[Cite as *State v. Crawford*, 2009-Ohio-4649.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 08AP-1055 (C.P.C. No. 07CR-8947)
Deion V. Crawford,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on September 8, 2009

Ron O'Brien, Prosecuting Attorney, and *Kimberly M. Bond*, for appellee.

Toki Michelle Clark, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

McGRATH, J.

{¶1} Plaintiff-appellant, Deion V. Crawford ("appellant"), appeals a judgment of conviction and sentence entered by the Franklin County Court of Common Pleas. For the following reasons, we affirm that judgment.

{¶2} On November 26, 2007, 20-year-old T.R.[1] reported to police that appellant, who was her mother's boyfriend, had raped her. On December 4, 2007, appellant was arrested and subsequently indicted on one count of rape, in violation of R.C. 2907.02, and one count of kidnapping, in violation of R.C. 2905.01.

[1] Initials are used to protect the anonymity of the victim.

{¶3} On October 27, 2008, the case proceeded to trial and the following facts were adduced. On the evening of November 25, 2007, T.R. was at home with her infant son when she received a phone call from her mother, who related to T.R. that she and appellant had a fight and that T.R. was not to let appellant into the home they shared. While she spoke with her mother, T.R. verified that both the front door and back sliding glass door were locked. When the call ended, T.R. went upstairs and watched television until she fell asleep with her son.

{¶4} Although T.R. had locked all the doors to the apartment, appellant was able to get inside by shaking the sliding glass door until the lock bar fell out. Once inside, appellant woke T.R. up and asked to use her phone. Appellant called T.R.'s mother and attempted to reconcile with her. While appellant was on the phone with T.R.'s mother, T.R. also called her mother and expressed concern about appellant's presence in the home. Although hesitant, T.R.'s mother told appellant he could call his brother or stay the night if he had nowhere else to go.

{¶5} T.R. returned to bed, but soon after falling asleep, appellant woke her up and told her the house phone was not working correctly and asked if he could use her cell phone. T.R. gave appellant her cell phone and he left the room to make a call. Appellant, however, could not figure out how to operate the phone, so he called out to T.R. and asked her to show him how to use it. T.R. complied and she got up and went into the room where appellant was and showed him how to make a call. While appellant placed a call to his brother, T.R. sat on the bed and waited. Appellant, however, did not get an answer to his phone call.

{¶6} Thereafter, appellant asked T.R. if she had ever received oral sex. He then pulled out a knife and held it to her neck as he pushed her onto the bed. She initially resisted, but then quieted down after he threatened her. Appellant pulled off T.R.'s shorts and underwear and began to perform oral sex on her. T.R. pleaded with him to stop, but appellant continued and told her to cooperate. Appellant then attempted to have vaginal intercourse with T.R. but was unsuccessful. He resumed oral sex on her until her son woke up crying. Appellant then stopped and told her to get her son and come back to the room.

{¶7} T.R. complied with appellant's request and, upon her return to the room with her son, appellant acted as if nothing had happened. He then told her not to tell anyone. T.R. stayed in the room with appellant because she feared that he would harm her or her son. After awhile, she falsely told appellant that a cab was arriving at 8 a.m. to take her and her son to a doctor's appointment. She also told appellant that she had to go to the apartment rental office before the cab arrived. Appellant allowed her to leave, but told her that her son had to remain with him. Although T.R. was reluctant to leave her son, she did, reasoning that she did not think appellant would harm him.

{¶8} T.R. left the apartment and first called her son's home care nurse, Gretchen Clark ("Clark"), because she was scheduled to arrive at the home at 8 a.m. She told Clark that appellant had raped her. Clark then contacted the police. T.R. next called her mother and other family members and informed them as to what had transpired with appellant. A short time later, an ambulance arrived, as did T.R.'s aunt. T.R. entered the apartment with them and found her son alone. The police arrived, and T.R. was taken to the hospital.

{¶9} Upon her arrival at the hospital, T.R. was examined primarily by Michelle Ross ("Ross"), a sexual assault nurse examiner. Ross interviewed T.R. regarding the incident and recorded her findings in a written report. Ross then conducted a physical examination of T.R., using a sexual assault kit to collect a swab sample from her inner thigh. Ross's examination of T.R. was consistent with the incident as reported by T.R. In addition to Ross's examination, T.R. received a cursory examination from a physician and was also interviewed by a police detective.

{¶10} On November 27, 2007, after T.R. was released from the hospital, appellant called T.R.'s mother. Appellant claimed that he did not know what was going on and told T.R.'s mother that he was out of town. He also stated that he was told that people were after him and that he needed money to get a lawyer. T.R.'s mother notified the police that she had been contacted by appellant and was encouraged to convey to appellant the impression that she was going to help him. In accordance with that suggestion, T.R.'s mother falsely told appellant that she did not believe her daughter's story. The next time appellant called T.R.'s mother, she told him that she had money to help him out, and they arranged to meet at her cousin's house. T.R.'s mother called the police, informed them of the meeting, and when appellant arrived at the meeting place, he was arrested.

{¶11} Appellant was interviewed by detectives and consented to an oral swab that was later compared to the swab sample taken from T.R.'s inner thigh. A laboratory analysis of the swab sample taken from T.R. tested presumptive positive for saliva; however, the forensic scientist was unable to develop a DNA profile from this sample because an insufficient amount of the sample was taken.

{¶12} The matter proceeded to trial, and a jury found appellant guilty of rape and kidnapping. On October 31, 2008, a sentencing hearing was held. Appellant was sentenced to a concurrent seven-year prison term for each offense. The court also informed appellant that he is a Tier III sex offender and would have to notify the sheriff's office of his residential address with verification every 90 days for the rest of his life. The court further told him that the sheriff's office would notify the community in which he lives that a sex offender resides in the neighborhood.

{¶13} On December 2, 2008, appellant filed a timely notice of appeal and assigns the following three errors:

> [1.] A trial court errs in labeling a defendant a sexual offender where no hearing is held to address such labeling and the court is vague as to what such labeling requires.
>
> [2.] A criminal defendant charged with rape does not receive a fair trial where the court overrules a defense motion to receive the attending physician's records.
>
> [3.] The conviction of appellant for rape and kidnapping is against the manifest weight of the evidence.

{¶14} Appellant contends in his first assignment of error that the trial court erred in labeling him a sexual offender because no hearing was held, and the trial court's statement regarding his duty to register as a sex offender was vague. We disagree.

{¶15} Appellant was found guilty of the offense of rape, in violation of R.C. 2907.02. Pursuant to R.C. 2950.01(G)(1)(a), a person convicted of rape is a Tier III sex offender. Furthermore, pursuant to R.C. 2929.19(B)(4)(a)(ii), a trial court is required to include in the offender's sentence a statement that the offender is a Tier III sex offender. This provision also requires compliance with R.C. 2950.03. More specifically, pursuant to R.C. 2950.03(A)(2), a judge is required at sentencing to provide a sex offender sentenced

after January 1, 2008, with notice that he is to register with the sheriff pursuant to R.C. 2950.04. Additionally, R.C. 2950.07(B)(1) provides that the registration requirement for a Tier III sex offender is for life, and R.C. 2950.06(B)(3) requires verification every 90 days.

{¶16} Furthermore, the tier classification of sex offenders operates as a matter of law, not by judicial determination. *State v. Barker*, 2d Dist. No. 22963, 2009-Ohio-2774, ¶9. A trial court is not required to hold a hearing to determine that an individual convicted of a sexually oriented offense is a sexually oriented offender. *State v. Chambers*, 151 Ohio App.3d 243, 2002-Ohio-7345, ¶14, citing *State v. Hayden*, 96 Ohio St.3d 211, 2002-Ohio-4169, ¶15. Once an individual is convicted of a sexually oriented offense, he is automatically classified as a sexually oriented offender and must comply with the registration requirements of R.C. 2950.04. Id. Additionally, R.C. Chapter 2950 is not meant to punish a defendant but, instead, is "to protect the safety and general welfare of the people of this state." *State v. Eppinger*, 91 Ohio St.3d 158, 165, 2001-Ohio-247.

{¶17} In this case, appellant is deemed a Tier III sex offender by virtue of his conviction for rape. The record demonstrates that the trial court told appellant at sentencing, "[y]ou have to keep the sheriff's office notified of your residential address and verify it every 90 days, but the requirement is for a lifetime. Also the sheriff will notify the community where you live, that there's a sex offender in the neighborhood." (Tr. 276.) The trial court was not required to hold a separate hearing to inform appellant of his classification as a Tier III sex offender because the classification arose from his conviction. *Chambers* at ¶14. Thus, the trial court complied with R.C. 2929.19(B)(4)(a) and 2950.03(A)(2) by notifying appellant that he is a Tier III sex offender and that he is required to comply with the statutory registration requirements.

{¶18} Furthermore, we fail to see how the above-stated notification to appellant at sentencing is vague. Appellant does not cite any authority for his contention that notification requires express language. Here, the notification properly informed appellant that he is required to notify the sheriff's office of his residential address for the rest of his life and that he must verify it every 90 days. Also, appellant can readily infer from the wording of the notification that he must notify the sheriff's office in the county in which he resides, and that he is the subject of the sheriff's notification to that community.

{¶19} Because the trial court was not required to hold a separate hearing to inform appellant he is a Tier III sex offender and because the trial court's statement regarding registration requirements was not vague, we overrule appellant's first assignment of error.

{¶20} Appellant contends in his second assignment of error that he did not receive a fair trial because the trial court overruled a defense motion to receive the attending physician's records. We disagree.

{¶21} The grant or denial of a discovery motion in a criminal case rests within the sound discretion of the trial court, and a reviewing court will not reverse the trial court's decision absent an abuse of discretion. *State v. Jenkins*, 174 Ohio App.3d 374, 2007-Ohio-7180, ¶10. The term "abuse of discretion" connotes more than an error of law or of judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *State v. Adams* (1980), 62 Ohio St.2d 151, 157. When applying this standard, an appellate court is not free to substitute its judgment for that of the trial judge. *Berk v. Matthews* (1990), 53 Ohio St.3d 161, 169. The issue of whether testimony or evidence is relevant or irrelevant, confusing or misleading, is best decided by the trial judge, who is in

a significantly better position to analyze the impact of the evidence on the jury. *Renfro v. Black* (1990), 52 Ohio St.3d 27, 31.

{¶22} The record reflects that during Ross's direct examination, she testified that in her capacity as a sexual assault nurse examiner she was primarily responsible for T.R.'s examination. Ross also testified as to State's Exhibit D, T.R.'s record, which included her chart, medical information, Ross's findings, and information related by T.R. about the incident. During cross-examination, Ross testified that, in addition to her examination, an attending physician conducted a cursory examination of T.R. When defense counsel inquired as to the whereabouts of the attending physician's dictation, Ross testified that the same was stored in the hospital computer system to which she did not have access. During this colloquy, defense counsel expressed a desire to see the attending physician's dictation. The state responsively objected on the basis that Ross was not the record keeper. The court then informed defense counsel that the court was not going to recess so that he could procure the dictation if, in fact, it had not already been subpoenaed. Defense counsel moved to have access to the dictation, and the trial court sustained the state's objection. Ross then testified that State's Exhibit D was the complete record of T.R.'s examination and acknowledged that the same did not contain the attending physician's dictation.

{¶23} Appellant argues the dictation was material to his defense, and the state violated Crim.R. 16(B)(1)(f) because it failed to disclose this evidence. The suppression by the prosecution of evidence that is favorable to the accused and "material either to guilt or to punishment" is a violation of due process. *State v. LaMar*, 95 Ohio St.3d 181, 2002-Ohio-2128, ¶27, citing *Brady v. Maryland* (1963), 373 U.S. 83, 87, 83 S.Ct. 1194,

1197. Evidence suppressed by the prosecution is "material" within the meaning of *Brady* only if there exists a "reasonable probability" that the result of the trial would have been different had the evidence been disclosed to the defense. *LaMar* at ¶27, citing *Kyles v. Whitley* (1995), 514 U.S. 419, 433-34, 115 S.Ct. 1555, 1566. To establish that the prosecution violated *Brady*, appellant must demonstrate the following: (1) the prosecution failed to disclose evidence upon request; (2) the evidence was favorable to the defense; and (3) the evidence was material. *State v. Jones*, 11th Dist. No. 2000-A-0083, 2002-Ohio-2074.

{¶24} The record does not demonstrate that appellant requested the dictation before trial, pursuant to Crim.R. 16(B)(1)(f), nor is there any evidence that the state acted to suppress it. Furthermore, there is nothing in the record to suggest that the subject matter of the dictation was materially different from the information contained in State's Exhibit D, and, thus, appellant has failed to demonstrate that the dictation would have even been favorable. Finally, there is no demonstration that the outcome of appellant's trial would have been different if the dictation had been included in the record of T.R.'s examination. Because the trial court did not abuse its discretion overruling appellant's motion for the dictation and because appellant has failed to prove a *Brady* violation, we overrule his second assignment of error.

{¶25} In his third assignment of error, appellant contends his conviction for rape and kidnapping is against the manifest weight of the evidence. We disagree.

{¶26} In determining whether a verdict is against the manifest weight of the evidence, we sit as a "thirteenth juror." *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52. Thus, we review the entire record, weigh the evidence and all reasonable

inferences, and consider the credibility of witnesses. Id. Additionally, we 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." Id., quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175. We reverse a conviction on manifest weight grounds for only the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " *Thompkins* at 387, quoting *Martin* at 175. Moreover, " 'it is inappropriate for a reviewing court to interfere with factual findings of the trier of fact * * * unless the reviewing court finds that a reasonable juror could not find the testimony of the witness to be credible.' " *State v. Brown*, 10th Dist. No. 02AP-11, 2002-Ohio-5345, ¶10, quoting *State v. Long* (Feb. 6, 1997), 10th Dist. No. 96APA04-511.

{¶27} Appellant claims no reasonable inference exists to deduce that he would suddenly rape his girlfriend's 20-year-old daughter absent any previous sexual interest in her. Rather, appellant, citing the genre of "daytime television talk shows," argues that "it is a reasonable inference to make that in the course of human affairs, an of-age daughter would consensually engage in sexual conduct with her mother's boyfriend." (Appellant's brief at 11.) Appellant contends that this inference, coupled with the fact that there was insufficient forensic evidence and T.R.'s alleged questionable testimony, does not support his conviction.

{¶28} R.C. 2907.02(A)(2) provides that "[n]o person shall engage in sexual conduct with another when the offender purposely compels the other person to submit by force or threat of force." "[W]hoever violates this section is guilty of rape, a felony of the first degree." R.C. 2907.02(B).

{¶29} Additionally, R.C. 2905.01(A)(4) provides that "[n]o person, by force, threat, or deception * * * shall * * * restrain the liberty of the other person, for any of the following purposes: * * * [t]o engage in sexual activity, as defined in section 2907.01 of the Revised Code, with the victim against the victim's will." "[W]hoever violates this section is guilty of kidnapping." R.C. 2905.01(C)(1).

{¶30} In either a criminal or civil case, the weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts. *State v. DeHass* (1967), 10 Ohio St.2d 230, 231. Because a fact finder has the opportunity to see and hear the witnesses, the cautious exercise of the discretionary power of a court of appeals to find that a judgment is against the manifest weight of the evidence requires that substantial deference be extended to the fact finder's determinations of credibility. *State v. Lawson* (Aug. 22, 1997), 2d Dist. No. 16288.

{¶31} Although there was insufficient forensic evidence in this case, the record reflects that T.R. testified that, after she told appellant he could stay the night, he asked her if she had ever received oral sex. She then testified that he pulled out a knife and held it to her neck as he pushed her onto the bed. She testified that, although she initially resisted, she ceased doing so after he threatened to hurt her and that she was frightened. She further testified appellant performed oral sex on her for 20 minutes and that she did not consent. Furthermore, the state presented the testimonies of T.R.'s mother and Ross.

{¶32} In this case, the jury found the testimony of these witnesses credible to support appellant's convictions. Indeed, T.R.'s testimony alone was sufficient, if believed, to support each element of rape. *State v. Lewis* (1990), 70 Ohio App.3d 624. As

previously noted, the jury was free to believe all, none, or only part of the testimony of any of the witnesses presented. Such determinations are well within the province of the jury, and we discern no miscarriage of justice in the decision to reject the defense theory. An appellate court may not substitute its judgment for that of the jury on the issue of witness credibility unless it is manifestly clear the jury lost its way. *Martin* at 175.

{¶33} Based upon the record before us, we cannot conclude the jury lost its way and created a manifest miscarriage of justice in arriving at its verdicts. To the contrary, the weight of the evidence supports the rape and kidnapping convictions. Accordingly, we overrule appellant's third assignment of error.

{¶34} Having overruled all three assignments of error, we hereby affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN and KLATT, JJ., concur.

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