

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 111178
 v. :
 :
 ANTON D. CROMWELL, :
 :
 Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: June 29, 2023

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-20-650540-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Steven N. Szelagiewicz, Assistant Prosecuting Attorney, *for appellee*.

Cullen Sweeney, Cuyahoga County Public Defender, and Noelle A. Powell, Assistant Public Defender, *for appellant*.

MARY EILEEN KILBANE, J.:

{¶ 1} Defendant-appellant Anton Cromwell (“Cromwell”) appeals from his conviction and sentence for rape, felonious assault, and kidnapping following a jury trial. For the reasons that follow, we affirm.

Factual and Procedural History

{¶ 2} On May 18, 2020, a Cuyahoga County Grand Jury indicted Cromwell on one count of rape in violation of R.C. 2907.02(A)(2); one count of felonious assault in violation of R.C. 2903.11(A)(1); one count of kidnapping in violation of R.C. 2905.01(A)(4); and one count of kidnapping in violation of R.C. 2905.01(A)(2). All four counts carried notice of prior conviction and repeat violent offender specifications, and both kidnapping counts also carried sexual motivation specifications.

{¶ 3} Cromwell pleaded not guilty to the charges. On November 8, 2021, Cromwell waived his right to a jury trial on the notice of prior conviction and repeat violent offender specifications and the case proceeded to a jury trial on the underlying charges.

{¶ 4} The victim, K.K., testified on behalf of the state. K.K. testified that on March 8, 2020, she was residing in a sober living home in Cleveland, Ohio. K.K. testified that at the time of trial, she was no longer using drugs, but on March 8, 2020, she was on a drug “binge.” She testified that she had left her sober living home at around midnight because she “was in a very bad mental state at the time” and had told her roommate that she planned to end her life.

{¶ 5} K.K. testified that she was outside of a gas station a short walk from her sober living home when she saw a man she subsequently identified as Cromwell. K.K. had heard police sirens and asked Cromwell where the sirens were coming from. K.K. testified that she and Cromwell then had a conversation in which she

told him that she was planning to end her life and he told her that she should not do that. According to K.K.:

And one thing led [to] another, and I asked him if he did drugs, and I showed him the drugs that I had, and he said, yes.

And he told me that there was an abandoned house a little bit down the street where he had been staying and that he had clothes there, and he would keep me safe and watch me while I slept, and he wanted me to go with him, and I did go with him.

K.K. then followed Cromwell to a nearby abandoned building, and they proceeded upstairs to an empty room. Cromwell went to get something from another room, and K.K. began smoking crack. When Cromwell came back into the room where he had left K.K., they started smoking crack together. K.K. testified that several minutes later, she dropped her lighter and it was pitch black in the room. K.K. testified that she remembered looking down on the ground and was searching with her hands to find her lighter when Cromwell came up behind her and started strangling her with his hands. K.K. testified that she blacked out several times while he was strangling her and he proceeded to rape her.

{¶ 6} K.K. testified that the final time she woke up, she was propped up against a wall with a rope tied around her neck. K.K. testified that she was frantic, crying, and struggling to breathe. She testified that Cromwell was standing in front of her, telling her to get up and accusing her of stealing his drug paraphernalia. K.K. testified that she was scrambling on the floor to find her crack pipe when suddenly Cromwell looked at her, looked to the side, and ran away.

{¶ 7} K.K. testified that she then ran out of the abandoned building, ran to her sober living house, and knocked on the door. When K.K. knocked on the door of her sober living home, her roommate answered and called the police because K.K. was beat up and clearly distressed. Police and an ambulance arrived, and K.K. was transported to the hospital. K.K. testified that her face was swollen and bloody and had strangulation rashes all over. The state introduced photos of K.K. taken at the hospital showing her injuries.

{¶ 8} K.K. testified that at the hospital, she underwent a CAT scan and a rape kit was collected. K.K. testified that after leaving the hospital, she stayed at her roommate's friend's apartment until she could get into a rehab facility.

{¶ 9} The state also called Strongsville police officer Cheyann Wolf ("Wolf"), who testified that she was working for the Cleveland Division of Police on March 8, 2020. Wolf testified that she received a call to respond to a sexual assault on West 97th Street in Cleveland, Ohio. When Wolf responded to the scene, K.K. was in the back of an ambulance that had also been dispatched to the scene. Wolf said that K.K. was visibly upset and made a phone call to her mother, before eventually telling Wolf that she had been raped. Wolf testified that K.K. described sitting outside and being approached by a man she did not know who wanted to smoke crack with her, so she went with the man. Wolf testified that K.K. described the man raping her, saying that she went in and out of consciousness when it was happening, and K.K. repeatedly told Wolf she was lucky to be alive. Wolf described K.K. as having multiple popped blood vessels in her eyes and on her cheeks, a bloody

cut on her nose, and numerous red markings on her neck, all of which appeared consistent with K.K.'s account of being strangled. Wolf also testified that K.K.'s tongue was swollen. Wolf rode in the ambulance with K.K. to MetroHealth.

{¶ 10} The state then called Detective Cynthia Adkins ("Adkins"), who testified that she was a detective in the Cleveland Division of Police Sex Crimes and Child Abuse Unit. Adkins testified that when she was assigned to the case, she contacted K.K. the day after the incident and they spoke over the phone. Adkins testified that when she initially spoke to K.K., K.K. was uncooperative, but she eventually spoke to Adkins about what had happened. Adkins testified that initially, the suspect in the case was unknown, but she eventually got a lead that Cromwell was involved.

{¶ 11} Adkins testified that the results from K.K.'s rape kit had two different DNA hits; one was Cromwell and the other was D.G., whom K.K. had identified as a consensual sexual partner. When Adkins and K.K. subsequently spoke in person, another detective presented K.K. with two photo arrays of suspects. Adkins testified that one photo array contained a photo of D.G., and the other photo array contained a photo of Cromwell.

{¶ 12} Adkins testified that she subsequently spoke to the prosecutor's office and a warrant was issued for Cromwell's arrest. Several days later, Adkins interviewed Cromwell. Adkins testified that Cromwell told her that he and K.K. went into an abandoned house to use drugs together and that, at some point, K.K. left the house and then returned. According to Adkins, Cromwell told her that he gave K.K.

a counterfeit one hundred dollar bill to buy more drugs, after which K.K. performed fellatio on Cromwell and subsequently had anal sex with him. Adkins testified that Cromwell denied seeing any injuries on K.K. before or after their interaction, and he likewise denied causing K.K. any injuries. Adkins testified that Cromwell told her that K.K. “likes getting choked hard.” When Adkins showed Cromwell photos of K.K.’s injuries, he responded “somebody else did this to her, man.”

{¶ 13} The state called Kristina Angel (“Angel”), a sexual assault nurse examiner (“SANE nurse”) at MetroHealth, who testified that she examined K.K. around 3 a.m. on March 8, 2020, and collected a rape kit from her. Angel testified that before she examined K.K., K.K. underwent a CAT scan because of her visible strangulation injuries. Angel testified that K.K. stated that she had been vaginally penetrated by her assailant and she was unsure if she had been anally penetrated; K.K. also told Angel that her assailant was unknown to her. Angel testified that K.K. told her that she had had consensual sex on March 7, 2020. Angel testified that K.K. again described meeting an unknown man and going with him to smoke crack. K.K. told Angel that the man came up behind her, wrapped his arms around her neck, told her to “spread [her] ass,” and strangled her until she passed out. Angel testified that she documented bruising on K.K.’s neck and knees, facial injuries, a swollen tongue, and bruising on her tongue consistent with strangulation.

{¶ 14} The state called Gerald Furniss (“Furniss”), a DNA analyst with the Cuyahoga County Medical Examiner’s Office, to testify as a witness. Furniss testified that he was assigned to K.K.’s case and analyzed her rape kit and prepared a report

based on his analysis. Furniss testified that Cromwell's DNA was identified on multiple samples from K.K.'s rape kit, including K.K.'s vaginal and anal swabs. Furniss testified that he did not test the swabs obtained from K.K.'s fingernails.

{¶ 15} Following the testimony of the foregoing witnesses, the state moved to admit photographs of K.K.'s injuries into evidence and, with no objection from defense counsel, the photographs were admitted into evidence. The state rested its case. Defense counsel made a Crim.R. 29 motion for acquittal, which the trial court denied. The defense did not call any witnesses or present any evidence, and defense counsel subsequently renewed its Crim.R. 29 motion, which the trial court again denied.

{¶ 16} On November 15, 2021, the jury returned a verdict of guilty on the rape, felonious assault, and two kidnapping charges, as well as both sexual motivation specifications. The court subsequently found Cromwell guilty of all notice of prior conviction and repeat violent offender specifications.

{¶ 17} On December 8, 2021, the court held a sentencing hearing. The assistant prosecuting attorney addressed the court and requested that Cromwell receive consecutive sentences. Defense counsel and Cromwell also addressed the court. The court stated that it reviewed the presentence investigation report, the state's sentencing memorandum, and Cromwell's competency evaluation. The court stated that both kidnapping counts would merge for sentencing, and defense counsel had no objection. The court imposed a sentence of 10 to 15 years for the rape count, 7 years for the felonious assault count, and 10 years for the kidnapping

count and ordered the sentences to run concurrently for a total aggregate sentence of 10 to 15 years.

{¶ 18} Cromwell appeals, presenting three assignments of error for our review:

I. Mr. Cromwell’s conviction is against the manifest weight of the evidence in violation of his rights to due process and a fair trial under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and Article I, Section 10 of the State of Ohio Constitution.

II. Anton Cromwell was denied his right to protection from double jeopardy as guaranteed to him by the Fifth and Fourteenth Amendments to the United States Constitution and Section 10, Article I of the Ohio Constitution, when the trial court erred in failing to merge the kidnapping counts with the rape and/or felonious assault counts.

III. As amended by S.B. 201, the revised code’s sentences for first- and second-degree qualifying felonies violate the constitutions of the United States and the State of Ohio; accordingly, the trial court erred in imposing a sentence pursuant to S.B. 201.

Legal Analysis

I. Manifest Weight

{¶ 19} In Cromwell’s first assignment of error, he argues that his convictions were against the manifest weight of the evidence.

{¶ 20} A manifest weight challenge questions whether the state met its burden of persuasion. *State v. Bowden*, 8th Dist. Cuyahoga No. 92266, 2009-Ohio-3598, ¶ 13. “[W]eight of the evidence involves the inclination of the greater amount of credible evidence.” *State v. Harris*, 8th Dist. Cuyahoga No. 109060, 2021-Ohio-856, ¶ 32, quoting *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). On a manifest weight challenge, “a reviewing court asks whose evidence is

more persuasive — the state’s or the defendant’s?” *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, ¶ 25. A reviewing court “weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether 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.” *State v. Martin*, 20 Ohio App.3d 172, 485 N.E.2d 717 (1st Dist.1983), paragraph three of the syllabus. Reversal of a trial court’s “judgment on manifest weight of the evidence requires the unanimous concurrence of all three appellate judges.” *State v. Crumbley*, 8th Dist. Cuyahoga No. 93202, 2010-Ohio-3866, ¶ 20, citing *Thompkins* at paragraph four of the syllabus.

{¶ 21} Cromwell’s manifest weight argument is based upon the nature of the investigation in this case. Cromwell argues that because there was evidence of strangulation, the DNA evidence from K.K.’s fingernails would be dispositive. Therefore, according to Cromwell, because Furniss elected not to analyze the DNA evidence from under K.K.’s fingernails, the investigation in this case was incomplete and tainted by an assumption that K.K.’s version of events was truthful. Similarly, Cromwell argues that the failure to contact or interview D.G., K.K.’s consensual sexual partner, was another flawed investigatory decision that undermines his convictions. Finally, Cromwell emphasizes that K.K.’s version of events contained discrepancies, she was uncooperative with the investigation, and she admitted to being in the middle of a drug “binge” when the assault allegedly occurred. Ultimately, Cromwell argues that because there was a failure to explore any evidence

that could have contradicted K.K.'s story, his convictions are against the manifest weight of the evidence.

{¶ 22} As an initial matter, we note that “there is no due process requirement for the police to conduct an investigation in a certain manner.” *State v. Weiser*, 10th Dist. Franklin No. 03AP-95, 2003-Ohio-7034, ¶ 33. Likewise, “sloppy police work” does not “violate a defendant’s due process rights.” *Athens v. Gilliland*, 4th Dist. Athens No. 02CA4, 2002-Ohio-4347, ¶ 5. While we are not dismissing Cromwell’s assertions that certain aspects of the investigation in this case may appear imperfect, we cannot use this as a basis to conclude that his convictions are against the manifest weight of the evidence. This is especially true where, as here, Cromwell’s trial counsel had the opportunity to articulate and emphasize what he identified as deficiencies in the investigation in this case, allowing the jury to consider these deficiencies. *State v. Lawshea*, 8th Dist. Cuyahoga No. 101895, 2015-Ohio-2391, ¶ 52.

{¶ 23} We are also not persuaded by Cromwell’s arguments regarding K.K.’s inconsistencies and initial uncooperativeness. A defendant “is not entitled to a reversal on manifest weight grounds merely because a witness may have made inconsistent statements.” *State v. Washington*, 8th Dist. Cuyahoga No. 107286, 2019-Ohio-2215, ¶ 54, quoting *State v. Robertson*, 8th Dist. Cuyahoga No. 106279, 2018-Ohio-2934, ¶ 30, citing *State v. Wade*, 8th Dist. Cuyahoga No. 90029, 2008-Ohio-4572, ¶ 38. Moreover, while K.K.’s version of events may have contained some inconsistencies, there was testimony and physical evidence that corroborated much

of her story. Specifically, her account of being violently raped and strangled was corroborated by numerous injuries and DNA evidence. Additionally, Cromwell's own statements corroborated much of K.K.'s story, including the fact that he admitted to having sex with her and his belief that K.K. liked to be "choked hard."

{¶ 24} Finally, with respect to K.K.'s degree of cooperation with the investigation and prosecution in this case, we note that Cromwell has pointed to no authority in which a manifest weight reversal was based on the victim's purported lack of cooperation. There are many reasons for which a victim of a crime, let alone a violent crime, may not be consistently cooperative. Moreover, several of those reasons, including K.K.'s ongoing substance abuse struggles and lack of stable housing, were explored thoroughly at trial.

{¶ 25} For these reasons, we cannot say that the jury lost its way and created a manifest miscarriage of justice in finding Cromwell guilty of rape, felonious assault, and kidnapping. Therefore, Cromwell's first assignment of error is overruled.

II. Merger

{¶ 26} In Cromwell's second assignment of error, he argues that the trial court erred in failing to merge the kidnapping count with either the rape and/or felonious assault counts.

{¶ 27} R.C. 2941.25 provides:

(A) Where the same conduct by defendant can be construed to constitute two or more allied offenses of similar import, the indictment

or information may contain counts for all such offenses, but the defendant may be convicted of only one.

(B) Where the defendant's conduct constitutes two or more offenses of dissimilar import, or where his conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them.

{¶ 28} Generally, we review de novo whether certain offenses should be merged as allied offenses under R.C. 2941.25. *State v. Bailey*, Slip Opinion No. 2022-Ohio-4407, ¶ 6, citing *State v. Williams*, 134 Ohio St.3d 482, 2012-Ohio-5699, 983 N.E.2d 1245, ¶ 1. However, “the failure to raise arguments related to merger of allied offenses at the time of sentencing forfeits all but plain error.” *Bailey* at ¶ 7, quoting *State v. Rogers*, 143 Ohio St.3d 385, 2015-Ohio-2459, 38 N.E.3d 860, ¶ 28. Under the plain error doctrine, intervention by a reviewing court is warranted only under exceptional circumstances to prevent injustice. *Id.*, citing *State v. Long*, 53 Ohio St.2d 91, 372 N.E.2d 804 (1978), paragraph three of the syllabus (“Notice of plain error is to be taken with the utmost caution, under exceptional circumstances and only to prevent a miscarriage of justice.”).

{¶ 29} “Although determining whether R.C. 2941.25 has been properly applied is a legal question, it necessarily turns on an analysis of the facts, which can lead to exceedingly fine distinctions.” *Bailey* at ¶ 11. Specifically, when determining whether offenses are allied offenses of similar import within the meaning of R.C. 2941.25, we consider three questions: ““(1) Were the offenses dissimilar in import or significance? (2) Were they committed separately? (3) Were they committed with separate animus or motivation?”” *Bailey* at ¶ 10, quoting *State v. Earley*, 145 Ohio

St.3d 281, 2015-Ohio-4615, 49 N.E.3d 266, ¶ 12, quoting *State v. Ruff*, 143 Ohio St.3d 114, 2015-Ohio-995, 34 N.E.3d 892, ¶ 31. If the answer to any of these questions is yes, separate convictions are permitted. *Id.*

{¶ 30} Cromwell argues that the kidnapping should have merged with the other counts because evidence presented at trial, in the form of K.K.'s own testimony, was that K.K. went into the abandoned house with Cromwell willingly. Cromwell argues that there was no kidnapping by deception and any physical restraint that occurred was incidental to the rape and felonious assault.

{¶ 31} With respect to the kidnapping count, the state argues that the evidence presented at trial shows that Cromwell's true intention was not merely to do drugs with K.K., but to violently rape her. Thus, according to the state, it is reasonable to conclude that Cromwell's intention was to engage in sexual acts with K.K. when he convinced her to enter an abandoned house with him. With respect to the felonious assault count, the state argues that because this case involved separate and identifiable harm to K.K. beyond the rape and kidnapping, the felonious assault should not have merged.

{¶ 32} Our review of the record reveals that the kidnapping could have been committed separately from the rape. As in *Bailey*, “[e]ven if we were to assume that the trial court erred by not merging the kidnapping and rape counts, the facts of the case indicate that such an error was not obvious.” *Bailey*, Slip Opinion No. 2022-Ohio-4407, at ¶ 14. Thus, we cannot conclude that it was plain error for the court to decline to merge the rape and kidnapping counts.

{¶ 33} With respect to the felonious assault, the record reflects that K.K. suffered severe injuries that were not limited to the restraint of her liberty. Therefore, the kidnapping and felonious assault were not allied offenses of similar import and we cannot say that the trial court committed plain error when it declined to merge them. For these reasons, Cromwell’s second assignment of error is overruled.

III. Reagan Tokes

{¶ 34} In Cromwell’s third assignment of error, he argues that his sentence pursuant to the Reagan Tokes Law was unconstitutional. As Cromwell acknowledges, the constitutionality of the Reagan Tokes Law was decided in this court’s en banc decision in *State v. Delvallie*, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.), which found “that the Reagan Tokes Law, as defined under R.C. 2901.011, is not unconstitutional.” *Id.* at ¶ 17. We are constrained to follow *Delvallie* and, therefore, find that the Reagan Tokes Law is not unconstitutional. We must find that Cromwell’s sentence was not a violation of his constitutional rights and, therefore, his third assignment of error is overruled.

{¶ 35} 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

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.

MARY EILEEN KILBANE, JUDGE

KATHLEEN ANN KEOUGH, P.J., and
EMANUELLA D. GROVES, J., CONCUR

N.B. Judge Mary Eileen Kilbane joined the dissenting opinion by Judge Lisa B. Forbes and the concurring in part and dissenting in part opinion by Administrative Judge Anita Laster Mays in *Delvallie* and would have found the Reagan Tokes Law unconstitutional.

Judge Emanuella D. Groves concurred with the opinions of Judge Lisa B. Forbes (dissenting) and Administrative Judge Anita Laster Mays (concurring in part and dissenting in part) in *Delvallie* and would have found the Reagan Tokes Law unconstitutional.