[Cite as *State v. Youssef*, 2015-Ohio-766.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101362

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MEDHAT W. YOUSSEF

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-13-580132-A and CR-13-580239-A

BEFORE: Kilbane, J., E.A. Gallagher, P.J., and Blackmon, J.

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ATTORNEYS FOR APPELLANT

Martin T. Galvin
Marianne K. Barsoum Stockett
Reminger Co., L.P.A.
1400 Midland Building
101 Prospect Avenue, West
Cleveland, Ohio 44115

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor
Margaret A. Troia
Brian Hoffman
Kelly N. Mason
Callista R. Plemel
Assistant County Prosecutors
The Justice Center - 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

MARY EILEEN KILBANE, J.:

{¶1} Defendant-appellant, Medhat Youssef ("Youssef"), appeals his rape, kidnapping, felonious assault, and domestic violence convictions in two separate cases. For the reasons that follow, we affirm.

{¶2} In November 2013, Youssef was charged in Case No. CR-13-580239 with three counts of rape and three counts of kidnapping.[1] In December 2013, he was charged in Case No. CR-580132 with three counts of felonious assault and three counts of domestic violence. Each of these offenses were committed against his wife, M.M., except for Count 3 in Case No. CR-580132, which was committed against a family friend, Y.M. The cases were joined for trial, at which the following evidence was adduced.

{¶3} At the time of trial M.M. was 25 years old and had been married for eight years to Youssef, who is approximately 20 years older than M.M. They first met in Egypt through an arranged marriage when she was approximately 17 years old. Youssef is a cousin of M.M.'s mother. M.M. lived in Egypt while Youssef worked abroad for two years. M.M. and Youssef had two children while they were in Egypt.

{¶4} The family traveled to the United States in December 2011. They moved into a house on Denison Avenue in Cleveland. M.M. testified that Youssef raped her sometime before Christmas of December 2011, while she was asleep. Youssef flipped her onto her back and pulled off her pajama pants. M.M. told him that she "didn't want to, she was tired," but he grabbed her hands, held them above her head, and slapped her face. She could not move because of Youssef's size. He then vaginally raped her. M.M. repeatedly told him that she did not want to have sex. Youssef grabbed her head and banged it against the wall.

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[1]One of the kidnapping counts carried a sexual motivation specification.

{¶5} M.M. testified that she never told anyone what happened because she was afraid of Youssef. She did not have any family in the Cleveland area, spoke little English, and cared for the children while Youssef worked and took care of all the finances. She once tried to run away with their daughter, but Youssef grabbed their son and told her that if she does not come back, he will kill their son.

{¶6} In January 2012, the family moved into a house on West 135th Street. M.M. testified that around October 9, 2013, she was asleep in her bedroom when Youssef woke her up, wanting to have sex with her. He vaginally raped her while holding down her arms and face. M.M. told Youssef that she did not want to sleep with him, and the doctor told her that she should not sleep with him for seven days because she had a vaginal infection that caused her to bleed. This had been a recurring problem for her since she came to the United States in December 2011. It was painful for her to have sex, which she explained to Youssef. M.M. received treatment from Dr. Kenneth Edelman, M.D. ("Dr. Edelman"), an OB-GYN with MetroHealth Hospital. In October 2012, Dr. Edelman first treated M.M. for pain and irregular bleeding. He observed a lesion and obtained a culture and blood work. Based on his observations, he suspected Type 2 Herpes. M.M.'s culture was negative for Type 2 Herpes, but her blood tested positive for Type 1 Herpes.

{¶7} M.M. testified that she could no longer take how Youssef treated her, so she decided to tell her friends from church about how Youssef treated her. She then filed a report with the police on October 15, 2013. A family friend, Y.M., accompanied M.M. to the police station to help translate. The Cleveland police officer who took the report asked Y.M. the questions. He would then ask them to M.M. Y.M. would respond, and he would relay M.M.'s answers to the officer. Afterwards, M.M. told Youssef that she made the report.

{¶8} On November 5, 2013, M.M. moved out of the West 135th Street home and into a home on Bosworth Avenue with her two children. She did not give Youssef this address because she feared him. At that time, she was working as a dishwasher. On November 11, 2013, M.M. agreed to drive Youssef to the hospital because he complained of a toothache. Before taking him to the hospital, she ensured that her children boarded their school bus in the morning. M.M. testified that she was scared to transport Youssef, but she did because he was family and he was sick. When they arrived at the hospital, Youssef was not able to be seen that day, so M.M. drove him home.

{¶9} M.M. then went back to her home on Bosworth Avenue so Y.M. could help install a bidet in her bathroom. M.M. testified that she and Y.M. are friends. They are not romantically involved, and Y.M. is engaged. M.M. prepared food for her children in the kitchen while Y.M. installed the bidet. She had a pot of boiling water on the stove. Shortly thereafter, Youssef called M.M. He told her that he was outside and asked her to open the door for him. She let him inside, thinking that he came over to help Y.M. install the bidet. They went into the kitchen and Youssef told M.M. that she needed his permission before allowing anyone into her home. M.M. replied that, "this is my house, not your house." Youssef then punched M.M. in the eye, grabbed the pot of boiling water, threw it on her arms and face, and hit her in the face with a plate, causing her top lip to split open and cuts on her arm. He also punched M.M. in the face and on her arms and legs. At one point, Youssef grabbed a knife and told M.M. that he was going to kill her then kill himself.

{¶10} Y.M. attempted to stop Youssef. Youssef punched Y.M. in the eye and hit him with a pot. Y.M. then called the police. The police arrived at the scene and called an ambulance for M.M., who was then transported to the hospital where she received medical

treatment for her injuries. M.M. suffered first and second degree burns to her face and arms as well as lacerations to her lip and arm.[2]

{¶11} Youssef did not testify in his own defense and did not call any witnesses. During closing arguments, defense counsel stated that it was his decision to not have Youssef testify.

{¶12} At the conclusion of trial, the jury found Youssef guilty of Counts 1 (felonious assault) and 4 (domestic violence) and not guilty of Counts 2 and 3 (both felonious assault) in Case No. CR-13-580132. In Case No. CR-13-580239, the jury found him guilty of Counts 1 and 5 (both rape) and Counts 2 and 6 (both kidnapping). The matter proceeded to sentencing in April 2014. In Case No. CR-580132, the court found Counts 1 and 4 to be allied offenses of similar import and merged them for purposes of sentencing. The state elected to proceed with sentencing on Count 1. The trial court ordered Youssef to serve two years in prison on Count 1. In Case No. CR-13-580239, the court found Counts 1 (rape) and 2 (kidnapping) and Counts 5 (rape) and 6 (kidnapping) to be allied offenses of similar import and merged them for purposes of sentencing. The state elected that Youssef be sentenced on Counts 1 and 5. The court ordered Youssef to five years in prison on Count 1 and five years on Count 5, to run concurrent to each other and concurrent to the sentence in Case No. CR-13-580132, for a total of five years in prison. The court also classified Youssef as a Tier III sex offender.

{¶13} Youssef now appeals, raising the following five assignments of error for review, which shall be discussed together where appropriate.

Assignment of Error One

[2]At the close of the state's case, the state dismissed Counts 3 (rape) and 4 (kidnapping) in Case No. CR-580239.

> [Youssef] was denied a fair trial by numerous improper statements and insinuations by the state concerning his ethnicity and religion, which individually and cumulatively constituted prosecutorial misconduct.
>
> Assignment of Error Two
>
> The trial court erred by admitting unauthenticated medical records into evidence.
>
> Assignment of Error Three
>
> [Youssef] was materially prejudiced by misrepresentations by the state concerning whether he had transmitted venereal disease(s) to [M.M], as well as by misrepresentations by the state concerning [M.M's] medical records. These repeated misrepresentations were made to the court in arguing the admissibility of medical records, in demonstrative exhibits, and in closing argument.
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> Assignment of Error Four
>
> The trial court erred by not appointing a certified interpreter(s) as required by the Ohio Rules of Superintendence.
>
> Assignment of Error Five
>
> [Youssef] was denied a fair trial by ineffective assistance of counsel.

Prosecutorial Misconduct

{¶14} In the first and third assignments of error, Youssef contends the state committed prosecutorial misconduct when it made cultural and religious references concerning Youssef and M.M. and misrepresented that M.M. had a sexually transmitted disease.

{¶15} Initially, we note that Youssef did not object to most of the instances of alleged prosecutorial misconduct, thereby waiving all but plain error. *See* Crim.R. 52(B). Under Crim.R. 52(B), "[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." Moreover, "[p]lain error does not exist unless, but for the error, the outcome at trial would have been different." *State v. Joseph*, 73 Ohio St.3d

450, 455, 1995-Ohio-288, 653 N.E.2d 285, citing *State v. Moreland*, 50 Ohio St.3d 58, 552 N.E.2d 894 (1990).

{¶16} Youssef complains that the prosecutor's cultural references during closing argument were prejudicial. Specifically, he refers to the prosecutor's comments that the marriage was an arranged marriage, M.M. and Youssef are related, Youssef is twice M.M.'s age, Youssef barely spent any time with M.M. when they first married, and their personal preference to use a bidet. Youssef maintains that these comments somehow sent a message to the jury that Youssef and M.M.'s culture permits marital rape and incest and prohibits divorce.

{¶17} In reviewing these comments for plain error, we note that throughout trial Youssef made inferences that M.M. was having an affair with Y.M. and lied about Youssef so she can be with Y.M. The cultural and religious references were used to explain why M.M. was hesitant to report the rape and why she stayed with Youssef, despite their problems. These references assisted the jury in understanding why Youssef was so upset to find Y.M. helping M.M. without his permission.

{¶18} Youssef also argues that the prosecutor misrepresented the testimony of Dr. Edelman by stating during closing argument that M.M. has a sexually transmitted disease.[3] At trial, Dr. Edelman testified that M.M. tested positive for Herpes 1 and her cultures came back negative for Herpes 2. During closing argument, the prosecutor, while summarizing M.M.'s medical records, stated that M.M. tested positive for Human Papillomavirus or HPV, and suffered from pelvic inflammatory disease.

[3]We note that Youssef objected to the medical records prior to closing argument, but did not specifically object to the prosecutor's comments during closing argument.

{¶19} We note that "prosecutors are given considerable latitude in closing argument. *State v. Dillon*, 10th Dist. Franklin No. 04AP-1211, 2005-Ohio-4124, ¶ 50. The prosecutor is entitled to comment on 'what the evidence has shown and what reasonable inferences may be drawn therefrom.' *State v. Butler*, 10th Dist. Franklin No. 03AP-800, 2005-Ohio-579, ¶ 11." *State v. Ball*, 8th Dist. Cuyahoga No. 99990, 2014-Ohio-1060, ¶ 21. Furthermore, "a prosecutor's statements are not to be taken out of context and given their most damaging meaning." *Id.*, citing *State v. Noling*, 98 Ohio St.3d 44, 2002-Ohio-7044, 781 N.E.2d 88.

{¶20} Here, Youssef was not charged with transmitting a disease. The state summarized M.M.'s medical records, which were properly admitted into evidence, to corroborate M.M.'s testimony that she did not want to have sexual intercourse for medical reasons, and she was not healthy enough to engage in sexual activity with Y.M. as Youssef suggested throughout trial.

{¶21} When considering the record as a whole, we cannot conclude these comments constitute plain error. Youssef failed to demonstrate that the outcome of the trial would have been different had the prosecutor not made any of these comments. Moreover, the state presented sufficient evidence to sustain Youssef's guilt regardless of these remarks and the jury was properly instructed that closing arguments were not to be considered as evidence. *State v. Hicks*, 194 Ohio App.3d 743, 2011-Ohio-3578, 957 N.E.2d 866, ¶ 30 (8th Dist.), citing *State v. Williams*, 38 Ohio St.3d 346, 528 N.E.2d 910 (1988) (a defendant's substantial rights cannot be prejudiced when the remaining evidence, standing alone, is so overwhelming that it constitutes defendant's guilt and the outcome of the case would have been the same regardless of evidence admitted erroneously). Thus, we find that these comments did not deprive Youssef of a fair trial, nor prejudicially affect his substantial rights.

{¶22} Regarding the instance to which Youssef did object, we must determine whether the prosecutor's remarks were improper, and if so, whether the remarks prejudicially affected Youssef's substantial rights. *State v. Smith*, 14 Ohio St.3d 13, 14, 470 N.E.2d 883 (1984); *Hicks* at ¶ 30. A prosecutor's conduct during trial cannot be grounds for error unless the conduct deprives the defendant of a fair trial. *State v. Maurer*, 15 Ohio St.3d 239, 473 N.E. 2d 768 (1984). The focus of that inquiry is on "'the fairness of the trial, not on the culpability of the prosecutor."' *State v. Bey*, 85 Ohio St.3d 487, 495, 1999-Ohio-283, 709 N.E.2d 484, quoting *Smith v. Phillips*, 455 U.S. 209, 219, 102 S.Ct. 940, 71 L.Ed.2d 78 (1982).

{¶23} Youssef asserts the prosecutor repeatedly asked M.M. questions concerning "rules" in her Arabic culture relating to having visitors over while the husband is not home and only filing for divorce in cases of adultery. The testimony Youssef refers to, however, developed on the state's redirect of M.M. in response to questions asked by Youssef's counsel on cross-examination. On cross-examination, defense counsel asked M.M. how she was related to Youssef, her arranged marriage, why she did not tell anyone that Youssef was raping her, and why she has not yet divorced him. On redirect, the state asked M.M. questions to clarify her testimony on cross-examination. As a result, this line of questioning cannot be considered to constitute prosecutorial misconduct.

{¶24} Therefore, the state's remarks during the examination of M.M. and during closing argument did not deprive Youssef of a fair trial.

{¶25} Accordingly, the first and third assignments of error are overruled.

Medical Records

{¶26} In the second assignment of error, Youssef argues the trial court erred by admitting unauthenticated medical records into evidence. Specifically, in closing argument, the state told

the jury that it would summarize 350 pages of medical records, which were not testified to during trial. The state told the jury that they should consider all of the victim's medical records. Youssef argues the state improperly invited the jury to independently review these records and reach their own conclusions as to what conditions described in the records were consistent with allegations of rape.

{¶27} It is well established that under Evid.R. 104, the introduction of evidence at trial falls within the sound discretion of the trial court. *State v. Heinish*, 50 Ohio St.3d 231, 239, 553 N.E.2d 1026 (1990). Therefore, "[a]n appellate court which reviews the trial court's admission or exclusion of evidence must limit its review to whether the lower court abused its discretion." *State v. Finnerty*, 45 Ohio St.3d 104, 107, 543 N.E.2d 1233 (1989).

{¶28} Youssef first argues that the medical records relating to M.M.'s medical history were unauthenticated, and therefore, inadmissible. He contends that the only admissible medical records were those testified to by a treating physician. We disagree. The records were properly authenticated as provided in Evid.R. 803(6), 901(B)(10), and R.C. 2371.422.

{¶29} Evid.R. 803(6) is one of the several exceptions to the general hearsay rule. It is commonly referred to as "the business records exception," and states in pertinent part that a business record is

> [a] memorandum, report, [or] record, * * * in any form, of acts, events, or conditions, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, [or] record, * * * as provided by Rule 901(B)(10).

{¶30} Under Evid.R. 901(B)(10), medical records may be authenticated by "[a]ny method of authentication or identification provided by statute enacted by the General Assembly not in

conflict with a rule of the Supreme Court of Ohio or by other rules prescribed by the Supreme Court." R.C. 2317.422 provides in pertinent part that

> the records, or copies of the records * * * of a hospital * * * in lieu of the testimony in open court of their custodian, person who made them, or person under whose supervision they were made, may be qualified as authentic evidence if any such person endorses thereon the person's verified certification identifying such records, giving the mode and time of their preparation, and stating that they were prepared in the usual course of the business of the institution. Such records * * * may not be qualified by certification as provided in this section unless the party intending to offer them delivers a copy of them, or of their relevant portions, to the attorney of record for each adverse party not less than five days before trial.

{¶31} In the instant case, the record reveals that at the end of the state's case, the state sought to admit M.M.'s medical records from MetroHealth Hospital, which consisted of 350 pages. The records include M.M.'s gynecological treatments since 2011. Defense counsel agreed to the admission of these records on the condition that certain portions of the records would be redacted. Then, prior to the state's closing argument, defense counsel objected to the state's use of the records, arguing that the records were irrelevant. The trial court overruled the objection, finding that the records are corroborative evidence as to M.M.'s testimony regarding her gynecological issues.

{¶32} These records contain a certificate of medical records signed by an employee of MetroHealth Hospital, certifying that "the attached records are true and authentic copies of the medical records prepared in the usual course of business of said institution." This certificate was sufficient under the Evid.R. 901(B)(10) and R.C. 2317.422. We also note that the state maintains that it supplied the medical records to defense counsel at least five days prior to trial. Therefore, the records were properly authenticated.

{¶33} Youssef next argues that the requirements of Evid.R. 803(6) were not satisfied. In support of his argument, he relies on *Hytha v. Schwendeman*, 40 Ohio App.2d 478, 320 N.E.2d

312 (10th Dist.1974). In *Hytha*, the Tenth District Court of Appeals set forth the following requirements in order for the record of a medical diagnosis made by a physician to be admissible into evidence:

> 1) The record must have been a systematic entry kept in the records of the physician made in the regular course of business;
>
> 2) The diagnosis must have been the result of well-known and accepted objective testing and examining practices and procedures that are not of such a technical nature as to require cross-examination;
>
> 3) The diagnosis must not have rested solely upon the subjective complaints of the patient;
>
> 4) The diagnosis must have been made by a qualified person;
>
> 5) The evidence sought to be introduced must be competent and relevant;
>
> 6) If the use of the record is for the purpose of proving the truth of matter asserted at trial, it must be the product of the party seeking its admission; and
>
> 7) It must be properly authenticated.

Id. at syllabus.

{¶34} This court reviewed *Hytha* in *Smith v. Dillard's Dept. Stores, Inc.*, 8th Dist. Cuyahoga No. 75787, 2000-Ohio-2689, and questioned the extent to which *Hytha* retained validity in light of then-current Ohio law. This court further addressed the continued applicability of the *Hytha* factors in *Peffer v. Cleveland Clinic Found.*, 8th Dist. Cuyahoga No. 94356, 2011-Ohio-450. We commented that although the factors constituted "instructive guidelines," they were not always appropriate. *Id.* at ¶ 24-25.

{¶35} In the instant case, we again note that defense counsel agreed to the admission of the medical records with certain redactions. M.M.'s testimony explains when, why, and under what circumstances the medical records were generated. Likewise, the medical records are

cumulative of M.M's testimony, corroborating the medical issues she complained about to Youssef. Defense counsel had the opportunity to question M.M. about her medical issues on cross-examination. None of the testimony elicited from M.M. contradicts her medical records. Defense counsel had these records at least five days prior to trial. Accordingly, Youssef was free to call his own expert to contradict or expound upon the records. Under these circumstances, the trial court did not abuse its discretion by admitting the medical records into evidence. *See State v. Hidvegi*, 8th Dist. Cuyahoga No. 90014, 2008-Ohio-2662.

{¶36} Accordingly the second assignment of error is overruled.

Interpreter

{¶37} In the fourth assignment of error, Youssef argues the trial court erred by not appointing a certified interpreter as required by Sup.R. 88(D), which governs the appointment of and certification requirement for foreign language interpreters. Sup.R. 88(D) provides in pertinent part:

> (1) Except as provided in divisions (D)(2) through (4) of this rule, when appointing a foreign language interpreter pursuant to division (A) of this rule, a court shall appoint a Supreme Court certified foreign language interpreter to participate in-person at the case or court function.
>
> (2) Except as provided in divisions (D)(3) and (4) of this rule, if a Supreme Court certified foreign language interpreter does not exist or is not reasonably available to participate in-person at the case or court function and after considering the gravity of the proceedings and whether the matter could be rescheduled to obtain a Supreme Court certified foreign language interpreter to participate in-person at the case or court function, a court may appoint a provisionally qualified foreign language interpreter to participate in-person at the case or court function. The court shall summarize on the record its efforts to obtain a Supreme Court certified foreign language interpreter to participate in-person at the case or court function and the reasons for using a provisionally qualified foreign language interpreter.
>
> (3) Except as provided in division (D)(4) of this rule, if a Supreme Court certified foreign language interpreter or provisionally qualified foreign language interpreter does not exist or is not reasonably available to participate in-person at the case or

> court function and after considering the gravity of the proceedings and whether the matter could be rescheduled to obtain a Supreme Court certified foreign language interpreter or provisionally qualified foreign language interpreter to participate in-person at the case or court function, a court may appoint a foreign language interpreter who demonstrates to the court proficiency in the target language and sufficient preparation to properly interpret the proceedings to participate in-person at the case or court function. Such interpreter shall be styled a "language-skilled foreign language interpreter." The court shall summarize on the record its efforts to obtain a Supreme Court certified foreign language interpreter or provisionally qualified foreign language interpreter to participate in-person at the case or court function and the reasons for using a language-skilled foreign language interpreter. The language-skilled foreign language interpreter's experience, knowledge, and training should be stated on the record. Each language-skilled foreign language interpreter shall take an oath or affirmation under which the interpreter affirms to know, understand, and act according to the "Code of Professional Conduct for Court Interpreters and Translators," as set forth in Appendix H to this rule.

{¶38} Youssef argues the court erred by not appointing a "Supreme Court certified foreign language interpreter" in violation of Sup.R. 88(D)(1) and by not "summariz[ing] on the record its efforts to obtain a Supreme Court certified foreign language interpreter" in violation of Sup.R. 88(D)(3).

{¶39} M.M. and Youssef were each in need of interpreters. At trial, the state advised the trial court that "[t]here is only one Ohio Supreme Court certified Arabic translator in the state of Ohio. That person lives in Cincinnati, so in this case it would not be reasonably practical to only use a Supreme Court certified translator because we need two translators[.]" Furthermore, Youssef stipulated that there was no certified available translators and the trial court "went above and beyond to find a suitable translator." Therefore, the court had no option but to use either a "provisionally qualified foreign language interpreter" or a "language-skilled foreign language interpreter" as provided in Sup.R. 88(D)(1) and (2).

{¶40} In the instant case, it appears the trial court used "language skilled" interpreters. As stated above, Sup.R. 88(D)(3) provides that when using a language skilled interpreter, the

court "shall summarize on the record its efforts to obtain a Supreme Court certified foreign language interpreter or provisionally qualified foreign language interpreter and the reasons for using a language-skilled foreign language interpreter." Furthermore, "[t]he language-skilled foreign language interpreter's experience, knowledge, and training should be stated on the record," and "[e]ach language-skilled foreign language interpreter shall take an oath or affirmation under which the interpreter affirms to know, understand, and act according to the code of professional conduct for court interpreters * * * as set forth in Appendix H to [Sup.R. 88]."

{¶41} As a result of Youssef's stipulation to the fact that there was no available Supreme Court certified translator, "we apply a plain-error standard, which requires a determination that the outcome of the trial clearly would have been different absent the error." *State v. Noor*, 10th Dist. Franklin No. 13AP-165, 2014-Ohio-3397, ¶ 72, citing *State v. McDowall*, 10th Dist. Franklin No. 09AP-443, 2009-Ohio-6902; *State v. Flores*, 12th Dist. Warren No. CA2014-03-037, 2014-Ohio-5751. Under this standard, we do not find the outcome of the trial would have been different.

{¶42} A review of the record reveals that both the state and Youssef stipulated to the qualifications of the interpreters used by Youssef. Under oath, the court inquired into the knowledge and training of the interpreters. The court inquired, under oath, into these interpreters knowledge and training. The trial court also inquired, under oath, into the qualifications of the interpreters used by M.M. The first interpreter had interpreted in approximately 12 other cases. Defense counsel objected to the use of this interpreter, but the trial court overruled the objection. This interpreter then began interpreting for M.M. After obtaining the basic information of M.M.'s name, age, and Youssef's name, the court called a sidebar and the matter was adjourned

for the day. The next morning, the trial court obtained a different interpreter and inquired into this interpreter's qualifications. Defense counsel again objected to the use of this interpreter, but the trial court overruled the objection.

{¶43} While defense counsel objected to the interpreters used by M.M., it is clear from the record that the court asked each interpreter for his or her qualifications and instructed the interpreters to interpret the testimony word for word to the best extent possible. Although there were some irregularities in the use of the translators, there is nothing in the record to suggest any improprieties in the translation that affected the outcome of the trial. Moreover, Youssef did not claim any specific instances where the interpreters' translation was improper. *See State v. Wang*, 9th Dist. Medina No. 13CA0027-M, 2015-Ohio-439 (where the Ninth District Court of Appeals ordered a new trial for the defendant when the defendant and the victim's friend alerted the trial court to the discrepancies between what the victim said and how the interpreter interpreted the victim's testimony. *Id.* at ¶ 11, 17. The court recognized "that verbatim interpretation is 'desirable, but not essential,' under the facts of this case, [the defendant] presented a compelling argument that the misinterpretation made a difference to his defense that he was venting his frustration rather than throwing items at the victim to inflict injury." *Id.* at ¶ 12, citing *State v. Patel*, 9th Dist. Summit No. 24024, 2008-Ohio-4692).

{¶44} Accordingly, we find that the trial court did not err in appointing an interpreter not certified by the Ohio Supreme Court.

{¶45} Therefore, the fourth assignment of error is overruled.

Ineffective Assistance of Counsel

{¶46} In the fifth assignment of error, Youssef argues defense counsel was ineffective for failing to: (1) explain in closing argument why Youssef did not testify; (2) use any challenges

during voir dire; (3) file a motion in limine limiting references to Youssef's culture; (4) use cell phone records at trial; (5) object to the state's use of cultural references; and (6) have Youssef tested for sexually transmitted diseases.

{¶47} To establish ineffective assistance of counsel, Youssef must demonstrate that: (1) counsel's representation was deficient in that it "fell below an objective standard of reasonableness" and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-688, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Sanders*, 94 Ohio St.3d 150, 151, 2002-Ohio-350, 761 N.E.2d 18. In Ohio, an attorney properly licensed is presumed competent. *State v. Lott*, 51 Ohio St.3d 160, 174, 555 N.E.2d 293 (1990). The defendant has the burden of proof and must overcome the strong presumption that counsel's performance was adequate or that counsel's action might be sound trial strategy. *State v. Smith*, 17 Ohio St.3d 98, 100, 477 N.E.2d 1128 (1985).

{¶48} At trial, defense counsel argued that M.M. was having an affair with Y.M. and decided to file rape charges against Youssef in order to have a "culturally acceptable" reason to divorce Youssef.[4] Youssef is now asking this court to second guess counsel's trial strategy, and we decline to do so. *State v. Grasso*, 8th Dist. Cuyahoga No. 98813, 2013-Ohio-1894, ¶ 62, citing *State v. Gooden*, 8th Dist. Cuyahoga No. 88174, 2007-Ohio-2371, ¶ 38 ("Trial tactics and strategies do not constitute a denial of effective assistance of counsel.") Debatable trial tactics do not constitute ineffective assistance of trial counsel, for it is obvious that "'nothing is seen

[4]We note that defense counsel also argued that M.M's injuries were not serious and Youssef did not commit an assault with a deadly weapon. This argument was successful to the extent that Youssef obtained not guilty verdicts on two of the felonious assault counts.

more clearly than with hindsight.'" *State v. Howard*, 8th Dist. Cuyahoga No. 88237, 2007-Ohio-991, ¶ 10, quoting *State v. Clayton*, 62 Ohio St.2d 45, 49, 402 N.E.2d 1189 (1980).

{¶49} As discussed above, Youssef failed to demonstrate how the result of the proceedings would have been different. Thus, we decline to find that he was denied effective assistance of counsel.

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

{¶51} Judgment is affirmed.

It is ordered that appellee recover from 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, P.J., and
PATRICIA A. BLACKMON, J., CONCUR