[Cite as *State v. Bello*, 2020-Ohio-1506.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	No. 108735
v.	:	
LOUIS BELLO,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: April 16, 2020

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-16-604311-A

Appearances:

Michael C. O'Malley Cuyahoga County Prosecuting Attorney, Frank Romeo Zeleznikar, Fallon M. Radigan, and Kerry A. Sowul, Assistant Prosecuting Attorneys, *for appellee*.

Ariel E. Burr, *for appellant*.

PATRICIA ANN BLACKMON, J.:

{¶ 1} Defendant-appellant, Louis Bello, appeals from his convictions for rape, kidnapping, and other offenses. He assigns the following errors for our review:

I. A trial court denies a defendant his rights to due process under the Constitutions of the United States and the State of Ohio when it fails to conduct an inquiry as to whether he knowingly and intelligently waived his right to testify at trial after indicating his intention to testify.

II. The trial court erroneously excluded [Bello] from the courtroom for almost the entire duration of his trial, in violation of his Sixth Amendment right of face-to-face confrontation of the witnesses against him.

{¶ 2} Having reviewed the record and the pertinent law, we affirm.

{¶ 3} On March 9, 2016, Bello was indicted for 12 charges in connection with three separate incidents. Counts 1 and 2 pertained to a 2006 attack and alleged two counts of rape, and two counts of kidnapping, with notice of a prior conviction for attempted rape, and repeat violent offender, sexual motivation, and sexually violent predator specifications. Counts 3 and 4 pertained to another 2006 attack, but were later dismissed. Counts 5 through 12 pertained to a 2014 attack and alleged three counts of rape, two counts of gross sexual imposition, two counts of kidnapping, and aggravated robbery. This group of charges also set forth firearm, repeat violent offender, sexually violent offender, and other specifications.

{¶ 4} In October 2016, the court referred Bello to the court psychiatric clinic to determine whether he was competent to stand trial. He was re-referred in June 2017. On July 20, 2017, the court went on the record disclosing that James Rodio, M.D. ("Dr. Rodio") of the court psychiatric clinic determined that Bello was not competent to stand trial, but there was "a substantial probability of restoration to competency within the statutory time frame if provided with a course of

treatment." Bello was subsequently transported for treatment to Twin Valley Behavioral Healthcare.

{¶ 5} In December 2017, the trial court granted the defense's motion for an independent psychiatric evaluations of Bello's competency and sanity. By March 2018, Dr. David Soeher ("Dr. Soeher") of Twin Valley Behavioral Healthcare opined that Bello is "competent to stand trial in that he is capable of understanding the nature and objective of the proceedings against him[,] assisting his counsel in his own defense." The following month, the independent expert retained by the defense, John Fabian, Psy.D. ("Dr. Fabian"), interviewed Bello and determined that Bello has bipolar disorder with manic episodes with psychotic features, schizoaffective disorder, antipersonality disorder, and substance abuse disorders. However, Dr. Fabian opined that Bello is competent to stand trial in that he is capable of understanding the nature and objective of the proceedings against him, assisting his counsel in his own defense, and making rational legal decisions. Both parties subsequently stipulated to the conclusions of Dr. Fabian's report.

{¶ 6} The matter was scheduled for trial in June 2018. During voir dire, Bello indicated that he wanted to accept a plea offered by the state, and the court began plea proceedings. However, the court was "not able to complete the plea hearing due to [Bello's] uncontrollable behavior and mental state," so the court again referred Bello to the court psychiatric clinic. Dr. Drew Calhoun ("Dr. Calhoun") opined that Bello was not competent to stand trial. In a second opinion obtained by the state in August 2018, Dr. Stephen Noffsinger ("Dr. Noffsinger")

agreed that Bello was not competent, but he opined that Bello could be restored to competency during the statutory timeframe if provided with a course of treatment. In January 2019, the parties waived a hearing and stipulated that Bello was competent to stand trial.

{¶ 7} By May 2019, Bello again advised the court that he wished to enter into a plea. However, during the plea colloquy, he stated that he felt "under duress." Bello also stated that he did not like to take his "psych medication" because it made him feel sick. Several days later, the parties appeared for trial, and the court advised Bello that he would have to listen to the court proceedings while in the holding cell if he continued to have outbursts.

{¶ 8} With regard to the 2006 incident, the state's evidence indicated that in April 2006, T.C. was a high school student with a part-time job. After work on April 4, 2006, T.C. boarded a bus and observed Bello sitting across from her. When T.C. exited the bus, Bello also exited and introduced himself to T.C. as "Mike." T.C. pulled out her cell phone to call her boyfriend, but Bello took the phone, pulled her behind some houses, and raped her. When Bello finished, he told her she was free to go, and she fled to her boyfriend's house. T.C.'s boyfriend drove T.C. to Huron Road Hospital, where nurse Michele Reali Sorrell ("Sorrell") examined her and collected evidence, including various swabs, in a rape kit. At the end of her testimony, T.C. identified Bello as her assailant.

{¶ 9} With regard to the 2014 incident, the state's evidence indicated that on November 14, 2014, K.P. took the bus home from a friend's house and exited on

Kinsman Avenue. As she headed home, a man grabbed her around the neck. According to K.P., the man threatened to shoot her if she did not give him her money. K.P. froze, and the man dragged her to the parking lot of a nearby church. He pushed her to the ground near a van and raped her. During the assault, she saw a police car and began to scream for help. The officers arrested the man during the attack. K.P. identified Bello as her assailant. EMS transported K.P. to MetroHealth where nurse Barbara Gifford ("Gifford") collected a rape kit including DNA evidence.

{¶ 10} Bello subsequently asked to leave the courtroom. The court removed him and he listened to the testimony from an adjoining room.

{¶ 11} Cleveland Police Officers Robert Mangan ("Officer Mangan") and Ian Mussel were in the area in response to a call regarding a possible theft of a catalytic converter from a van parked in the church parking lot. They approached the van while Bello was assaulting K.P. and apprehended him. According to Officer Mangan, Bello's pants were down at his ankles and his hands were over the woman's mouth; the woman's pants were around one leg.

{¶ 12} Anthony Kratsas ("Kratsas") of the Cuyahoga County Prosecutor's Sexual Assault Kit Task Force testified that he examined the DNA evidence from the 2006 and 2014 assaults and developed a lead suspect. He subsequently obtained a search warrant for Bello's DNA.

{¶ 13} Heather Bizub ("Bizub"), a forensic scientist with the Ohio Bureau of Criminal Investigation, testified that she conducted an analysis of the DNA evidence

obtained from the vaginal and anal swabs obtained from the 2006 attack on T.C. The sperm fraction of this DNA was consistent with Bello's DNA. According to Bizub, the probability of finding another individual with the same DNA profile was less than one in one trillion.

{¶ 14} Laura Evans ("Evans"), a forensic DNA analyst with the Cuyahoga County Medical Examiner's Office, testified that she conducted an analysis of the DNA evidence obtained in this matter. According to Evans, male DNA from the vaginal swabs from the 2014 attack on K.P. contained DNA that was consistent with Bello's DNA. The probability of finding another individual with the same DNA profile was one in 2,070 African Americans, one in 2,457 Caucasians, and one in 1,580 in Hispanics. The male DNA from the anal swabs obtained in this matter also contained DNA that was consistent with Bello's DNA. The probability of finding another individual with the same DNA profile was one in 6,190 African Americans, one in 7,349 Caucasians, and one in 4,728 Hispanics.

{¶ 15} Cleveland Police Detective Bruce Vowell ("Det. Vowell") testified that he interviewed Bello regarding the 2014 assault. According to Bello's statement to Det. Vowell, Bello went to get something to eat at the homeless shelter, and he met up with a friend. As Bello and the friend walked along Kinsman to find another friend, Bello stopped beside a van parked at a church to smoke a cigarette. Bello noticed a man and woman arguing about money, and the woman began to cry. When the police approached, Bello's companions fled, and the police arrested him.

Bello denied raping the woman and denied that his pants were down when the police arrested him.

{¶ 16} At the close of its case, the state dismissed the firearm specifications and amended the charge of aggravated robbery to robbery. Bello was subsequently convicted of one count of rape and one count of kidnapping (with their specifications) from the 2006 attack, and two counts of rape, two counts of kidnapping, and two counts of gross sexual imposition (with their specifications) from the 2014 attack. The court found the defendant guilty of notice of prior conviction, repeat violation offender specification, and the sexually violent predator specification. The court merged two of the kidnapping and also merged two of the gross sexual imposition convictions, then sentenced Bello to a term of 35 years to life.

Bello's Decision Not to Testify

{¶ 17} In his first assigned error, Bello argues that because he initially advised the court that he wished to testify, when he later did not do so, the trial court erred in failing to conduct an inquiry into whether he knowingly and intelligently waived his right to testify at trial.

{¶ 18} In *State v. Bey*, 85 Ohio St.3d 487, 499, 1999-Ohio-283, 709 N.E.2d 484, the Ohio Supreme Court recognized that a defendant's right to testify is a fundamental and personal right that is waivable only by the accused. However, the *Bey* court held that a trial court is not required to conduct an inquiry with the defendant about the decision whether to testify. *Id.*, citing *State v. Oliver*, 101 Ohio

App.3d 587, 656 N.E.2d 348 (8th Dist.1995). *Accord State v. Thompson*, 141 Ohio St.3d 254, 2014-Ohio-4751, 23 N.E.3d 1096, ¶ 257.

{¶ 19} Bello insists, however, that this matter is analogous to *State v. Skeens*, 4th Dist. Lawrence No. 95CA24, 1997 LEXIS App. 1978 (May 6, 1997), wherein the Fourth District Court of Appeals held that even after the defense has already rested, the trial court is required to stop the proceedings and inquire where the defendant indicates that he wishes to testify, so long as the case has not been submitted to the jury.

{¶ 20} In this matter, however, near the end of the trial, Bello's counsel advised the court that he just addressed the issue with Bello and Bello indicated that he did not wish to testify. Later, after the jury already reached its verdict, Bello told the court that he had changed his mind. This is absolutely untimely. Accordingly, *Skeens* is inapplicable herein. Further, Bello cites no authority from this jurisdiction for his position. Instead, he cites several cases from state and federal courts outside Ohio for the proposition that an on-the-record inquiry should be required. Courts in Ohio, however, "have taken a contrary view." *Oliver* at 593.

{¶ 21} In accordance with the foregoing, the first assigned error is not well-taken.

Bello's Absence from the Courtroom

{¶ 22} In his second assigned error, Bello maintains that the trial court erred when it "excluded [him] before the completion of Officer Mangan's testimony

[through five witnesses,] and did not allow him to return until the case had concluded."

{¶ 23} "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." *State v. Boynton*, 8th Dist. Cuyahoga No. 106301, 2018-Ohio-4429, ¶ 34, citing *Illinois v. Allen*, 397 U.S. 337, 343, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970). *See also* Ohio Constitution, Article I, Section 10; Crim.R. 43.

{¶ 24} In *Boynton*, this court recognized that the right to be present is not absolute and may be forfeited. This court stated:

> 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.*
>
> 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.

Id. at ¶ 35-36. *Accord State v. Baskin*, 3d Dist. Allen No. 1-18-23, 2019-Ohio-2071, ¶ 24.

{¶ 25} Here, Bello's trial counsel did not object to Bello's removal from the courtroom, thereby waiving all but plain error on appeal. *Id.* Crim.R. 52(B) provides that "[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court."

{¶ 26} We find no plain error. On multiple occasions throughout the trial, the court warned Bello that he would be removed from the courtroom and listen to the proceedings from an adjacent room, if he continued his disruptive behavior. Nonetheless, Bello continued to be disruptive. The trial court gave Bello numerous opportunities to collect himself, and yet he continued to have outbursts. Bello also voluntarily left the courtroom on his own initiative, and his counsel ultimately waived his presence during the closing arguments. On this record, we agree with the trial court's determination that the trial could not be carried on in his presence due to his disorderly and disruptive behavior, and that Bello lost his right to be present.

{¶ 27} The second assigned error lacks merit.

{¶ 28} Judgment is 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 conviction having been affirmed, any bail pending 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.

PATRICIA ANN BLACKMON, JUDGE

EILEEN T. GALLAGHER, A.J., and
ANITA LASTER MAYS, J., CONCUR

KEY WORDS

Right to testify; waiver; Crim.R. 45; confrontation

Record demonstrated that defendant waived his right to testify; trial court did not violate Crim.R. 45 and did not deprive defendant of his right to confront his accusers where defendant was briefly excluded due to outbursts and otherwise voluntarily left the courtroom during trial.