement whether the similar cases were even committed by the same person or by multiple suspects or how they were similar to the instant case.

{¶ 22} The second comment, relating to a parole officer who was sent to arrest Goudlock at his residence, is even more innocuous. However, Goudlock failed to object to this statement and therefore waived all but plain error. *State v. Brown*, Cuyahoga App. No. 92834, 2010-Ohio-1203; *Yaeger v. Fairview Gen. Hosp.* (Mar. 11, 1999), Cuyahoga App. No. 72361, citing *Stores Realty Co. v. Cleveland, Bd. of Bldg. Standards* (1975), 41 Ohio St.2d 41, 322 N.E.2d 629. To prevail on a claim of plain error, Goudlock must demonstrate that the outcome of the trial would have been different if the statement had not been made. *State v. Moulder*, Cuyahoga App. No. 80266, 2002-Ohio-5327; *State v. Alexander*, Cuyahoga App. No. 87109, 2006-Ohio-4760; *State v. Long* (1978), 53 Ohio St.2d 91, 372 N.E.2d 804.

{¶ 23} Det. Ezzo made the statement about sending a parole officer to arrest Goudlock while testifying about the steps taken to locate Goudlock. Det. Ezzo testified that they did not find Goudlock on their first attempt at the address of a family member. The State then asked: "Where did you look next?" Det. Ezzo responded: "Well, the interviews that — I actually sent a parole officer out to that address."

{¶ 24} After this response, Goudlock's trial counsel did not object but requested a sidebar conference. After the conference, without objection or curative instruction, the following exchange took place:

> "Q: Detective, the Fugitive Task Force, the Marshall's office as well, you have talked about the people that are in your Fugitive Task Force which is the Domestic Violence Unit, right?
>
> "A: Yes.
>
> "Q: Now each one of those — these Task forces, can be composed of numerous members of different departments, correct.
>
> "A: Yes, a multiagency Task Force, correct."

{¶ 25} Thus, Det. Ezzo's additional testimony demonstrated that it is common for his unit to work with several other units that could include parole officers. Moreover, Det. Ezzo never stated that he sent Goudlock's parole officer to arrest him. Rather, he stated that he sent "*a* parole officer," which is significantly different from a statement referencing "*his* parole officer." Taken in context with Det. Ezzo's overall testimony, we find no prejudice by this statement.

{¶ 26} Finally, we note that where evidence has been improperly admitted, the admission is harmless beyond a reasonable doubt if the remaining evidence alone demonstrates overwhelming proof of defendant's guilt. *State v. Dailey*, Cuyahoga App. No. 89289, 2007-Ohio-6650. Here, the record is replete with evidence demonstrating Goudlock's guilt even without the offending statements.

{¶ 27} Therefore, the second assignment of error is overruled.

Sexually Violent Predator Specifications

{¶ 28} In the third assignment of error, Goudlock argues the evidence was not sufficient to support a finding that he is guilty of the sexually violent predator specifications.

{¶ 29} The standard of review for sufficiency of the evidence is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus.

{¶ 30} R.C. 2971.01(H)(1) defines a sexually violent predator as "a person who, on or after January 1, 1997, commits a sexually violent offense and is likely to engage in the future in one or more sexually violent offenses." Because of the punitive aspects of the specification, for a sexually violent predator specification to apply to an offender, the state must prove beyond a reasonable doubt that R.C. 2971.01(H) applies to the offender. *State v. Williams*, 88 Ohio St.3d 513, 532, 2000-Ohio-428, 728 N.E.2d 342.

{¶ 31} R.C. 2971.01(H)(2) provides factors "which may be considered as evidence tending to indicate that there is a likelihood that the person will engage in the future in one or more sexually violent offenses." One of the stated factors is, "the person has been convicted two or more times, in separate criminal actions, of a sexually oriented offense or a child-victim oriented offense." Id.

{¶ 32} Further, "[b]ased on the statute's current language, a person need not have already been convicted of a sexually violent offense at the time of indictment to be indicted for and subsequently found guilty of a sexually violent predator specification." *State v. Hardges*, Summit App. No. 24175, 2008-Ohio-5567, at ¶50.

{¶ 33} Here, the jury found Goudlock guilty of six counts of rape and one count of gross sexual imposition, which constitute seven separate sexually-oriented offenses. The kidnapping conviction was both violent and sexually motivated because Goudlock kidnapped S.D. with intent to engage in sexual conduct with her. The evidence established that the rape was violently accomplished with the threat of a knife.

{¶ 34} In finding that Goudlock is likely to engage in one or more sexually violent offenses, the court also mentioned that Goudlock has previously been convicted of two aggravated robberies and one felonious assault that included a firearm specification. These convictions demonstrate Goudlock's violent tendencies. The trial court also noted Goudlock exposed himself and masturbated in front of a female nurse at the Southern Ohio Correctional Facility. The court found that such behavior demonstrates Goudlock's lack of concern for consequences and "uncontrollable impulsivity."

{¶ 35} Based on Goudlock's history and multiple convictions of rape, kidnapping, and gross sexual imposition, we find the trial court properly found that the sexually violent predator specifications were supported by sufficient evidence.

{¶ 36} Accordingly, the third assignment of error is overruled.

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.

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COLLEEN CONWAY COONEY, JUDGE

PATRICIA ANN BLACKMON, P.J., and
MARY J. BOYLE, J., CONCUR