

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 09CA009662

Appellee

v.

ROBERT L. DUNN

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 08CR077368

Appellant

DECISION AND JOURNAL ENTRY

Dated: December 13, 2010

WHITMORE, Judge.

{¶1} Defendant-Appellant, Robert Dunn, appeals from his conviction in the Lorain County Court of Common Pleas. This Court affirms.

I

{¶2} On the evening of September 14, 2008, Dunn met Michelle Kopp and her friend Melony Shreffler through a mutual friend of Kopp and Shreffler's. Dunn offered the two women a place to stay for the night, and they accepted. The girls eventually lay down on the floor of Dunn's apartment, where he created a make-shift bed for them out of drapes, blankets, and pillows. Not long after she lay down, Kopp felt Dunn place his hand on her stomach. Over Kopp's protests, Dunn pulled down Kopp's pants. He inserted his fingers into her vagina and then had sexual intercourse with her while holding her down. Shreffler heard Kopp telling Dunn to stop, but feigned sleep because she was afraid. When Kopp was able to break from Dunn's

hold, she shook Shreffler and told her she wanted to leave. The girls went to the emergency room and later to the police station.

{¶3} On December 18, 2008, a grand jury indicted Dunn on one count of rape, in violation of R.C. 2907.02(A)(2), and an attendant repeat violent offender specification. A supplemental indictment later added another count of rape, accompanied by repeat violent offender and sexually violent predator specifications. On July 20, 2009, a bench trial commenced. The State dismissed Dunn’s first count of rape and its attendant specification immediately before trial. The court found Dunn guilty of rape and the attendant repeat violent offender specification, but dismissed the remaining sexually violent predator specification. The court sentenced Dunn to twenty years in prison and classified him as a Tier III sex offender/child-victim offender.

{¶4} Dunn now appeals from his conviction and raises one assignment of error for our review.

II

Assignment of Error

“THE VERDICT IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.”

{¶5} In his sole assignment of error, Dunn argues that his rape conviction is against the manifest weight of the evidence. Specifically, he challenges Kopp’s credibility and argues that she fabricated the allegations against him.

{¶6} When considering a manifest weight argument, the Court:

“[M]ust review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine whether, in resolving conflicts in the evidence, the trier of fact 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. Otten* (1986), 33 Ohio App.3d 339, 340.

A weight of the evidence challenge indicates that a greater amount of credible evidence supports one side of the issue than supports the other. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387. Further, when reversing a conviction on the basis that the conviction was against the manifest weight of the evidence, the appellate court sits as the “thirteenth juror” and disagrees with the factfinder’s resolution of the conflicting testimony. *Id.* Therefore, this Court’s “discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.” *State v. Martin* (1983), 20 Ohio App.3d 172, 175; see, also, *Otten*, 33 Ohio App.3d at 340.

{¶7} “No person shall engage in sexual conduct with another when the offender purposely compels the other person to submit by force or threat of force.” R.C. 2907.02(A)(2). “Sexual conduct” includes vaginal intercourse and digital penetration. See R.C. 2907.01(A).

“A person acts purposely when it is his specific intention to cause a certain result, or, when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is his specific intention to engage in conduct of that nature.” R.C. 2901.22(A).

The foregoing offense constitutes rape. R.C. 2907.02(B).

{¶8} Kopp and Shreffler both testified that a mutual friend of theirs introduced them to Dunn on the evening of September 14, 2008. The women accepted Dunn’s invitation to sleep at his apartment because they did not have anywhere else to stay that night. At some point after they were introduced to Dunn, Dunn opened his wallet and exposed a prison identification card. Dunn admitted to Kopp and Shreffler that he had been in prison, but claimed it was because he had assaulted another man after seeing the man hit a woman. Dunn later stipulated at trial that he had gone to prison for rape.

{¶9} Kopp and Shreffler testified that later that evening they both lay down on the make-shift bed that Dunn created for them on his apartment floor. Kopp testified that when

Dunn appeared next to her and put his hand on her stomach, she told him to stop. Dunn, however, reached his hand further down and inserted several fingers into her vagina. Kopp stated that she was “frozen” at that point, but was able to reiterate to Dunn that he “need[ed] to stop.” Dunn then straddled Kopp, held her down by the arms, and forcibly engaged in sexual intercourse with her for a short period of time. As soon as she was able to get out from underneath Dunn, Kopp shook Shreffler to get her attention and left the apartment. Shreffler also testified and confirmed that she heard Kopp telling Dunn to “stop.” Shreffler stated that she was not actually asleep during the rape, but that she was too scared to help Kopp. She testified that she saw Dunn had his pants down after Kopp shook her.

{¶10} Carol Wilde, a registered nurse who worked at the Walter G. Nord Center at the time of this incident, testified that she examined Kopp in the early morning hours of September 15, 2008. Nurse Wilde observed some blood in Kopp’s underwear as well as some abrasions to her genitals. Nurse Wilde testified that the abrasions she observed would be consistent with penetration and “likely *** caused by something rough, such as fingernails.” Anthony Winston later conducted Y-STR DNA testing on the swabs that Nurse Wilde took from Kopp during the examination. Winston testified that Dunn could not be eliminated as the source of the male DNA detected on Kopp’s swabs.

{¶11} Dunn testified on his own behalf and denied that he either digitally penetrated Kopp or engaged in sexual intercourse with her. According to Dunn, he knew Kopp before this incident because she was a prostitute and he had paid her for intercourse on a previous occasion. Dunn further claimed that, on the night she stayed with him, Kopp told him she thought she was pregnant with his child, based on their prior sexual encounter. Dunn speculated that Kopp fabricated the charges against him because she was angry with him for refusing her request to

move into his apartment. He also thought Kopp was angry because he accused her of stealing from him when she and Shreffler were at the apartment. Dunn only admitted to kissing Kopp on the neck at some point during the night and rubbing her stomach with her permission.

{¶12} Despite Dunn's testimony that he knew Kopp before this incident, Detective Steven Zacharias testified that Dunn had a different reaction when he spoke with him. Detective Zacharias met with Dunn to obtain a DNA standard from him. The search warrant that he gave to Dunn listed Kopp as the victim and also contained Shreffler's name. Dunn told Detective Zacharias that he "didn't know who they were."

{¶13} James Whorley also testified against Dunn. Whorley shared a segregation cell with Dunn in the Lorain County Correctional Facility while Dunn was awaiting trial. Whorley testified that Dunn admitted to holding Kopp down and engaging in sexual intercourse with her over her protests. Whorley further testified that, when he returned to his cell from recreation one day, he found Dunn masturbating to pictures of Kopp's vaginal area. Dunn received the pictures, which were taken during Kopp's hospital examination, in the copy of his case file that his lawyer provided him. A detective from the Elyria Detective Bureau later retrieved the pictures from the Lorain County Correctional Facility.

{¶14} Based on all the evidence in the record, we cannot conclude that the trial court lost its way by convicting Dunn of rape. The evidence supports the conclusion that Dunn forcibly engaged in sexual conduct with Kopp. Shreffler corroborated Kopp's testimony and Kopp's injuries were consistent with forcible penetration. Moreover, Dunn admitted to Whorley that he forced Kopp to engage in intercourse and he could not be excluded as the source of the DNA detected in Kopp's swabs. Dunn's arguments that his conviction is against the manifest weight of the evidence lacks merit. His sole assignment of error is overruled.

III

{¶15} Dunn's sole assignment of error is overruled. The judgment of the Lorain County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

BETH WHITMORE
FOR THE COURT

CARR, P. J.
MOORE, J.
CONCUR

APPEARANCES:

PAUL A. GRIFFIN, Attorney at Law, for Appellant.

DENNIS WILL, Prosecuting Attorney, and BILLIE JO BELCHER, Assistant Prosecuting Attorney, for Appellee.