[Cite as *State v. Taylor*, 2015-Ohio-2033.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101615

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MICHAEL A. TAYLOR

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-13-579620-B

BEFORE: Kilbane, J., Celebrezze, A.J., and Laster Mays, J.

RELEASED AND JOURNALIZED: May 28, 2015

ATTORNEY FOR APPELLANT

David L. Doughten
David L. Doughten Co., L.P.A.
4403 St. Clair Avenue
Cleveland, Ohio 44103

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor
Maxwell Martin
Assistant County Prosecutor
The Justice Center - 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

MARY EILEEN KILBANE, J.:

{¶1} Defendant-appellant, Michael Taylor, ("Taylor"), challenges the manifest weight of the evidence supporting his conviction for sexual battery, in violation of R.C. 2907.03(A)(3). In undertaking our review, we found this to be a very close case. Upon completing the inherently fact-specific analysis, and with due consideration of the United States Supreme Court's reminder that "DNA testing alone does not always resolve a case,"[1] we affirm.

{¶2} On November 1, 2013, after DNA samples were matched to DNA in the Combined DNA Index System ("CODIS") database, Taylor and codefendant, Jayson Battiste ("Battiste"), were indicted in connection with a 2003 sexual assault complaint. The charges stem from a report of an attack made by the complaining witness, D.T., in connection with events that occurred after she had attended the Cleveland Puerto Rican Festival on the evening of July 19, 2003. The four-count indictment charged Taylor and Battiste with one count of rape, in violation of R.C. 2907.02(A)(2); one count of attempted rape, in violation of R.C. 2907.02(A)(2) and 2923.02; one count of sexual battery, in violation of R.C. 2907.03(A)(3); and one count of kidnapping, in violation of R.C. 2905.01(A)(4). Taylor pled not guilty, and the case against him proceeded to a jury trial on April 30, 2014.[2]

---

[1] *District Attorney's Office for Third Judicial Dist. v. Osborne,* 557 U.S. 52, 62, 129 S.Ct. 2308, 174 L.Ed.2d 38 (2009).

[2] The trial court originally ruled that the codefendants would be tried together, but trial commenced only against Taylor when Battiste's attorney became

{¶3} T.J. testified that she has been friends with D.T. for many years and that she ran into D.T. at the festival on July 19, 2003. D.T. was alone at this time. The two women eventually met two men at the festival. T.J. stated that she did not know these men prior to that evening. At around midnight, the men agreed to give the women a ride home. T.J. testified that she was dropped off first, but she did not believe that D.T. was at risk from the men since they seemed safe and D.T. did not appear to be intoxicated. T.J. testified that she did not learn of D.T.'s allegations until shortly before trial, even though they saw each other on a regular basis. T.J. was presented with photo arrays in connection with this matter, but she was unable to identify any individuals from that night.

{¶4} D.T. testified that she took the bus downtown to attend the festival, then ran into T.J. According to D.T., these men were friends with T.J. T.J. did not drink alcohol, but D.T. consumed six beers and was taking prescription Zoloft at the time.

{¶5} D.T. testified that at around midnight, the men agreed to take them home. They dropped T.J. off first, and D.T. asked the men to stop so she could buy cigarettes. She then fell asleep in the car. According to her police report, at approximately 4:00 a.m., she awoke. The car was parked in a field, and one of the men was on top of her in the backseat. At that point, her skirt was up, her underwear was missing, and the man's pants were down. She believed that she had been penetrated, and there was seminal fluid

---

ill. (*See* Journal Entry dated May 1, 2014, CR-13-579620-A). Battiste's trial began on September 24, 2014, and he was also found guilty of sexual battery.

on her vagina. D.T. testified that she did not consent to sexual relations, and she had been asleep when the man got on top of her. D.T. demanded her underwear, asked the man to get off of her, then got out of the car and used her cell phone to call a friend to pick her up. One of the men asked if she was okay.

{¶6} The following afternoon, D.T. had a friend take her to the Cleveland Clinic Emergency Room. D.T. acknowledged that her medical records, in addition to identifying her as D.T., also identify her as D.S., which she stated is a familial last name. The records indicate that twin assailants, "T.Y." and "Twins," whom she did not know previously, had sexually assaulted her. She reported that she had used a cloth to clean herself, but did not take a bath or shower. She indicated that she did not want to report the matter, but her friend had talked her into doing so. She also indicated that she had consensual sex with her boyfriend approximately two days earlier. D.T. stated that the medical records mistakenly refer to "T.Y." as a male assailant; however, she meant to state that she had gone to the festival with her friend, T.J.

{¶7} Evidence was collected in a rape kit at the hospital. The vaginal and rectal swab DNA analysis revealed semen that contained a mixture of DNA profiles from two men, and indicated additional but less complete information suggesting a third assailant.

{¶8} A police report was made at the emergency room, but D.T. failed to keep an appointment to give a statement at the Justice Center on July 21, 2003, and did not followup after the attack in order to provide a statement to police. She acknowledged, however, that she was at the Justice Center on July 23, 2003, to respond to criminal

charges.

{¶9} D.T. testified that she did not recall receiving certified letters from the police about this matter in 2006. She testified that she abused "wet" or PCP and was addicted to drugs until 2012 when she completed drug treatment in connection with her sentence for attempted robbery. She acknowledged that she has memory issues from her drug use. D.T. acknowledged that Cleveland Police Detective Christina Cottom ("Detective Cottom") contacted her by using information provided to the Cuyahoga County Probation Department.

{¶10} Detective Cottom testified that in 2006, codefendant Battiste was identified as a possible suspect in this matter through CODIS, and that she spoke with D.T.'s grandmother and cousin in order to attempt to contact her. However, D.T. failed to report for an interview.

{¶11} Detective Cottom further testified that in 2013, Taylor was identified as a possible suspect in this matter through CODIS. At that point, D.T. did speak with the police and viewed two photo arrays. In the first photo array from August 22, 2013, she did not identify a possible suspect. In the second photo array, from September 5, 2013, she picked someone from that photo array and stated that she was 60-70 percent certain that he was the assailant, but it was not Taylor.

{¶12} Detective Cottom eventually spoke with Taylor and obtained DNA samples from him in order to conduct additional DNA analysis. The additional analysis indicated that Taylor could not be excluded as a source of the DNA, and the proportion of

the population that cannot be excluded is 1 in 5,741,000.

{¶13} Taylor elected to present evidence and testified that in 2003, he and Battiste were living together and selling drugs. Battiste's brother also moved in with them, and according to Taylor, the Battiste brothers looked very much alike. Taylor stated that in that time period, he had a "crazy lifestyle" and had consensual sex with many women. He did not remember D.T., but he testified that he did not engage in nonconsensual sex, never had sex in a car, and did not have sex with the same women as Battiste.

{¶14} On May 5, 2014, the jury found Taylor guilty of Count 3, sexual battery, in violation of R.C. 2907.03(A)(3) (sexual conduct where the defendant knows that the victim submits because she is unaware that the act is being committed), and he was acquitted of the remaining charges. On June 2, 2014, the trial court sentenced Taylor to 30 months of imprisonment, and ordered that this sentence be served concurrently with a 30-month sentence in Cuyahoga C.P. No. CR-13-580310, for having a weapon while under disability. Taylor now appeals, assigning the following single error for our review:

Assignment of Error

> The verdict of guilt on the charge of sexual battery is against the weight of the evidence.

{¶15} In support of this assignment of error, Taylor argues that the manifest weight of the evidence presented in this matter does not support the conviction for sexual

battery. He notes various inconsistencies in D.T.'s testimony and that D.T. had an extensive history of drug abuse, which impaired her memory. He further notes that she did not respond to Detective Cottom's 2006 efforts to contact her, and that T.J.'s testimony indicated that D.T. did not seem intoxicated and did not believe that D.T. was at risk from the men since they seemed safe during the ride home.

{¶16} In *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, ¶ 25, the Ohio Supreme Court described a challenge to the manifest weight of the evidence supporting a conviction as follows:

> [The] reviewing court asks whose evidence is more persuasive — the state's or the defendant's? * * * "When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a 'thirteenth juror' and disagrees with the factfinder's resolution of the conflicting testimony."

Id., quoting *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541, and citing *Tibbs v. Florida*, 457 U.S. 31, 42, 102 S.Ct. 2211, 72 L.Ed.2d 652 (1982).

{¶17} Moreover, an appellate court may not merely substitute its view for that of the jury, but must find that "'in resolving conflicts in the evidence, the jury 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, quoting *State v. Martin*, 20 Ohio App.3d 172, 485 N.E.2d 717 (1st Dist.1983). Accordingly, reversal on manifest weight grounds is reserved for "'the exceptional case in which the evidence weighs heavily against the conviction.'" *Id.*, quoting *Martin*. In addition, this court must remain mindful that the weight to be given the evidence and the credibility of the witnesses are

matters left primarily to the jury. *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967). In order to reverse a conviction "on the weight of the evidence, when the judgment results from a trial by jury, a unanimous concurrence of all three judges on the court of appeals panel reviewing the case is required." *Thompkins* at paragraph four of the syllabus, applying Article IV, Section 3(B)(3) of the Ohio Constitution.

{¶18} In this matter, Taylor was convicted of sexual battery, in violation of R.C. 2907.03(A)(3), which states that, "[n]o person shall engage in sexual conduct with another, not the spouse of the offender, when * * * (3) the offender knows that the other person submits because the other person is unaware that the act is being committed." In this regard, we note that such cases are inherently fact-sensitive. "We recognize that this case or similar ones we may encounter in the future necessarily involves a fact specific analysis." *State v. While*, 11th Dist. Trumbull No. 2001-T-0051, 2003-Ohio-4594, ¶ 20 (discussing allied offenses). We additionally note that "DNA testing alone does not always resolve a case." *District Attorney's Office for Third Judicial Dist.*, 557 U.S. at 62, 129 S.Ct. 2308, 174 L.Ed.2d 38. Therefore, while presence of DNA alone may establish that sexual conduct has taken place, this single fact, standing alone, does not establish, beyond a reasonable doubt, that "the offender knows that the other person submits because the other person is unaware that the act is being committed," as required under R.C. 2907.03(A)(3). These additional elements must likewise be established by the prosecution beyond a reasonable doubt. So-called "cold cases," that involve the analysis of biological fluids years after an alleged offense, are likewise subjected to this

highest standard of proof.

{¶19} In addition to the DNA evidence collected in this matter, the state also presented circumstantial evidence to establish the offense of sexual battery under R.C. 2907.03(A)(3). The state's evidence demonstrated that D.T. left the festival with T.J. and two men. After T.J. was dropped off, D.T., who had been drinking and took prescription medicine in this general time period, fell asleep in the car. When she awoke, one of the men was on top of her, her underwear was missing, and she felt a wet substance on her vagina. The next afternoon, she went to the hospital and reported that two men, twins, had assaulted her. Although she did not appear at the Justice Center in order to provide the police with a statement in 2003, and failed to appear again in 2006, DNA analysis from the night of the incident indicated the presence of DNA from Taylor, Battiste, and another individual. D.T. reported that she had sex with her boyfriend two days earlier and neither Taylor nor Battiste was her boyfriend. Additional information indicates that Taylor and Battiste were roommates. Taylor maintained that he had many sexual partners in this time frame, and he insisted that he did not engage in nonconsensual sex and did not have sex with women who had slept with Battiste. However, a mixture of DNA from Battiste and another person were obtained in the rape kit collected at the hospital. Based on the foregoing, and upon our fact-specific analysis of this extremely close case, we cannot say that the jury lost its way in convicting Taylor of the offense of sexual battery, in violation of R.C. 2907.03(A)(3).

{¶20} Therefore, the sole assignment of error is without merit.

{¶21} 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

FRANK D. CELEBREZZE, JR., A.J., and
ANITA LASTER MAYS, J., CONCUR