[Cite as *State v. Boynton*, 2018-Ohio-4429.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106301

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ANDRE D. BOYNTON

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-16-603301-B

BEFORE: Keough, J., McCormack, P.J., and Laster Mays, J.

RELEASED AND JOURNALIZED: November 1, 2018

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KATHLEEN ANN KEOUGH, J.:

{¶1} Defendant-appellant Andre D. Boynton appeals from the trial court's judgment, rendered after a jury trial, finding him guilty of trafficking in persons, conspiracy, rape, kidnapping, unlawful sexual conduct with a minor, endangering children, pandering sexually-oriented matter involving a minor, illegal use of a minor in nudity-oriented material or performance, and voyeurism; and sentencing him to life in prison without parole. We affirm.

I. Background

{¶2} In 2016, Boynton and his longtime girlfriend, Anika George, were charged in a 150-count indictment for trafficking in persons in violation of R.C. 2905.32(A)(2)(b); conspiracy in violation of R.C. 2923.01(A)(1); rape in violation of R.C. 2907.02(A)(1)(b) and (c) and 2907.02(A)(2); kidnapping in violation of R.C. 2905.01(A)(4) and 2941.147; unlawful sexual

conduct with a minor in violation of R.C. 2907.04(A); pandering sexually-oriented matter involving a minor in violation of R.C. 2907.322(A)(1) and (3); illegal use of a minor in nudity-oriented material or performance in violation of R.C. 2907.323(A)(1); gross sexual imposition in violation of R.C. 2907.05(A)(4); and voyeurism in violation of R.C. 2907.08(D).[1] The charges arose out of numerous sex crimes against juveniles. Boynton was in prison when the offenses occurred; he was charged and convicted of conspiracy to commit trafficking in persons and as an accomplice on the remaining counts.

{¶3} The evidence at trial demonstrated that in early July 2014, George approached victims M.D., J.W., J.L., and J.B. (minor boys who ranged in age from nine to twelve) and asked them if they wanted to earn some money. When the boys entered George's car, George told them she was going to give them oral sex. George did so, then took a picture of the victims' penises, and gave them money. George asked for M.D.'s phone number and a week later, called M.D. and asked him if the boys wanted to meet up again. George picked up M.D., J.W., and J.L., took them to a parking lot, and had oral and vaginal sex with them.

{¶4} The next time, George picked up M.D., J.W., and J.L. and took them to her apartment, where she had oral and vaginal sex with them. A week later, George again picked up the three boys, took them to her apartment, and again had oral and vaginal sex with them. Before she dropped the boys off, George stopped at GameStop and bought the boys a video game. On the next occasion, George arranged to pick up M.D. and J.L., brought them back to her apartment, and had oral and vaginal sex with them. She again stopped at GameStop and bought the boys a video game before she dropped them off.

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[1]George was also charged with endangering children in violation of R.C. 2919.22(A), drug possession in violation of R.C. 2925.11(A), and possessing criminal tools in violation of R.C. 2923.24(A).

{¶5} George arranged for two other meetings at her apartment with M.D., J.W., and J.L. where she had oral and vaginal sex with them. The next time she brought the boys to her apartment, Boynton's 14-year-old developmentally disabled niece A.B. was there. George had oral and vaginal sex with the boys, and then told J.W. to have anal sex with A.B., which he did. George brought all four boys to her apartment on another occasion when A.B. was there, and M.D. and J.B. had anal sex with her, as well as oral and vaginal sex with George. J.L. testified that George wanted him to have sex with A.B., but he refused because he could tell she was younger and disabled. J.W. testified that George asked him to have sex with M.D. and an "old man," but he refused. M.D. also refused George's request that he have sex with an "old man."

{¶6} Boynton called George repeatedly from prison in 2013 and 2014, and the calls were recorded on the prison's Global Tel Link system. Many of the recorded telephone conversations between Boynton and George were admitted into evidence and played for the jury. In some of the conversations, Boynton encouraged George to find a job as a home health care worker to disabled children so she could perform sex acts on them. In other calls, Boynton instructed George, who was working at a nursing home, to "stretch" the male patients' penises, measure their penises, and then "jack." He also instructed her to perform oral sex on the male patients, and to "suck on the tits" and "finger" the female patients. He further instructed her to film and photograph these sexual assaults.

{¶7} Boynton also instructed George in the phone conversations to find young boys between eight and fourteen years of age, "get them in the car and suck them off and f--- them." He also instructed George to measure the boys' penises, take pictures of their penises, and record the sexual assaults on her cell phone. The victims testified that George measured their penises and recorded the sex acts on her cell phone.

{¶8} Additionally, Boynton instructed George to babysit his special-needs niece while his sister was out of town, and while babysitting her, perform oral sex on her and force the child victims to have sex with her. A.B. can be heard in some of the telephone conversations crying that she is in pain and saying she wants the boys to stop. Boynton can be heard telling George which boy should next have sex with A.B., and George can be heard telling A.B. to stop crying and "stop being a baby." On a number of the calls, George described to Boynton exactly what she had done to each child or elderly patient in the nursing home where she worked. Upon hearing these reports, Boynton would laugh or admit that he "got hard" from listening to the account.

{¶9} Boynton testified in his defense. He said that he called George from prison approximately three to four thousand times in 2013 and 2014. He said that he never had sexual contact with M.D., J.W., J.L., and J.B., but admitted that he "might have" suggested that George touch the boys' penises; he "might have" instructed George to pick up the boys and have sexual relations with them; and he "may have" directed her to take pictures of the boys while they were naked. Boynton insisted, however, that his instructions to George involved only "role play."

{¶10} On cross-examination of Boynton, the state played many of the calls between him and George. Boynton identified his voice in the calls, and agreed that he instructed George in the calls to pick up eight, nine, or ten-year-old boys, suck on their penises, and take pictures. He further agreed that he instructed George to hold their penises, measure them, and take pictures. He agreed further that in one call, he told George he wanted to see how A.B. would "react" to J.B. He also agreed that in another conversation with George, he asked her to put A.B. on the phone so he could ask her if she "sucked it." Boynton also agreed that he talked to George about

her patients at the nursing home where she worked, and agreed that he "might have" talked to her about going into their rooms and "stretching it" and then recording it.

{¶11} George's sexual assaults were discovered when one of the boys' mothers learned one evening that the boys were not where they had said they would be. Upon locating the boys, the mother learned what George had been doing with them and called the police. M.D. directed the police to George's apartment, and following a search warrant, the police seized electronic devices from the apartment.

{¶12} Jason Howell, a computer forensic examiner with the Internet Crimes Against Children Task Force, testified that he examined the devices taken from George's apartment. He found nude photographs of elderly residents of the nursing home where George worked, as well as pornography depicting A.B., M.D., J.L., J.W., and J.B., and videos depicting some of the rapes of the children. In the videos, George is visibly raping the boys and directing the rape of A.B. The photographs and videos were shown to the jury.

{¶13} The state voluntarily dismissed 32 counts of the indictment before the jury received the case. The jury subsequently returned a verdict finding Boynton not guilty of the drug possession charge, but guilty of the remaining 117 counts of the indictment. The court found Boynton to be a sexually violent predator and sentenced him to life in prison. This appeal followed.

II. Law and Analysis

A. Self-representation

{¶14} The record reflects that Boynton was arraigned on March 15, 2016, and the court assigned an attorney from the public defender's office to represent him. On July 17, 2016, the trial court granted the public defender's request to withdraw from the case because of conflicts

with Boynton. The court appointed another attorney and set trial for January 23, 2017. At a hearing on February 3, 2017, a third attorney for Boynton informed the court that he had been retained by Boynton in December 2016, and trial was reset to April 3, 2017.

{¶15} On April 3, 2017, the trial court heard argument on motions to dismiss for lack of speedy trial filed by counsel for Boynton and codefendant George. During argument, Boynton interrupted his lawyer and asked if he could speak. The trial judge advised Boynton that he could speak through his attorney. The court then addressed Boynton's pro se motion to disqualify his retained counsel. The court denied the motion, finding that the motion had been filed on March 20, despite Boynton's knowledge that trial was set for April 3, and further, that there was no reason to disqualify Boynton's highly qualified counsel. Boynton then told the judge that he was firing his lawyer "on the record," and that he had filed a civil suit and a complaint with the state bar association against his lawyer. Boynton's counsel responded that he had not received notice of either a complaint or a lawsuit against him, and that Boynton's assertion in court was the first time counsel had been advised of the complaint and lawsuit. Counsel moved to withdraw, stating that he could not represent Boynton if he had indeed filed a complaint against him.

{¶16} After a recess, the trial judge advised the parties that she had called the Ohio and Cleveland Metropolitan Bar Associations and been advised there was no pending complaint against Boynton's counsel. The trial judge denied Boynton's motion to disqualify counsel and asked that Boynton's retained counsel continue to represent him.

{¶17} Boynton's counsel then advised the court that Boynton wished to enter a plea. The court informed Boynton that his only choice was to plead to the indictment because no plea offers had been made. At that point, Boynton began speaking on his own behalf. Boynton

repeatedly told the court that the charges had to be "bonded," and that he would "plead to the facts but not the crimes." The court asked several times if Boynton wished to plead to the indictment but Boynton refused to answer and stated that "if there is no bond there is no charges and there is no claim." Eventually, the trial court advised Boynton that if he would not answer its question regarding whether he wanted to plead to the indictment, the case would immediately proceed to trial.

{¶18} Boynton then argued that the court did not have subject matter jurisdiction over the case. The court advised Boynton that he had counsel and it would not tolerate hybrid representation, and that the court indeed had subject matter jurisdiction over the matter. The court advised Boynton that the case would proceed to trial that day and that he was to cooperate with his lawyer. Boynton then told the court that "he is not my lawyer and he doesn't speak for me. I don't give a shit. F--- that." The judge then adjourned the hearing.

{¶19} The parties returned after a short recess. The court asked Boynton if he had calmed down and advised him that "that behavior won't be tolerated in this courtroom." Boynton then accused the trial judge of lying to him and told her "Man, f--- you." The trial judge then removed Boynton from the courtroom. As he was leaving, Boynton told his lawyer that he was fired. The trial court then granted counsel's motion to withdraw and continued the trial to allow Boynton to obtain new counsel.

{¶20} The next day, new counsel was appointed for Boynton and trial was reset for July 17, 2017. On July 14, 2017, the court held a pending motions hearing. At the start of the hearing, the trial judge addressed Boynton. The judge reviewed what had happened at the April 3 hearing, including exchanges between Boynton and his lawyer, Boynton's attempt to overturn the table, and his use of profanities. The judge advised him that she wanted him to be present

during his trial but "that if any of this conduct happens again, I am going to remove you from the courtroom and we're going to proceed with the trial. I will give you a closed caption screen in the holding cell and that's where you will have to stay during the entire trial." Boynton apologized to the court for his prior conduct.

{¶21} The trial court then noted that Boynton had filed many pro se motions, despite the appointment of counsel. The trial court advised Boynton that it would not accept hybrid representation and asked him whether he wanted to represent himself or wanted his attorney to represent him. Boynton stated that he understood he was "not in a position to represent himself" but that he did not want the specific appointed counsel to represent him. The court advised Boynton that although he was entitled to appointed counsel, he was not entitled to the appointed attorney of his choice. The court advised Boynton that because he had said he did not want to represent himself, appointed counsel would represent him during trial. The court then ruled on the pending motions, including striking from the record the pro se motions filed by Boynton.

{¶22} Trial commenced on July 24, 2017. The trial judge repeated the warning she gave on July 14 about removing Boynton from the courtroom if there were any disruptions. The court then proceeded with a competency hearing of A.B. When Boynton's attorney stated that the defense agreed with the court's ruling that A.B. was incompetent to testify, Boynton said that he objected. The judge advised him that he could not speak, and that his attorney was representing him. The judge warned Boynton again that if he insisted on speaking, "you're going to be sitting in a holding cell."

{¶23} The attorneys and judge then discussed what, if any, statements of A.B. could be introduced after the court's ruling that she was incompetent to testify. Boynton apparently continued talking because the record reflects that his attorney told him to be quiet. At that point,

the judge told Boynton that it was in his best interest to be in the courtroom during trial but if she heard his voice again, he would participate from a holding cell.

{¶24} Boynton then told the judge that he wanted to represent himself because appointed counsel had not done several things he had asked him to do. The trial judge denied Boynton's motion, finding that (1) trial had commenced, (2) when given the opportunity prior to trial to represent himself Boynton told the court he did not want to do so, and (3) Boynton had a "proclivity" to substitute counsel.

{¶25} In his first assignment of error, Boynton contends that the trial court committed reversible error when it denied his request to represent himself.

{¶26} The Sixth Amendment of the United States Constitution guarantees a criminal defendant the right to self-representation. *State v. Gibson*, 45 Ohio St.2d 366, 345 N.E.2d 399 (1976), paragraph one of the syllabus, citing *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975).

{¶27} The right is not absolute, however. A criminal defendant must "unequivocally and explicitly" invoke his right to self-representation. *State v. Cassano*, 96 Ohio St.3d 94, 2002-Ohio-3751, 772 N.E.2d 81, ¶ 38. In addition, the request must be timely. *Id*. Where the request is timely and explicitly made, the denial of the request is per se reversible error. *State v. Thigpen*, 8th Dist. Cuyahoga No. 99841, 2014-Ohio-207, ¶ 23.

{¶28} Self-representation may be properly denied, however, when it is requested in close proximity to trial or under circumstances suggesting that the request is made for purposes of delay or manipulation. *State v. Armstrong*, 8th Dist. Cuyahoga No. 103088, 2016-Ohio-2627, ¶ 9, citing *State v. Vrabel*, 99 Ohio St.3d 184, 2003-Ohio-3193, 790 N.E.2d 303, ¶ 50.

{¶29} In this case, Boynton's request, made after trial had commenced, was obviously not timely. *See Cassano* at ¶ 40 (defendant's request made three days before trial not timely); *State v. Buchanan*, 2017-Ohio-1361, 88 N.E.3d 686 ¶ 18 (8th Dist.) (defendant's day of trial request not timely); *State v. Lozada*, 8th Dist. Cuyahoga No. 94902, 2011-Ohio-823, ¶ 37 (day of trial request untimely, particularly given the history of delays in the case); *State v. Smith*, 8th Dist. Cuyahoga No. 64715, 1994 Ohio App. LEXIS 595, *12 (Feb. 17, 1994) (day of trial request not timely). Thus, the trial court properly denied Boynton's request on this basis alone.

{¶30} Furthermore, the trial court had already twice rescheduled trial to accommodate Boynton's "proclivity" to new counsel. And Boynton had specifically informed the court prior to trial that he did not want to represent himself. Thus, his day of trial request appeared to be nothing more than a tactic to further delay a trial that he had already delayed several times.

{¶31} The first assignment of error is overruled.

B. Removal of Defendant from the Courtroom

{¶32} After the trial court denied his request for self-representation, Boynton continued arguing with the judge. The judge twice reiterated her warning that Boynton would be removed from the courtroom if he continued to disrupt the proceedings. Boynton continued arguing with the judge, who then ordered him removed from the courtroom.

{¶33} In his second assignment of error, Boynton asserts that he was improperly removed from the courtroom without warning and without any opportunity to return, in violation of his due process right to be present at every stage of the proceeding.

{¶34} The Confrontation Clause of the Sixth Amendment of the United States Constitution guarantees a defendant's right to be present in the courtroom at every stage of the

trial. *Illinois v. Allen*, 397 U.S. 337, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970). *See also* Ohio Constitution, Article I, Section 10 and Crim.R. 43.

{¶35} A defendant can lose his right to be present at trial, however, if after he has been warned by the judge that he will be removed if he continues his disruptive behavior, he nevertheless acts in a manner that is so disorderly, disruptive, and disrespectful to the court that his trial cannot be carried on with him in the courtroom. *State v. Brown*, 5th Dist. Richland No. 2003-CA-01, 2004 Ohio-3368, ¶ 75, citing *Allen* at 343. Once lost, the right to be present can be reclaimed when the defendant is willing to conduct himself consistently with proper decorum and respect. *Id.*

{¶36} Boynton's argument that he was removed without warning and an opportunity to return is specious. Even a cursory review of the record demonstrates that the trial judge repeatedly warned Boynton throughout the proceedings, both before and during trial, that he would be removed from the courtroom if he continued his disruptive behavior. Boynton chose not to heed the warnings and continued to interrupt the trial court so the proceedings could not continue. The trial court had sufficient cause to remove Boynton from the courtroom. Moreover, despite Boynton's argument, he was given an opportunity to adjust his behavior and return to the courtroom after he was initially removed but chose upon his return to continue to disrupt the proceedings at trial.

{¶37} The second assignment of error has no merit and is overruled.

C. Ineffective Assistance of Counsel

{¶38} In his third assignment of error, Boynton asserts that his counsel was ineffective for not objecting when the trial court improperly removed him from the courtroom.

{¶39} To establish constitutionally ineffective assistance of counsel, a defendant must demonstrate (1) deficient performance by counsel, i.e., that counsel's performance fell below an objective standard of reasonable representation; and (2) prejudice, i.e., a reasonable probability that but for counsel's errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Short*, 129 Ohio St.3d 360, 2011-Ohio-3641, 952 N.E.2d 1121, ¶ 113. When performing a *Strickland* analysis, courts "must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Strickland* at 689.

{¶40} We find no ineffective assistance of counsel. Counsel had no basis upon which to object to Boynton's removal from the courtroom because, as discussed above, Boynton was properly removed after he ignored repeated warnings by the trial judge that he would be removed if he continued disrupting the court proceedings.

{¶41} The third assignment of error is overruled.

D. Sufficiency of the Evidence

{¶42} In his fourth assignment of error, Boynton contends there was insufficient evidence to support his convictions because he was in prison when the offenses occurred and had no direct contact with the victims.

{¶43} The test for sufficiency requires a determination of whether the prosecution met its burden of production at trial. *State v. Bowden*, 8th Dist. Cuyahoga No. 92266, 2009-Ohio-3598, ¶ 12. An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The relevant inquiry 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. Thompkins*, 78 Ohio St.3d 386, 678 N.E.2d 541 (1997).

{¶44} Boynton was convicted of conspiracy to commit trafficking in persons and as an accomplice on the remaining counts.

{¶45} R.C. 2923.01, regarding conspiracy, states that:

> (A) No person, with purpose * * * to promote or facilitate the commission of * * * trafficking in persons * * * shall do either of the following:
>
> (1) With another person or persons, plan or aid in planning the commission of [the specified offense];
> (2) Agree with another person or persons that one or more of them will engage in conduct that facilitates the commission of [the specified offense].

{¶46} R.C. 2923.03, the complicity statute, provides that:

> (A) No person, acting with the kind of culpability required for the commission of an offense, shall do any of the following:
>
> (1) Solicit or procure another to commit the offense;
> (2) Aid or abet another in committing the offense;
> (3) Conspire with another to commit the offense in violation of Section 2923.01 of the Revised Code;
> (4) Cause an innocent or irresponsible person to commit the offense.

{¶47} The evidence produced by the state at trial was more than sufficient to support Boynton's convictions. The evidence of conspiracy and complicity was produced in the thousands of recorded prison calls Boynton made to George that were introduced by the state and played for the jury at trial. Boynton admitted that he made these calls to George. In the calls, Boynton instructed George to find young boys and girls and have sex with them. George would tell Boynton if a young boy or girl was walking on the street, and Boynton would tell George to "go get them." The scheme involved George calling out to the child and asking him if he wanted to make $10. When the child agreed, George would tell him to get in the car and then

drive to a location where she sexually assaulted the child. The prison calls contained recordings of a number of such sexual assaults.

{¶48} Boynton also instructed George to photograph or film the sexual assaults, and specifically told her what pictures to take, such as "take pictures of the penis up and down." The photographs and videos were introduced at trial and shown to the jury. Boynton also instructed George to sexually assault the mentally incapacitated residents at the nursing home where she worked. The calls contain recordings of a number of these sexual assaults.

{¶49} Boynton also instructed George to "report" each assault to him. In the telephone conversations, George would describe what she did to each child or elderly patient, and Boynton would laugh or admit that he "got hard" listening to George's account.

{¶50} The recorded telephone conversations make clear that Boynton solicited George to commit the crimes and helped plan the offenses. He developed a scheme with George regarding how to get the young children in her car, and when the children were with her, he told her exactly what sexual assaults to perform on them. He also encouraged George to get a job in a nursing home, and then told her what sexual assaults to perform on the elderly patients in her care.

{¶51} Any rational trier of fact could have concluded from this evidence that Boynton, acting with the intent to commit the offenses, conspired with George and facilitated the commission of the offenses. Boynton's convictions are supported by sufficient evidence, and the fourth assignment of error is overruled

{¶52} 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. The defendant's convictions 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

KATHLEEN ANN KEOUGH, JUDGE

TIM McCORMACK, P.J., and
ANITA LASTER MAYS, J., CONCUR