[Cite as *State v. Dudley*, 2011-Ohio-726.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94972

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

EDDIE DUDLEY

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-530921

BEFORE: Cooney, J., Boyle, P.J., and Blackmon, J.

RELEASED AND JOURNALIZED: February 17, 2011

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COLLEEN CONWAY COONEY, J.:

{¶ 1} Defendant-appellant, Eddie Dudley ("Dudley"), appeals his convictions for kidnapping, felonious assault, and domestic violence. Finding no merit to the appeal, we affirm.

{¶ 2} In November 2009, Dudley was charged with kidnapping, felonious assault, and domestic violence. After a jury trial in March 2010, he was found guilty and sentenced to a total of seven years in prison.

{¶ 3} Dudley now appeals, raising two assignments of error.

Ineffective Assistance of Counsel

{¶ 4} In his first assignment of error, Dudley contends that he received ineffective assistance of counsel.

{¶ 5} To reverse a conviction for ineffective assistance of counsel, the defendant must prove "(1) that counsel's performance fell below an objective standard of reasonableness, and (2) that counsel's deficient performance prejudiced the defendant resulting in an unreliable or fundamentally unfair outcome of the proceeding." *State v. Madrigal*, 87 Ohio St.3d 378, 388-389, 2000-Ohio-448, 721 N.E.2d 52, citing *Strickland v. Washington* (1984), 466 U.S. 668, 687-688, 104 S.Ct. 2052, 80 L.Ed.2d 674.

{¶ 6} As to the second element of the test, the defendant must establish "that there exists a reasonable probability that, were it not for counsel's errors, the result of the trial would have been different." *State v. Bradley* (1989), 42 Ohio St.3d 136, 538 N.E.2d 373, paragraph three of the syllabus; *Strickland* at 686. In evaluating whether a petitioner has been denied effective assistance of counsel, the Ohio Supreme Court held that the test is "whether the accused, under all the circumstances, had a fair trial and substantial justice was done." *State v. Hester* (1976), 45 Ohio St.2d 71, 341 N.E.2d 304, paragraph four of the syllabus.

{¶ 7} This court must presume that a licensed attorney is competent and that the challenged action is the product of sound trial strategy and falls within the wide range of

professional assistance. *Strickland* at 689. Courts must generally refrain from second-guessing trial counsel's strategy, even where that strategy is questionable, and appellate counsel claims that a different strategy would have been more effective. *State v. Jalowiec*, 91 Ohio St.3d 220, 237, 2001-Ohio-26, 744 N.E.2d 163.

{¶ 8} Dudley claims that his counsel was ineffective because on cross-examination of the victim, Erin Lesneski ("Lesneski"), defense counsel inflamed the jury and confirmed the State's allegations by repeating some of the same questions that the prosecutor had asked.

{¶ 9} Having reviewed the record, it is clear that despite the repetition of certain questions pertaining to the alleged attack, defense counsel zealously advocated on behalf of his client. Counsel attempted to discredit Lesneski's testimony numerous times. Trial counsel cross-examined the witnesses to establish that Lesneski had consumed alcohol on the night in question, that she was not initially cooperative with authorities, and that she would not immediately identify Dudley as the attacker. Counsel also presented evidence that Lesneski had been intimate with a man who was a mutual friend of hers and Dudley's, about whom she and Dudley had argued. Counsel accused Lesneski of lying about who had beaten her, claiming it had been this other man, not Dudley.

{¶ 10} Based on the foregoing, Dudley has not shown to a reasonable degree of probability that but for certain aspects of defense counsel's line of questioning the

outcome of the trial would have been different. Defense counsel's performance did not rise to the level of ineffective assistance of counsel.

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

Manifest Weight of the Evidence

{¶ 12} In his second assignment of error, Dudley contends that his conviction is against the manifest weight of the evidence.

{¶ 13} A challenge to the manifest weight of the evidence attacks the verdict in light of the State's burden of proof beyond a reasonable doubt. *State v. Thompkins*, 78 Ohio St.3d 380, 386-87, 1997-Ohio-52, 678 N.E.2d 541. When inquiring into the manifest weight of the evidence, the reviewing court sits as the "thirteenth juror and makes an independent review of the record." Id. at 387; *Tibbs v. Florida* (1982), 457 U.S. 31, 42, 102 S.Ct. 2211, 72 L.Ed.2d 652. The appellate court reviews the entire record, weighs the evidence and all reasonable inferences, considers the credibility of all witnesses and determines 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 judgment must be reversed and a new proceeding ordered. *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717.

{¶ 14} Where a judgment is supported by competent, credible evidence going to all essential elements to be proven, the judgment will not be reversed as being against the manifest weight of the evidence. *State v. Mattison* (1985), 23 Ohio App.3d 10, 14, 490

N.E.2d 926. Accordingly, reversal on manifest weight grounds is reserved for "the exceptional case in which the evidence weighs heavily against the conviction." *Martin* at 175.

{¶ 15} In the instant case, Dudley was convicted of felonious assault under R.C. 2903.11(A)(1), which states: "No person shall knowingly * * * [c]ause serious physical harm to another or to another's unborn." He was also convicted of kidnapping under R.C. 2905.01(A)(3), which states: "No person, by force, threat, or deception, * * * shall remove another from the place where the other person is found or restrain the liberty of the other person, for any of the following purposes: * ** (3) To terrorize, or to inflict serious physical harm on the victim or another." Finally, Dudley was convicted of domestic violence under R.C. 2919.25(A), which states: "No person shall knowingly cause or attempt to cause physical harm to a family or household member."

{¶ 16} The following evidence was adduced at trial. Lesneski testified that she and Dudley were engaged and had been living together in their apartment for over a year. In the evening and early morning hours of October 26, 2009, Dudley repeatedly and violently assaulted her, causing her serious injuries that included a gash above her eye and a broken nose. After the assault, Dudley refused to allow her to seek medical attention. Lesneski was forced to escape from the apartment through a bedroom window. Once outside, she entered a nearby store and a clerk called police. Lesneski was taken to the hospital where she received treatment for her injuries.

{¶ 17} Dudley claims that his convictions are against the manifest weight of the evidence because Lesneski's testimony is not credible. We disagree.

{¶ 18} A review of the record reveals that Lesneski's testimony regarding the incident is corroborated by other evidence. She testified that she and Dudley began to argue between 6:00 and 8:00 p.m. She testified that the argument escalated and Dudley began to physically abuse her. Dudley refused to allow her to leave the apartment. Lesneski eventually cut through the screen of one of the bedroom windows and climbed out.

{¶ 19} An upstairs neighbor, Reola Hood, testified that she heard what sounded like fighting in the apartment where Dudley and Lesneski lived.

{¶ 20} Cleveland police officers Lisa Cornell and Jill Pendersen, who responded to the scene, testified when they approached Lesneski at the store, she was injured and bleeding, as well as visibly shaken and afraid.

{¶ 21} Laura Gaertner, the hospital's sexual-assault nurse examiner, testified that Lesneski was badly beaten and in need of stitches, which was corroborated further by Lesneski's medical records. The State produced photos of her injuries as well.

{¶ 22} The detectives who investigated testified that they observed the torn window screen, and the State produced photos of the bedroom window screen with the cuts that Lesneski described.

{¶ 23} Despite her initial fear and hesitancy to identify Dudley by name, Lesneski consistently identified her attacker as her fiancé, and eventually provided his name.

{¶ 24} In weighing the credibility of witnesses and the totality of evidence presented, this case is not the exceptional one requiring reversal. The State proved the elements of each crime charged, and the jury did not lose its way in convicting Dudley. Therefore, his convictions are not against the manifest weight of the evidence.

{¶ 25} The second assignment of error is overruled.

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 convictions having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

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COLLEEN CONWAY COONEY, JUDGE

MARY J. BOYLE, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR