

[Cite as *State v. Vansickle*, 2018-Ohio-5324.]

STATE OF OHIO)
)ss:
COUNTY OF WAYNE)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 18AP0009

Appellee

v.

JOSHUA R. VANSICKLE

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF WAYNE, OHIO
CASE No. 2017 CRC-I 000116

Appellant

DECISION AND JOURNAL ENTRY

Dated: December 31, 2018

CALLAHAN, Judge.

{¶1} Appellant, Joshua VanSickle, appeals his convictions by the Wayne County Court of Common Pleas. This Court affirms.

I.

{¶2} In the early morning hours of February 27, 2017, a woman arrived at the emergency room of Wooster Community Hospital exhibiting signs that she had been brutally attacked. The woman, A.M., reported to a Wooster police officer that she had been beaten, strangled, and raped by her husband, Joshua VanSickle, and that he had kicked in the windshield of her vehicle in an attempt to prevent her escape. The medical staff treated A.M.’s injuries and discharged her, but she returned later in the day for an examination by a sexual assault nurse examiner (“SANE”) on the recommendation of law enforcement officers.

{¶3} Mr. VanSickle was charged with attempted murder in violation of R.C. 2903.02(A) and R.C. 2923.02, rape in violation of R.C. 2907.02(A)(2), three counts of

kidnapping in violation of R.C. 2905.01(A)(3), (B)(2), and (A)(4), respectively, two counts of felonious assault in violation of R.C. 2903.11(A)(1) and (A)(2), and one count of domestic violence in violation of R.C. 2919.25(A). Mr. VanSickle waived his right to a jury trial, and the trial court found him not guilty of attempted murder, but guilty of each remaining charge. The trial court sentenced Mr. VanSickle to a total prison term of twenty years. Mr. VanSickle filed this appeal.

II.

ASSIGNMENT OF ERROR

APPELLANT'S CONVICTIONS FOR RAPE, R.C. 2907.02(A)(2); KIDNAPPING, R.C. 2905.01(A)(3); KIDNAPPING, R.C. 2905.01(B)(2); AND KIDNAPPING, R.C. 2905.01(A)(4), WERE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶4} In his sole assignment of error, Mr. VanSickle argues that his convictions for rape and kidnapping are against the manifest weight of the evidence. This Court disagrees.

{¶5} When considering whether a conviction is against the manifest weight of the evidence, this Court must:

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, 33 Ohio App.3d 339, 340 (9th Dist.1986). A reversal on this basis is reserved for the exceptional case in which the evidence weighs heavily against the conviction. *Id.*, citing *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983).

{¶6} Mr. VanSickle's first argument is that his conviction for rape is against the manifest weight of the evidence. Specifically, he has argued that the physical evidence adduced

at trial did not support A.M.'s testimony that a rape occurred and that her testimony should not be credited.

{¶7} R.C. 2907.02(A)(2), which prohibits rape, provides that “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.” “Sexual conduct” includes “vaginal intercourse between a male and female[.]” R.C. 2907.01(A). “Force” is defined as “any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing.” R.C. 2901.01(A)(1).

{¶8} A.M. provided detailed testimony regarding the events in question. She testified that the conflict with Mr. VanSickle on the day of the attack started when he left for work, when he began calling her and sending text messages. Around midday, she recalled, Mr. VanSickle asked her to send him an explicit video of herself. She complied, although the request made her “uncomfortable,” in the hope that he would “leave [her] alone.” She testified that she also took a gallon jug of water to Mr. VanSickle at his workplace and that when he came out to her vehicle to meet her, he asked her to come into his workplace for a sexual encounter. A.M. stated that she refused, and Mr. VanSickle became angry.

{¶9} A.M. recalled that when Mr. VanSickle returned home from work, he was “grumpy” and “angry” and accused her of infidelity. Nonetheless, the two travelled together to a local brewery to celebrate Mr. VanSickle’s brother’s birthday. After a brief period of calm during the celebration, A.M. testified that she and Mr. VanSickle argued on their way home, and Mr. VanSickle then pulled his truck on to a side street, grabbed her hair, and slammed her head into the passenger side window of the vehicle five or ten times. Mr. Van Sickle told her to walk home, then relented, giving her the keys to the truck and walking home himself. A.M. testified

that after driving around looking for Mr. VanSickle for a while, she drove home alone to wait for him.

{¶10} A.M. recalled that Mr. VanSickle arrived home angry sometime around midnight: he pushed the door open, shoved her away, and shattered the mobile phone that she used for work. She testified that Mr. VanSickle went upstairs for a few minutes and returned carrying a belt, which he laced through the buckle and tightened around her neck. A.M. testified that Mr. VanSickle drew the belt tighter around her neck, telling her that she “had five minutes before [she] was going to die.” When she fell to the ground, Mr. VanSickle braced his foot against her chest and pulled the belt until A.M. lost consciousness. According to her testimony, Mr. VanSickle threatened her again when she regained consciousness, then strangled her a second time until she passed out. When she regained consciousness again, she attempted to placate Mr. VanSickle by making up “stories” that implicated her in infidelity “to try to save [herself],” but he strangled her—and she lost consciousness—a third time.

{¶11} A.M. testified that when she regained consciousness after the third incident of strangulation, she found herself lying on her back in the living room with Mr. VanSickle sitting on top of her, his knees pushing down on her collarbone and restraining her arms. With the belt still around her neck, Mr. VanSickle struck A.M.’s face with a closed fist, breaking her nose. A.M. testified that, still holding the tightened belt around her neck, Mr. VanSickle threw her “face down on the chair,” removed her pants, and raped her vaginally. A.M. recalled that she was afraid that he “was still going to pull [the belt] and kill me.” She testified that Mr. VanSickle also attempted anal penetration, but ejaculated on her buttocks and the backs of her legs before doing so.

{¶12} Mr. VanSickle points to two things in support of his position that the physical evidence at trial did not support A.M.'s testimony: no semen was detected from swabs of A.M.'s legs and buttocks, and pictures of the living room chair do not depict bloodstains. With respect to the absence of semen, the registered nurse who conducted A.M.'s SANE examination testified that she swabbed the back of A.M.'s legs, her calves, her perianal area, and her vagina. Although laboratory tests did not detect semen on A.M.'s legs and calves, they did detect the presence of semen in her vagina, which was marked by bruises and abrasions. The nurse also testified that A.M. had told her that she had bathed before the SANE examination. A.M. consistently testified that she had last had consensual sexual relations with Mr. VanSickle on the evening of February 25, 2017. She denied that she had sex with him at any point during their encounters on February 26th.

{¶13} With respect to the absence of blood on the chair on which the rape occurred, Mr. VanSickle deduces that if he had, in fact, injured A.M.'s nose severely, it would certainly have bled profusely onto the living room chair if the rape had occurred as she testified. It is true that Detective Juan McCloud, who met with A.M. and reviewed photographs of the scene, testified that there was no photographic evidence of blood on the living room chair. It is unclear, however, whether the house and its contents were in the same condition at the time that the police arrived to execute a search warrant on the following day, and it does not necessarily follow from A.M.'s testimony that blood must have been found on the chair.

{¶14} Mr. VanSickle has also argued that his rape conviction is against the manifest weight of the evidence because A.M. offered conflicting versions of the attack and did not mention it to the emergency room doctor who examined her. Mr. VanSickle also suggests that the fact that one of the police officers at Wooster Community hospital was "under the impression

there was sexual intercourse, but not a sexual assault,” demonstrates that A.M.’s trial testimony was false.

{¶15} A.M. testified that she regained consciousness after Mr. VanSickle strangled her for a third time and found herself lying on her back on the living room floor. In this position, with the belt still around her neck, Mr. VanSickle punched her face with a closed fist. A.M. testified that Mr. VanSickle then threw her “face down on the chair,” removed her pants, and raped her vaginally. Officer Jacob Mattayaw, who was dispatched to Wooster Community Hospital when A.M. arrived there, noted that A.M. “had clearly been assaulted.” He also testified that A.M. “reported that after the assault [Mr. VanSickle] still had the belt around her throat and stood her up and pulled her pants down and began having sexual intercourse with her.” Given the way in which the attack on A.M. unfolded, there is no inconsistency between her testimony and Officer Mattayaw’s recollection of her statement. Neither the fact that Officer Mattayaw saw A.M.’s condition, yet drew the conclusion that “intercourse had taken place” nor the fact that A.M. did not report the rape to the emergency room doctor who treated her physical injuries undermines the credibility of her testimony.

{¶16} Mr. VanSickle’s second argument is that his convictions for kidnapping are against the manifest weight of the evidence because the evidence did not demonstrate that A.M.’s liberty was restrained—an element of kidnapping under R.C. 2905.01(A)(2)/(4) and R.C. 2905.01(B). Contrary to Mr. VanSickle’s position, neither an explicit threat tied to leaving a locale nor physically blocking the subject’s egress is necessary to establish that the subject’s liberty has been restrained. *See, e.g., State v. Wright*, 9th Dist. Summit No. 27434, 2015-Ohio-2381, ¶ 19.

{¶17} A.M.'s testimony established that Mr. VanSickle tightened a belt around her throat and, on three occasions, pulled it taut until she lost consciousness. With the belt tightened around her neck, he also moved her from room to room, forced her up from a supine position, and engaged in sexual intercourse with her. Mr. VanSickle admitted at trial that he tightened the belt around A.M.'s neck. A.M. also testified that Mr. VanSickle repeatedly threatened her with death, and she related that throughout the incident, she sought an opportunity to get away. In addition, A.M. testified that after the attack, Mr. VanSickle accompanied her throughout the house. She recalled that when she told him that she wanted to go downstairs for a glass of water, "He grabbed my arm and he said no. He said - - he told me I wasn't going to go down there." Although he eventually told her that she could leave, her perception was different:

Q: What happened when you went downstairs?

A: I got some water. I sat in the chair. He sat on the couch. And we just talked and I apologized and he told me how much he loved me and he's sorry it has to come to this and it has to be this extreme. And he said if you want to leave you can leave. I understand.

Q: At some point did you feel like you had an opportunity to leave?

A: At some point, not then, but yes, later.

{¶18} It is clear from this testimony that Mr. VanSickle restrained A.M.'s liberty for an extended period of time by means of physical restraint, death threats, and fear. We therefore disagree with Mr. VanSickle's contention that his convictions for kidnapping are against the manifest weight of the evidence.

{¶19} Mr. VanSickle's assignment of error is overruled.

III.

{¶20} Mr. VanSickle's assignment of error is overruled. The judgment of the Wayne 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 Wayne, 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(C). 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.

LYNNE S. CALLAHAN
FOR THE COURT

TEODOSIO, P. J.
CARR, J.
CONCUR.

APPEARANCES:

MATTHEW J. MALONE, Attorney at Law, for Appellant.

DANIEL R. LUTZ, Prosecuting Attorney, and ANDREA D. UHLER, Assistant Prosecuting Attorney, for Appellee.