[Cite as *State v. Martin*, 2018-Ohio-1843.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106038

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

TRAMAINE E. MARTIN

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-16-612220-A

BEFORE: Kilbane, J., E.A. Gallagher, A.J., and McCormack, J.

RELEASED AND JOURNALIZED: May 10, 2018

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MARY EILEEN KILBANE, J.:

{¶1} Defendant-appellant, Tramaine Martin ("Martin"), brings this pro se appeal challenging his convictions and sentence for attempted rape, gross sexual imposition, and kidnapping. For the reasons set forth below, we affirm.

{¶2} In December 2016, Martin was charged in a five-count indictment arising from allegations by his former girlfriend's ten-year-old niece, K.B., that Martin sexually assaulted her during a sleepover at Martin's home. The indictment charged Martin with one count of rape, one count of attempted rape, two counts of gross sexual imposition ("GSI"), and one count of kidnapping with a sexual motivation specification.

{¶3} In February 2017, the trial court granted counsel's request to withdraw and appointed the Cuyahoga County Public Defender to represent Martin. In April 2017, Martin's assistant public defender moved to withdraw, advising the court that Martin wished to proceed pro se. The trial court denied counsel's request and referred Martin to the court psychiatric clinic for an evaluation.[1] In May 2017, the state and Martin's assistant public defender stipulated to a report indicating Martin was competent to represent himself, and the trial court granted Martin's request to proceed pro se.

{¶4} In June 2017, the trial court addressed Martin's various pro se motions on the record. Martin explained he moved to suppress evidence stemming from his arrest.

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[1] Martin filed an appeal from the trial court's order denying counsel's request to withdraw. As a result, the trial court recused itself and the case was reassigned to a new trial court judge.

He claimed his arrest constituted an "illegal seizure" because "Cleveland Heights [police] came to Cleveland and arrested me." The trial court denied the motion without hearing. The trial court also denied Martin's January 2017 motion to dismiss and continued the matter to allow the state to provide a calculation of Martin's speedy trial time. A few weeks later, the trial court denied Martin's motion to dismiss, finding that 19 speedy trial days remained.

{¶5} In July 2017, Martin executed a written waiver of his right to a jury trial, and the matter proceeded to trial before the bench. The following was adduced at trial.

{¶6} In December 2016, K.B., along with her two siblings, had a sleep over with their cousins at the Cleveland Heights home of their aunt, K.S. Martin is the father of K.S.'s two youngest children. At the time of the sleep over, Martin was living in K.S.'s home, but slept in his own separate bedroom.

{¶7} K.B. testified that during the sleep over, she was sleeping in the same bed with her 12-year-old cousin, T.M., in a third-floor bedroom. T.M. is Martin's daughter. K.B. explained she awoke in the middle of the night when she heard someone coming up the stairs. Martin came into the room, got into the bed under the covers between K.B. and T.M., and pulled down K.B.'s pants. He then attempted to "stick his private part" into K.B. from behind while holding down her arms. K.B. explained Martin was not successful because she kept her legs closed. Martin then put his tongue to K.B.'s "private part," pulled up her pants, got out of the bed, and went back downstairs.

{¶8} K.B. started crying during the incident. After Martin left the room, K.B. went downstairs to use her aunt's phone to call her mother. K.B. saw Martin coming out of the second-floor bathroom on her way to her aunt's room. Martin asked K.B. "what was wrong?" because she was still crying, but she did not reply. K.B. went outside on the porch to call her mother and waited there until her mother arrived.

{¶9} K.B.'s mother drove her directly to the Cleveland Heights police station, and K.B. gave an interview and a written statement. After K.B. made a police report, she returned home with her mother to wait until a sexual assault nurse examiner ("SANE examiner") became available later that morning. K.B. was examined by a SANE examiner a few hours later.

{¶10} At trial, K.B.'s mother, aunt, and cousin testified, corroborating K.B.'s version of events. Notably, Martin's 12-year-old daughter, T.M., testified that she remembered sharing a bed with K.B. during the sleep over, and she further recalled that she had seen "my dad" _ Martin _ get in the bed and under the covers, between her and K.B.

{¶11} A forensic biologist and a forensic scientist both testified as to the results of the rape kit. The forensic biologist explained she conducted testing that revealed the presence of amylase on both the front and back panels of K.B.'s underwear. Amylase is found in high concentrations in saliva but can also be detected in other bodily fluids. The forensic scientist conducted a DNA analysis of the amylase found in K.B.'s underwear. The forensic scientist testified that the amylase contained a mixed DNA

profile from two people _ K.B. and a male. The forensic scientist explained that DNA found in the front panel "was consistent with male DNA, but the profile was too low to be able to, with any degree of confidence, say who it may * * * have been from." However, the forensic scientist further testified that the male DNA profile of the amylase swabbed from the back panel of K.B.'s underwear was "consistent with [Martin] to the degree of being rarer than one in one trillion."

{¶12} Cleveland Heights Detective William Stross, Jr. ("Detective Stross") of the Cleveland Heights police department testified to his role in the investigation. Detective Stross explained that he "requested a warrant [for Martin's arrest] from [the Cleveland Heights municipal court] and * * * signed a complaint against [Martin.]"

{¶13} After the state rested, Martin testified on his own behalf, denying any sexual conduct with K.B. However, he admitted to going upstairs to the room in which K.B. and T.M. were sleeping. He explained his purpose was to "check[] on [the girls]" and that he merely put his knee and hand on the bed to retrieve T.M.'s glasses, because she had fallen asleep with them on.

{¶14} At the conclusion of trial, the trial court found Martin guilty of one count each of attempted rape, GSI, and kidnapping. With regard to the kidnapping count, the trial court found Martin guilty of a sexual motivation specification and that Martin had released K.B. unharmed. A few days later, the trial court sentenced Martin to an indefinite prison term of ten years to life with the possibility of parole after ten years. The trial court determined Martin to be a Tier III sex offender.

{¶15} It is from this order that Martin appeals, raising seven assignments of error for our review:

Assignment of Error One

> The trial court committed plain, reversible error when it denied [Martin's] motion to suppress.

Assignment of Error Two

> The trial court committed plain, reversible error when it denied [Martin's motion for] dismissal of the indictment.

Assignment of Error Three

> The trial court committed plain, reversible error when it denied [Martin's motion for] dismissal based upon violation to statutory and constitutional right to a speedy trial.

Assignment of Error Four

> [Martin's convictions are] not sustained by sufficient evidence.

Assignment of Error Five

> [Martin's convictions] are against the manifest weight of the evidence.

Assignment of Error Six

> The trial court imposed a sentence that wasn't authorized by law; is void, ab initio; and must be vacated along with convictions therefor[e].

Assignment of Error Seven

> [R.C.] 2941.147 is unconstitutional when attached to a violation of [R.C.] 2905.01(A)(4).

Motion to Suppress

{¶16} In the first assignment of error, Martin argues the trial court erred in denying his suppression motion without conducting a hearing.

{¶17} Our review of a trial court's decision to deny a motion to suppress is de novo. *State v. Hernandez*, 8th Dist. Cuyahoga No. 90581, 2008-Ohio-5871, ¶ 11. Review of a motion to suppress "involves a mixed question of law and fact." *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8.

{¶18} This court has held that an evidentiary hearing is not mandatory on every motion to suppress. *State v. Mason*, 8th Dist. Cuyahoga No. 104533, 2017-Ohio-7065, ¶ 14. Indeed, Ohio Crim.R. 12(F) instructs that a "'court may adjudicate a motion based upon briefs, affidavits, the proffer of testimony and exhibits, a hearing, or other appropriate means.'" *Id*., quoting Crim.R. 12(F). "'A trial court must conduct [a suppression] hearing only when the claims in the motion would justify relief and are supported by factual allegations.'" *State v. Conley*, 8th Dist. Cuyahoga No. 88495, 2007-Ohio-2920, ¶ 11, quoting *State v. Djuric*, 8th Dist. Cuyahoga No. 87745, 2007-Ohio-413, ¶ 32. Thus, we examine the record to determine whether the claims in Martin's suppression motion would justify relief and are supported by factual allegations. *Mason* at ¶ 14.

{¶19} Prior to trial, Martin moved to suppress all evidence stemming from his arrest, making two separate claims. First, he claims Cleveland Heights police did not have "territorial jurisdiction" to execute the arrest warrant in the city of Euclid. Cleveland Heights police used cell phone tracking information to locate and arrest Martin at a Home Depot in Euclid. Martin also claims the arrest warrant was not supported by probable cause.

{¶20} With regard to Martin's jurisdictional argument, we note that Ohio Crim.R. 4(D) provides that "[w]arrants shall be executed and summons served by any officer authorized by law * * * at any place within this state." *Id.* at (D)(1) and (2). Thus, Cleveland Heights police had the authority to execute the warrant for Martin's arrest anywhere in the state of Ohio, including the city of Euclid.

{¶21} In his pro se suppression motion, Martin sets forth multiple arguments in support of his claim that the arrest warrant was issued without probable cause. First, he contends there was insufficient information contained in the complaint to support a probable cause determination and the issuance of an arrest warrant. Martin argues the complainant, Detective Stross, "doesn't state he witnessed the event" and "fails to disclose any credentials which would support his determination in the abstract." In a supplemental brief to his motion to suppress, Martin further claims "Det. Stross only makes barebone conclusions and unsubstantiated generalizations[,] * * * fails to articulate what basis he relied upon in filing charges * * * [and] what training has equipped him with the knowledge to render a crime was committed in the abstract."

{¶22} The Fourth Amendment to the United States Constitution and Section 14, Article I of the Ohio Constitution both require that a warrant only be issued if probable cause is demonstrated through an oath or affidavit. *State v. Williams*, 8th Dist. Cuyahoga No. 98100, 2013-Ohio-368, ¶ 13. This court has held that "[p]robable cause to arrest exists where the facts and circumstances within the arresting officer's knowledge are sufficient to warrant a prudent man in believing that an offense was committed." *State v.*

Steward, 8th Dist. Cuyahoga No. 80993, 2003-Ohio-1337, ¶ 21, citing *Beck v. Ohio*, 379 U.S. 89, 91, 85 S.Ct. 223, 13 L.Ed.2d 142 (1964).

{¶23} Crim.R. 4(A)(1) governs the issuance of arrest warrants in Ohio and provides, in relevant part, that "the finding of probable cause may be based upon hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished." Thus, Martin's argument that the complaint for his arrest is defective because Detective Stross did not witness the event is unpersuasive.

{¶24} We disagree with Martin's contention that the complaint is "barebone," and that it fails to articulate the basis for the filing of charges. In his affidavit, Detective Stross states "[t]he victim is [ten-years] old and conveyed she was raped by [Martin]." Detective Stross further details the specifics of the offenses as alleged by K.B.

{¶25} Martin argues that because Detective Stross did not personally interview K.B. before preparing the affidavit, "he was only under the belief that a crime had taken place." At the time Detective Stross sought the arrest warrant, K.B. had provided a written statement to Cleveland Heights police and had been interviewed by a Cleveland Heights police officer. Detective Stross had interviewed K.B.'s aunt, K.S., and cousin, T.M. When cross-examined by Martin at trial, Detective Stross explained that in seeking the warrant, he relied upon the information provided by his colleague's interview with K.B. as well as K.B.'s written statement, which he "determined * * * to be accurate and concise." We find that at the time he submitted the complaint, Detective Stross had

sufficient information to warrant a reasonable belief that Martin had committed an offense.

{¶26} Martin also takes issue with the lack of physical evidence supporting the complaint for his arrest. Martin essentially argues that the arrest warrant is deficient because the investigation of K.B.'s allegations was not yet complete. There is no authority that requires completion of a criminal investigation prior to issuance of an arrest warrant. As discussed above, we find the arrest warrant was based upon probable cause because Detective Stross's affidavit demonstrates "facts and circumstances * * * sufficient to warrant a prudent man in believing that an offense was committed." *Steward*, 8th Dist. Cuyahoga No. 80993, 2003-Ohio-1337, at _ 21, citing *Beck*, 379 U.S. 89, 91, 85 S.Ct. 223, 13 L.Ed.2d 142, at 91.

{¶27} Based on the foregoing, we do not find that the claims in Martin's suppression motion justify any relief. Moreover, the arrest warrant was issued upon a complaint that sufficiently demonstrated probable cause. Therefore, the trial court did not err in denying his suppression motion without conducting an evidentiary hearing.

{¶28} Accordingly, the first assignment of error is overruled.

Motion to Dismiss

{¶29} In the second assignment of error, Martin argues that the trial court erred in denying his January 2017 motion to dismiss. Specifically, he argues that his motion should have been granted because of "defects in the institution of the prosecution" and a "variance between complaint and indictment," resulting in double jeopardy. He further

argues the indictment is defective because it was signed by a "robot." We find his arguments unpersuasive.

{¶30} With regard to his argument that there were "defects in the institution of the prosecution" Martin contends Cleveland Heights police violated R.C. 2151.421(E)(1) by pursuing a criminal investigation into K.B.'s allegations "because police are required to turn [a] case over to [the Department of Child and Family Services] for investigation/assessment."

{¶31} R.C. 2151.421 sets forth reporting requirements for child abuse or neglect. Specifically, R.C. 2151.421(E)(1) provides that

> [w]hen a municipal or county peace officer receives a report concerning the possible abuse or neglect of a child or the possible threat of abuse or neglect of a child, upon receipt of the report, the municipal or county peace officer who receives the report shall refer the report to the appropriate public children services agency.

{¶32} We find no support within this statute for Martin's claim that reports of child abuse or neglect are to be "exclusively" investigated by public children services agencies. K.B.'s allegations against Martin constituted criminal conduct alleged to have occurred in the city of Cleveland Heights over which Cleveland Heights police had jurisdiction to investigate.

{¶33} Martin further argues the trial court should have dismissed the indictment because it "was extended to include every form of sexual activity, which increased the

State's chances of success." Martin argues that the felony indictment is violative of the double jeopardy clause because it contained additional charges and a different timeframe than the complaint issued in Cleveland Heights Municipal Court. Specifically, he notes that the "[c]omplaint charged one count of rape and one count of kidnapping but [the] indictment added two counts of [GSI], one count of att[empted] rape[,] and stretched the kidnapping by attaching a sexual motivation spec[fication]."

{¶34} Crim.R. 3 explains that "[t]he complaint is a written statement of the essential facts constituting the offense charged." The purpose and function of a complaint is to inform the accused of the crime for which he is charged. *Lakewood v. Calanni*, 154 Ohio App.3d 703, 2003-Ohio-5246, 798 N.E.2d 701, ¶ 25 (8th Dist.). Crim.R. 7 requires that "all * * * felonies shall be prosecuted by indictment, except that after a defendant has been advised by the court of the nature of the charge against the defendant and of the defendant's right to indictment, the defendant may waive that right in writing and in open court." Martin provides no authority in support of his argument that the formal indictment issued by the grand jury must exactly mirror the initial complaint.

{¶35} Martin also argues that the municipal court proceedings, coupled with his felony trial, result in double jeopardy. This argument is unpersuasive. We have previously explained that in felony cases, a municipal court has no jurisdiction or power to determine the guilt or innocence of an accused. *State v. Nelson*, 51 Ohio App.2d 31, 32, 365 N.E.2d 1268 (8th Dist.1977), paragraph three of the syllabus. A preliminary

hearing conducted in a municipal court does not place the accused in jeopardy. *Id*. A preliminary hearing is limited to a felony probable cause determination after which the municipal court may bind the accused over to the court of common pleas, order the accused discharged, or, if it finds probable cause for the commission of a misdemeanor offense only, it may retain the case for trial after the issuance of a misdemeanor complaint. *Id.* at paragraph two of the syllabus.

{¶36} Lastly, Martin takes issue with the electronic signature of the grand jury foreperson on the indictment. Relying upon the Black's Law Dictionary definition of "signature" as "a person's name or mark written by that person," he argues the "affixed [signature] print[ed] by a robot" constitutes a jurisdictional defect.

{¶37} As an initial matter, we note the use of electronic signatures has become common place in the law. Indeed, the Ohio Uniform Electronic Transactions Act at R.C. 1306.06(A) provides that "a record or signature may not be denied legal effect or enforceability because it is in electronic form." The act further provides "[i]f a law requires a signature, an electronic signature satisfies the law." R.C. 1306.06(D). Thus, under the act, the requirement under Crim.R. 6(C) and (F) that either grand jury foreman or deputy foreman sign the indictment is satisfied by his or her electronic signature.

{¶38} In light of the foregoing, we conclude the trial court did not err in denying Martin's motion to dismiss. Accordingly, the second assignment of error is overruled.

Speedy Trial

{¶39} In the third assignment of error, Martin claims that his right to a speedy trial was violated.

{¶40} In *State v. Baker*, 78 Ohio St.3d 108, 676 N.E.2d 883 (1997), the Ohio Supreme Court discussed the constitutional and statutory rights to a speedy trial.

> The right to a speedy trial is guaranteed by the Sixth Amendment to the United States Constitution and Section 10, Article I of the Ohio Constitution. The individual states are obligated under the Fourteenth Amendment to afford a person accused of a crime such a right. *Klopfer v. North Carolina*, 386 U.S. 213, 222-223, 87 S.Ct. 988, 993, 18 L.Ed.2d 1, 7-8 (1967). However, the states are free to prescribe a reasonable period of time to conform to constitutional requirements. *Barker v. Wingo*, 407 U.S. 514, 523, 92 S.Ct. 2182, 2188, 33 L.Ed.2d 101, 113 (1972). In response to this constitutional mandate, Ohio has enacted R.C. 2945.71 to 2945.73, which designate specific time requirements for the state to bring an accused to trial.

Id. at 110.

Constitutional Right to a Speedy Trial

{¶41} Martin contends his constitutional speedy trial rights were violated in this matter. In determining whether a constitutional speedy trial violation exists, we balance four factors _ the length of the delay, the reason for the delay, the accused's assertion of his or her right to a speedy trial, and the prejudice to the accused as a result of the delay.

Barker v. Wingo, 407 U.S. 514, 530, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972). This court has explained "[t]he first factor, the length of the delay, is a 'triggering mechanism,' determining the necessity of inquiry into the other factors." *State v. Robinson*, 8th Dist. Cuyahoga No. 105243, 2017-Ohio-6895, ¶ 9, quoting *State v. Triplett*, 78 Ohio St.3d 566, 569, 679 N.E.2d 290, citing *Barker* at 530. The defendant must make a threshold showing of a "presumptively prejudicial" delay to trigger an analysis of the other *Barker* factors. *Doggett v. United States*, 505 U.S. 647, 652, 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992). Post-accusation delay approaching one year is generally found to be presumptively prejudicial. *Robinson*, citing *Doggett* at fn. 1.

{¶42} Here, Martin was brought to trial in a little over six months after the issuance of the indictment. He acknowledges the "length of delay wasn't so egregious as to warrant automatic dismissal." Thus, we do not find that Martin has established that the time between the indictment and trial in this matter constituted a presumptively prejudicial delay. Martin has not satisfied the threshold showing and, therefore, his constitutional speedy trial challenge is unpersuasive.

Statutory Speedy Trial Right

{¶43} Martin also argues the statutory speedy trial time prescribed by R.C. 2945.71 to 2945.73 expired before he was brought to trial. Under R.C. 2945.71(C)(2), the state is required to bring a defendant to trial on felony charges within 270 days of arrest. *Id*. at ¶ 19. Each day a defendant is held in jail in lieu of bail counts as three days in the speedy trial time calculation. R.C. 2945.71(E). R.C. 2945.72 provides, in relevant part, that speedy trial time may be tolled by the following:

> (C) Any period of delay necessitated by the accused's lack of counsel, provided that such delay is not occasioned by any lack of diligence in providing counsel to an indigent accused upon his request as required by law;
>
> * * *
>
> (E) Any period of delay necessitated by reason of a * * * motion, proceeding, or action made or instituted by the accused;
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> * * *
>
> (H) The period of any continuance granted on the accused's own motion, and the period of any reasonable continuance granted other than upon the accused's own motion[.]

R.C. 2945.72.

{¶44} When reviewing a statutory speedy trial issue, this court counts the days and determines whether the number of days not tolled exceeds the time limits for bringing the defendant to trial as set forth in R.C. 2945.71. *State v. Geraci*, 8th Dist. Cuyahoga Nos. 101946 and 101947, 2015-Ohio-2699, ¶ 20. "If the state has violated a defendant's right to a speedy trial, then upon motion made prior to trial, the defendant 'shall be

discharged,' and further criminal proceedings based on the same conduct are barred." *Id*., quoting R.C. 2945.73(B).

{¶45} Here, Martin was arrested on December 5, 2016. He was incarcerated while awaiting trial. Thus, under the "triple count provision" of R.C. 2945.71(E), the state had 90 days in which to bring him to trial. "The statutory speedy trial period begins to run on the date the defendant is arrested; however, the date of arrest is not counted when calculating speedy trial time." *Geraci* at ¶ 21.

{¶46} A total of 60 speedy trial days elapsed from the date following Martin's arrest to the start of trial. The record reflects that a demand for discovery and motion for bill of particulars filed by defense counsel on December 9, 2016. The record further reflects continuances at the request of defense at various points from January 10, 2017, until February 27, 2017. From December 6, 2016 until February 27, 2017, we calculate that 11 speedy trial days elapsed.

{¶47} On February 27, 2017, the trial court permitted Martin's counsel to withdraw. On March 1, 2017, the trial court appointed an assistant Cuyahoga County public defender to represent Martin. The speedy trial clock tolled from February 28 until March 1, 2017, while Martin was without counsel. *See* R.C. 2945.72(C).

{¶48} While Martin was represented by the assistant county public defender, various continuances were made at the request of defense. Martin argues the actions of the assistant public defender do not count against him for purposes of speedy trial time because "Martin was under the belief that he technically represented himself at the point

of [original] counsel's withdrawal." However, this court has held that "'[a] defendant's right to be brought to trial within the time limits expressed in R.C. 2945.71 may be waived by his counsel for reasons of trial preparation and the defendant is bound by the waiver even though the waiver is executed without his consent.'" *State v. Williams*, 8th Dist. Cuyahoga No. 100898, 2014-Ohio-4475, ¶ 59, quoting *State v. McBreen*, 54 Ohio St.2d 315, 376 N.E.2d 593 (1978), syllabus.

{¶49} On April 10, 2017, the assistant public defender moved to withdraw as counsel, advising the court that Martin wished to proceed pro se. Two days later, the trial court denied counsel's motion to withdraw, but referred Martin to the court psychiatric clinic for an evaluation of whether he was competent to represent himself. Martin filed an appeal to this court from the trial court's order denying counsel's motion to withdraw.[2] As a result, the trial court recused itself and, on May 5, 2017, the case was transferred to the administrative judge for reassignment.

{¶50} After reassignment, the new trial court judge set a pretrial for May 10, 2017, which was ultimately reset to May 16, 2017. From May 5 until May 16, 2017, an additional 11 speedy trial days elapsed. The trial court sua sponte continued the May 16, 2017 pretrial to May 18, 2017 because the trial court was "waiting on [a] transcript" from a hearing before the previous trial court. We find this two-day sua sponte continuance was reasonable in its length and purpose, and thus served to toll speedy trial time. *State v. Lee*, 48 Ohio St.2d 208, 209, 357 N.E.2d 1095 (1976); R.C. 2945.72(H).

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[2] Martin voluntarily dismissed this appeal.

{¶51} On May 18, 2017, the trial court permitted Martin to proceed pro se. The trial court set a June 5, 2017 pretrial and July 24, 2017 trial date. From May 18, 2017 to June 5, 2017, 18 speedy trial days elapsed. The June 5, 2017 pretrial was continued one day, to June 6, 2017, at defense request. On June 6, 2017, the trial court ordered the state to respond to the various pro se motions Martin had filed throughout the pendency of the case before a June 20, 2017 hearing, tolling speedy trial time until that time.

{¶52} On June 20, 2017, the trial court held a hearing on Martin's motion to dismiss for violation of his right to a speedy trial. Based upon a speedy trial calculation provided by the state, the trial court determined that at that time, there were 19 speedy-trial days remaining. The journal entry states "[t]ime calculated. Parties agree 19 days left."

{¶53} At Martin's request, the trial date was moved up to July 10, 2017. From June 20 until July 10, 2017, 20 days elapsed for a total of 60 speedy trial days _ well within the 90 days required under R.C. 2945.71.

{¶54} Having found no violation of Martin's constitutional and statutory speedy trial rights, the third assignment of error is overruled.

Sufficiency of the Evidence

{¶55} In the fourth assignment of error, Martin argues that the state did not meet its burden of producing sufficient evidence to prove each element of the offenses for which he was convicted beyond a reasonable doubt.

{¶56} Our review for sufficiency tests the adequacy of the state's evidence. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541. When reviewing for sufficiency of the evidence, our function "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." *State v. Jenks*, 61 Ohio St.3d 259, 262, 574 N.E.2d 492 (1991). "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." *Id*.

{¶57} Here, the trial court found Martin guilty of attempted rape under R.C. 2907.02(A)(1)(b), which provides, in relevant part, that "[n]o person shall engage in sexual conduct with another who is not the spouse of the offender, when * * * [t]he other person is less than thirteen years of age, whether or not the offender knows the age of the other person." The trial court also found Martin guilty of GSI under R.C. 2907.05(A)(4), which prohibits "sexual contact with another, not the spouse of the offender * * * when * * * [t]he other person * * * is less than thirteen years of age, whether or not the offender knows the age of that person."

{¶58} Martin was also found guilty of kidnapping under R.C. 2905.01(A)(4) with a sexual motivation specification under R.C. 2941.147. R.C. 2905.01(A)(4) provides that

> [n]o person, by force, threat, or deception, or, in the case of a victim under the age of thirteen * * * by any means, shall remove another from the place where the other person is found or restrain the liberty of the other person,

> for [the] purpose[] * * * [of engaging] in sexual activity, as defined in [R.C. 2907.01], with the victim against the victim's will[.]

{¶59} Here, the state elicited testimony that K.B. was ten years old at the time of the offense in December 2016. K.B. testified that Martin got into the bed she shared with her cousin, pulled down her pants, and attempted to put his "private part" in her from behind while holding down her arms. She explained that he was unsuccessful because she kept her legs closed, but that he proceeded to put his tongue on her private area before pulling her pants up and leaving the room. K.B.'s testimony was corroborated by the testimony of other witnesses as well as DNA evidence indicating Martin's DNA was present in amylase swabbed from the rear panel of K.B.'s underwear.

{¶60} Our review of the record demonstrates the state presented sufficient evidence and met its burden of production as to Martin's convictions for attempted rape, GSI, and kidnapping.

{¶61} Accordingly, the fourth assignment of error is overruled.

Manifest Weight

{¶62} In the fifth assignment of error, Martin argues his convictions were against the manifest weight of the evidence.

{¶63} In evaluating a criminal manifest weight challenge, we review the entire record, weigh the evidence and all reasonable inferences, and consider the credibility of all witnesses and determine whether, in resolving conflicts in the evidence, the factfinder clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. *Thompkins*, 78 Ohio St.3d at 387,

1997-Ohio-52, 678 N.E.2d 541, quoting *State v. Martin*, 20 Ohio App.3d 172, 485 N.E.2d 717 (1st Dist.1983), paragraph three of the syllabus. Reversal of a conviction on manifest weight grounds is reserved for "the exceptional case in which the evidence weighs heavily against the conviction." *Id*.

{¶64} In conducting this review, this court remains mindful that the weight of the evidence and the credibility of the witnesses are matters primarily for the fact-finder to assess. *State v. Bradley*, 8th Dist. Cuyahoga No. 97333, 2012-Ohio-2765, ¶ 14, citing *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. The rationale behind this principle is that the trier of fact is in the best position to take into account inconsistencies, along with the witnesses' manner and demeanor, and determine whether the witnesses' testimonies are credible. *Id*.

{¶65} Martin contends K.B.'s testimony is not credible. He argues her testimony was inconsistent with the statement she gave to police and the narrative she gave to the SANE nurse examiner. Martin further argues that "had [he] been presented with an opportunity to be heard, he could have submitted that K.B.'s testimony was impeachable [sic] by the state's own evidence, being the police reports it strategically did not admit at trial."

{¶66} We note that Martin cross-examined K.B. and did not attempt to impeach her testimony through her prior statements. The record reflects the state provided the police reports to defense counsel in January 2017, and that the state and standby counsel provided all discovery to Martin when he was permitted to proceed pro se.

{¶67} Martin points to the fact that K.B. did not "scream[ ] or call[ ] for help." At trial, Martin cross-examined K.B. on this topic. K.B. gave a very reasonable reply given her age and the nature of the offenses:

> [Martin:] Is there any reason why you didn't call out for your aunt or try to get away?
>
> [K.B.]: Because I was afraid.

{¶68} In further support of his manifest weight challenge, Martin attempts to call into question the reliability of DNA evidence presented at trial. At trial, he presented his own theory that K.B. came in contact with his DNA by sitting on the toilet on which he had sweated. He also contends the Ohio Bureau of Criminal Investigation ("BCI") uses a "biased analytical approach" in testing the forensic evidence because the BCI forensic scientist testified "[i]f we get [DNA] profiles that basically answer the questions that the testing was asked of us, then we stop [testing]." We find these arguments unpersuasive. Martin presents no expert testimony in support of his theory or his argument that the approach used by the BCI is "biased" or "unscientific."

{¶69} After careful review of the record, we conclude the trial court did not lose its way in weighing the evidence to reach the determination that Martin was guilty of attempted rape, GSI, and kidnapping. This is not the "'exceptional case in which the evidence weighs heavily against the conviction.'" *Thompkins*, 78 Ohio St.3d at 387, 1997-Ohio-52, 678 N.E.2d 541, quoting *Martin*, 20 Ohio App.3d 172, 485 N.E.2d 717.

{¶70} Accordingly, the fifth assignment of error is overruled.

Sentence

{¶71} In the sixth and seventh assignments of error, Martin challenges his sentence. In the sixth assignment of error, Martin argues his sentence was not statutorily authorized. He also argues he was subject to "cumulative punishment for alleged offenses of similar import," and that his sexual offender registration requirement constitutes an additional punishment, resulting in double jeopardy. In the seventh assignment of error, Martin contends the sexual motivation specification under R.C. 2941.147 is unconstitutional when charged with kidnapping under R.C. 2905.01(A)(4).

{¶72} At the sentencing hearing, the state advised the trial court of its position that the attempted rape and GSI each merge into the kidnapping count. The trial court sentenced Martin on the kidnapping count only, imposing a single mandatory term of ten years to life. Martin argues this sentence is not statutorily authorized. This argument is unpersuasive.

{¶73} R.C. 2905.01(C) provides, in pertinent part:

> (3) If the victim of the [kidnapping] offense is less than thirteen years of age and if the offender also is convicted of * * * a sexual motivation specification that was included in the indictment, * * * kidnapping is a felony of the first degree, and, notwithstanding the definite sentence provided for a felony of the first degree in [R.C. 2929.14], the offender shall be sentenced pursuant to [R.C. 2971.03] as follows:
>
> * * *
>
> (b) If the offender releases the victim in a safe place unharmed, the offender shall be sentenced pursuant to that section to an indefinite term consisting of a minimum term of ten years and a maximum term of life imprisonment.[3]

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[3] *See also* R.C. 2971.03(B)(3)(a).

{¶74} Here, the trial court found Martin guilty of kidnapping with a sexual motivation specification. The state established that K.B. was under 13 years old at the time of the offense. At the conclusion of trial, the trial court found that K.B. was left unharmed as related to the kidnapping count. Thus, under R.C. 2905.01(C)(3)(b), the trial court was required to impose an indefinite prison term of ten years to life.

{¶75} Martin's argument that he was subject to cumulative punishment for allied offenses of similar import is unsupported by the record. As discussed above, the trial court sentenced Martin to a single term on the kidnapping count only.

{¶76} Likewise, Martin's argument that his sex offender registration requirement violates double jeopardy is unpersuasive. In *State v. Williams*, 88 Ohio St.3d 513, 2000-Ohio-428, 728 N.E.2d 342, the Ohio Supreme Court held that the registration requirement for sexually oriented offenses prescribed by R.C. Chapter 2950 does not violate the Double Jeopardy Clauses of the United States and Ohio Constitutions because that chapter is neither "criminal," nor does it inflict punishment. *Id.* at 527-528.

{¶77} Martin further contends his kidnapping conviction with a sexual motivation specification "is incompatible with the Double Jeopardy Clause of the United States Constitution," essentially arguing the specification is akin to a conviction.

{¶78} R.C. 2941.147 provides that

> [w]henever a person is charged with an offense that is a violation of * * * [R.C. 2905.01] * * * the * * * count in the indictment * * * may include a specification that the person committed the offense with a sexual motivation. This specification requires the state show that the underlying offense was committed with "a purpose to gratify the sexual needs or

desires of the offender."

Id. at (B); R.C. 2971.01(J). Under Ohio law, a specification may not stand on its own in an indictment, but must be charged accompanying the underlying offense.[4] *See generally* R.C. 2941.141 to 2941.1423.

{¶79} Based on the foregoing, the sixth and seventh assignments of error are overruled.

{¶80} Judgment is affirmed.

It is ordered that appellee recover of 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.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, JUDGE

EILEEN A. GALLAGHER, A.J., and
TIM McCORMACK, J., CONCUR

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[4] "Charge" and "specifications" are defined as "[t]he general allegation of the commission of a crime, and the detailed facts thereof." *Ballentine's Law Dictionary* (3d Ed.1969).