

[Cite as *State v. Carpenter*, 2009-Ohio-3593.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 91769

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JAMES CARPENTER

DEFENDANT-APPELLANT

**JUDGMENT:
REVERSED AND REMANDED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-507323

BEFORE: Cooney, A.J., McMonagle, J., and Blackmon, J.

RELEASED: July 23, 2009

**JOURNALIZED:
ATTORNEY FOR APPELLANT**

Ruth Fischbein-Cohen
3552 Severn Road
Suite 613
Cleveland Hts., Ohio 44118

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

BY: Carrie Heindrichs
Assistant County Prosecutor
9th Floor, Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

COLLEEN CONWAY COONEY, A.J.:

{¶ 1} Defendant-appellant, James Carpenter (“Carpenter”), appeals his convictions for felonious assault and abduction. Finding merit to the appeal, we reverse and remand for a new trial.

{¶ 2} Carpenter was arrested and charged with two counts of felonious assault, kidnapping, and domestic violence in February 2008. In May 2008, a jury found him guilty of felonious assault and abduction, a lesser included offense of kidnapping. The trial court sentenced him to six years in prison on the felonious assault charge and one year for abduction, to be served concurrently.

{¶ 3} Carpenter appeals, raising two assignments of error for our review. We shall address the second assignment first because it is dispositive.

Manifest Weight of the Evidence

{¶ 4} In the second assignment of error, Carpenter alleges that his convictions were against the manifest weight of the evidence. The test for manifest weight requires the appellate court to determine whether the State has met its burden of persuasion. *State v. Thompkins*, 78 Ohio St.3d 380, 390, 1997-Ohio-52, 678 N.E.2d 541.

{¶ 5} When a defendant asserts that his or her conviction is against the manifest weight of the evidence, an appellate court sits as a thirteenth juror and reviews the entire record, weighs the evidence and all reasonable inferences, and

considers the credibility of witnesses. *Id.*, citing *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717.

{¶ 6} Nonetheless, we must be mindful that the weight of the evidence and the credibility of witnesses are matters primarily for the trier of fact. *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus. In reviewing a claim that a conviction is against the manifest weight of the evidence, a reviewing court cannot reverse the conviction unless it is obvious that 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. *Thompkins*, at 387.

{¶ 7} In the instant case, Carpenter was convicted of felonious assault under R.C. 2903.11(A)(1), and abduction under R.C. 2905.02(A)(2).

{¶ 8} R.C. 2903.11(A)(1) states:

{¶ 9} “No person shall knowingly * * * [c]ause serious physical harm to another or to another’s unborn.”

{¶ 10} R.C. 2901.01(A)(5) defines “serious physical harm to persons” as:

{¶ 11} “(a) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;

{¶ 12} “(b) Any physical harm that carries a substantial risk of death;

{¶ 13} “(c) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;

{¶ 14} “(d) Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement;

{¶ 15} “(e) Any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain.”

{¶ 16} R.C. 2905.02(A)(2) describes the crime of abduction as follows:

{¶ 17} “No person, without privilege to do so, shall knowingly[,] * * * [b]y force or threat, restrain the liberty of another person under circumstances that create a risk of physical harm to the victim or place the other person in fear.”

{¶ 18} The following evidence was adduced at trial. The alleged victim, Teresa Ferguson (“Ferguson”), testified that Carpenter was her pimp and supported her financially. She claimed that from January to May 2007, he provided her a place to stay as long as she engaged in prostitution and gave him the money. She testified that each day he locked her in a basement apartment to which she did not have a key. Consequently, she could only leave the building with him. She testified she was homeless, and her only shelter was the basement apartment that Carpenter provided.

{¶ 19} Ferguson claimed that every day at 4:00 a.m., Carpenter drove her to Lorain Avenue where she would engage in prostitution until 7:00 a.m. Then he would pick her up and return her to the basement apartment. She testified that she knew of Carpenter’s wife, Brenda, and that she had to hide when Brenda came to the basement apartment.

{¶ 20} Ferguson testified that on May 21, 2007, when Carpenter returned to pick her up on Lorain Avenue, he began yelling at her and slapped her, because he

was dissatisfied with the amount of money she had made. She further claimed that when they returned to the basement apartment, he beat her with a metal mop handle for five or ten minutes, and she screamed and feared for her life. She testified that he stopped beating her when she began spitting up blood. She claimed that he left the apartment and locked the door, but she escaped through a window.

{¶ 21} Later that day, Ferguson went to see her parole officer, Annessa Slater ("Slater"). Ferguson explained what had happened and told Slater she was having a mental breakdown. Ferguson went to a hospital for treatment. She testified that medical personnel ordered x-rays and that the beating had fractured her ribs. She believed she had been treated at "Lutheran" or "Metro" but could not remember which hospital.

{¶ 22} The only medical record evidence, however, directly contradicted Ferguson's testimony about her injuries. First, Ferguson received treatment at St. Vincent Charity Hospital, not Lutheran Hospital or MetroHealth Hospital. Second, the records contained no mention of any injury or x-rays being taken. Instead, the diagnoses and treatment were for psychiatric complaints and asthma. The records indicated that Ferguson complained that her pimp boyfriend had physically abused her and would hurt her again because she had run away. But on May 21, the day she was admitted, her chief complaint was of suicidal thoughts, and on a scale of zero to ten, the severity of her pain was zero.

{¶ 23} When Ferguson was released from the hospital, police officer Eric Poole (“Poole”) took her to a domestic violence shelter. Ferguson told him that her boyfriend had struck her in the ribs with a metal pole and that she had been in the hospital for two days.

{¶ 24} Ferguson also testified that she suffered from paranoid schizophrenia and that she heard voices.

{¶ 25} Brenda testified that she and Carpenter operated a business renting rooms to boarders. She was unaware of any illegal activity on their property. Carpenter would often leave the house at night, but Brenda never knew where he went and never questioned him.

{¶ 26} Brenda did not know that Ferguson was a prostitute and was unaware that anyone was staying in the basement apartment. Neither she nor Carpenter received rent money from Ferguson. Brenda claimed that they used the basement apartment only during the summer. She also testified that the apartment door could be opened from inside without a key.

{¶ 27} In May 2007, Brenda received a phone call from a woman claiming to be Ferguson’s mother. The caller claimed that Ferguson was locked in Brenda’s basement apartment. Brenda went to the basement apartment and found the door unlocked and the apartment unoccupied. She discovered a bag with prescription bottles labeled with Ferguson’s name inside the apartment.

{¶ 28} Based on the foregoing, we conclude that the instant case presents the “exceptional case in which the evidence weighs heavily against the conviction.” *Thompkins*, at 387. We find that the jury lost its way in finding Carpenter guilty of felonious assault and abduction. The evidence weighs heavily against finding that Carpenter caused Ferguson serious physical harm. If Carpenter had indeed beaten Ferguson as she alleged and fractured her ribs, then the hospital records would indicate some physical injury or complaint of pain.

{¶ 29} The jury lost its way in finding Carpenter guilty of abduction as well. The evidence weighs heavily against finding that Carpenter by force or threat restrained Ferguson’s liberty. It seems incredible that Ferguson did not escape through the window sooner than May or escape her alleged confinement during the time she freely moved about on the street. We find this case presents the unusual circumstance where the jury clearly lost its way and created a manifest miscarriage of justice such that the conviction must be reversed and a new trial ordered.

{¶ 30} Accordingly, we sustain the second assignment of error.

Ineffective Assistance of Counsel

{¶ 31} In the first assignment of error, Carpenter claims that he received ineffective assistance of counsel. Having found merit to the second assignment

of error that requires a new trial, we need not address this issue because it is moot.

{¶ 32} In the instant case, however, we note that Carpenter’s trial counsel apparently failed to review the medical records, which contradict most of Ferguson’s testimony. This was an important piece of exculpatory evidence that counsel should have utilized to the fullest. However, we find this issue moot in light of our remand for a new trial.

Judgment is reversed. Case remanded for a new trial.

It is ordered that appellant and appellee share the 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.

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

COLLEEN CONWAY COONEY, ADMINISTRATIVE JUDGE

CHRISTINE T. McMONAGLE, J., and
PATRICIA A. BLACKMON, J., CONCUR