

IN THE COURT OF APPEALS FOR CHAMPAIGN COUNTY, OHIO

| | | |
|---------------------|---|--|
| STATE OF OHIO | : | |
| Plaintiff-Appellee | : | C.A. CASE NO. 2010 CA 4 |
| v. | : | T.C. NO. 09CR226 |
| MATTHEW T. DUNCAN | : | (Criminal appeal from Common Pleas Court) |
| Defendant-Appellant | : | |

OPINION

Rendered on the 11th day of March, 2011.

NICK A. SELVAGGIO, Atty. Reg. No. 0055607, 200 N. Main Street, Urbana, Ohio 43078
Attorney for Plaintiff-Appellee

CHARLES W. SLICER, III, Atty. Reg. No. 0059927, 111 West First Street, Suite 518,
Dayton, Ohio 45402
Attorney for Defendant-Appellant

DONOVAN, J.

{¶ 1} This matter is before the Court on the Notice of Appeal of Matthew Duncan, filed March 3, 2010. On September 3, 2009, Duncan was indicted on one count of importuning, in violation of R.C. 2907.07(B)(F)(3), a felony of the fifth degree; one count of unlawful sexual conduct with a minor, in violation of R.C. 2907.04(A)(B)(1), a felony of the

fourth degree; and one count of sexual battery, in violation of R.C. 2907.03(A)(1)(B), a felony of the third degree. Following a jury trial, Duncan was found guilty of importuning and unlawful sexual conduct with a minor. He was found not guilty of sexual battery. The trial court sentenced Duncan to concurrent sentences of 12 months for importuning and 18 months for unlawful sexual conduct with a minor. The trial court also designated Duncan a Tier II sex offender.

{¶ 2} The events giving rise to this matter began on March 20, 2009, when Tiffany and her boyfriend, Michael, who is Matthew Duncan's brother, brought Tiffany's cousin, M.F., and M.F.'s little sister, both of whom resided in Columbus, to their home in Mechanicsburg to help Tiffany prepare for her daughter's birthday party the next day. Matthew resided in the home with Tiffany and Michael, and he and his girlfriend, Elisha, who was pregnant with Matthew's child, were present when M.F. arrived on the evening of the 20th. M.F. was thirteen years old at the time. After putting her bags away, M.F. took care of Tiffany's two children while Tiffany made cupcakes for the party. After M.F. bathed the children and put them to bed, she left the bedroom and sat down in the living room where Matthew was playing video games with two of his friends. While they continued to play, M.F. went back and forth between the living room and the kitchen where Tiffany and Elisha were finishing the cupcakes.

{¶ 3} Late in the evening, Michael and the two other men playing video games left to go to a bar, and Matthew stayed behind. When Michael returned alone to the home, he and Tiffany went to the bathroom to take a shower together, and Elisha and Matthew went into the back bedroom. After "a little bit," Matthew returned to the living room where M.F.

sat on the couch, and he sat on a chair. M.F. testified, "I was flirting with him and he was flirting with me." M.F. testified that she "thought he was cute." Matthew then moved over to the couch, and M.F. "was looking at him then he kissed me and I kissed him back * * * ."

M.F. testified, "I wanted it to go further, but then I really didn't want to think about it; but I wasn't for sure. I was confused as a result." According to M.F., Matthew "was like saying do you want to fuck and stuff like that. And I was like, well, I was like I want to and I was like but I can't. I was like because I'm on my period.

{¶ 4} "And he was like - - not like really like trying to like physical (sic). Well, he was trying to pull my pants down, but they wouldn't come down because I had pants on that were tied. * * * And I was like no and then he stopped." M.F. denied that she pushed Matthew away. M.F. stated that Matthew asked her two or three times to have sex with him and she told him no. M.F. denied feeling sexually pressured into engaging in sexual conduct with Matthew. Matthew then removed his penis from his pants, and M.F. testified as follows: "He pulled it out and was like, well, then at least do this. And I was like, no. * * * I was like, your girlfriend is back there; and then he was like, well, just do it. And I was like okay. And then I did it." When asked why she engaged in oral sex with Matthew, M.F. stated, "He asked me to. And - - but I wanted to but then I didn't want to. I just did it. I thought if I did it he would stop asking me so I just - - I did it. I didn't tell him no." M.F. stated that she and Matthew "heard a noise" in the house and that Matthew then returned to the back bedroom. M.F. testified that she noticed that Matthew did not have any pubic hair.

{¶ 5} Prior to the incident, M.F. stated that Matthew asked her how old she was and

she told him, and she stated that she knew that Matthew was over 18 years of age. M.F. stated that she was “high” when the incident occurred. She stated that Matthew told her not to tell anyone what happened. According to M.F., she advised Michael of the incident the next day. M.F. stated that she was subsequently interviewed by a Children’s Services worker, and that she reported the above facts to her.

{¶ 6} On cross-examination, the following exchange occurred:

{¶ 7} “Q. I think it’s your testimony that you never told Mr. Duncan to stop, right?”

{¶ 8} “A. Right.”

{¶ 9} “Q. I think it’s your testimony that you never pushed him away, right?”

{¶ 10} “A. Right.”

{¶ 11} On redirect examination, the prosecutor approached the bench and asked the court’s permission to impeach M.F. pursuant to Evid.R. 607(A). According to the prosecutor, “the State is surprised at her statements to the effect that she didn’t tell the defendant no when the advances were being made. She reported to a forensic child advocacy center worker that she told him no on at least two occasions, and the State is surprised and feels that this testimony is damaging. And I would like to question this witness as to that prior inconsistent statement.”

{¶ 12} Defense counsel objected and the following exchange occurred:

{¶ 13} “MR. BRECOUNT: If the Court is going to overrule my objection I’d at least ask for some sort of limiting instruction because we are getting in a statement that was made off the record - - or I mean, out of court. By that kind of mere question - - I understand that questions are not testimony, but I think it would be worth advising the jury of that again.”

{¶ 14} “THE COURT: Advising the jury of what?”

{¶ 15} “MR. BRECOUNT: That questions aren’t testimony. I just don’t want the jury to interpret the fact that the question is being asked that it was made. * * *

{¶ 16} “I’m also concerned about the fact that - - I understand with juvenile witnesses there’s a certain amount of leeway given when it comes to asking leading type questions. That is going to go too far under these particular circumstances, Your Honor. What I mean by going too far, I mean, I understand there’s a certain amount of leading questions that are allowed because of the age of the witness. But I think that kind of question is entirely too leading, Your Honor.

{¶ 17} “THE COURT: The Court believes that the questioning is authorized by the Rules of Evidence, and the Court chooses to allow the questioning.

{¶ 18} “If you have an objection to an individual question on leading grounds or hearsay grounds, then you need to enter the objection at the time the question is asked. But if it’s for other grounds like we have discussed here, you don’t have to object each time.”

{¶ 19} Questioning resumed as follows:

{¶ 20} “BY MR. HOUGHTON:

{¶ 21} “[M.F.], I think you testified earlier that you remember being interviewed by someone at Children Advocacy Center in Columbus?”

{¶ 22} “A. Yes.

{¶ 23} “Q. And that was in an interview regarding the incidents that you’ve testified to today?”

{¶ 24} “A. Yes.

{¶ 25} “Q. And I also believe that you testified that you don’t recall today having told Matthew Duncan no verbally when he was making these advances on you. Is that right?

{¶ 26} “A. Well, he tried to pull my pants down I told him no. But when I did oral I didn’t say no. I said no at first but then I didn’t the second time.

{¶ 27} “Q. And do you remember the first time you said no, did he respond that he wanted it to go further?

{¶ 28} “A. No.

{¶ 29} “Q. * * * Do you remember telling the child advocacy interviewer that you told Matthew that you didn’t want to do that and he responded come on?

{¶ 30} “A. No that was when he - -

{¶ 31} “MR. BRECOUNT: I’ll object. Leading, Your Honor.

{¶ 32} “THE COURT: Sustained to the form of the question.

{¶ 33} “ * * *

{¶ 34} “CONTINUING BY MR. HOUGHTON:

{¶ 35} “Q. * * * Do you remember whether Matthew responded after you had said no the first time you know you want to or something to that effect?

{¶ 36} “A. He said that when he was pulling my pants down; and I was like no, I don’t want to. And he was like, yeah, you do. You know you want to.

{¶ 37} “* * *

{¶ 38} “Q. Do you remember telling the child advocacy worker when you were interviewed that after [Matthew] had said ‘you know you want to’ that you told him that you

didn't want to and that that's when he pulled his penis out?

{¶ 39} "A. No.

{¶ 40} "MR. BRECOUNT: Objection. Leading.

{¶ 41} "THE COURT: Overruled.

{¶ 42} "Q. Do you remember telling the child advocacy worker that Matthew had said you know you want to do this?

{¶ 43} "MR. BRECOUNT: Same objection.

{¶ 44} "THE COURT: * * * overruled. You may answer.

{¶ 45} "A. Yes.

{¶ 46} "Q. Okay. Do you remember what you told the interviewer your response to that was verbally?

{¶ 47} "A. I said no.

{¶ 48} "Q. Okay. Did he pull his penis out after you had said no?

{¶ 49} "A. No. It was before I said no.

{¶ 50} "Q. So you didn't actually tell him no before he pulled his penis out?

{¶ 51} "A. I said no when he was pulling my pants down, and then he pulled it out.

And then after that, I said no but then I did it anyways.

{¶ 52} "Q. Is that because you wanted to do it or because he had his hand on your head or something else.

{¶ 53} "A. I wanted to but then I didn't want to. But I did it anyways."

{¶ 54} Tiffany testified that when she and Michael walked to the bathroom to shower, she observed Elisha and Matthew "going to the bedroom to do whatever they do."

Tiffany testified that she and Michael were in the shower together for 45 minutes. When she exited the bathroom, Matthew asked her for a cigarette, she gave him one, and she observed him return to the back bedroom and close the door. Tiffany assumed that M.F. was sleeping in the other bedroom with the kids while she showered. Tiffany did not see M.F. until the following morning. When she learned of M.F.'s allegations against Matthew, Tiffany confronted him. Tiffany testified that initially Matthew was shocked, "and then it went straight to anger, and he just looked at me. And he was like, you didn't hear screaming, did you? You know, like he felt like, I don't know. Like if he had been doing something that she would have been screaming or I would have known or, you know, kind of like if it was, you know, I wasn't hearing it so it didn't happen. * * *."

{¶ 55} "So I was on the phone with my Uncle Donny, and he demanded to talk to him, and I gave him the phone. And he began to tell Donny, you know, she wasn't screaming here. Nobody heard her screaming. She was, you know, she was fine. I would not do that with your daughter. * * *."

{¶ 56} Tiffany testified that M.F. had a reputation for being untruthful. Tiffany was asked at the close of direct examination, "Do you know whether [M.F.] has an ax to grind with Matthew Duncan?" Defense counsel objected to the question, and the court overruled the objection. Tiffany asked that the question be repeated and then responded, "I don't know that I want to say that she did. I just know that she was always in competition with my sister, and my sister has had a crush on Matthew for a long time; and she made it very well known to everybody. So I don't know that she would have a - - you know, trying to get him in trouble. I think it was more she was bragging."

{¶ 57} The following exchange then occurred on cross-examination:

{¶ 58} “Q. [Tiffany], I didn’t understand your answer earlier. Are you saying [M.F.] has a reputation for untruthfulness?”

{¶ 59} “A. As far as I know, yes.”

{¶ 60} Steven Eck, an officer with the Mechanicsburg Police Department, testified that he investigated M.F.’s allegations against Matthew after the incident was reported on April 3rd. Eck interviewed Matthew on May 12, 2009, and Matthew denied any type of sexual conduct with M.F. When Eck asked Matthew how M.F. could have known that his pubic area was free of hair, Matthew “became agitated.” He advised Eck that he shaved his pubic region, and that “he must have made comment to Elisha at the dinner table and that M.F. must have heard him say that. I inquired as to whether that was an appropriate dinnertime discussion with a 13 year old present, and he became extremely angry at that point and the interview ended shortly after that.”

{¶ 61} Michael testified on behalf of Matthew. Michael stated that when he and Tiffany got into the shower, Matthew was in the back bedroom with Elisha. When Michael and Tiffany emerged from the bathroom 45 minutes later, Matthew was putting something in the refrigerator, and he asked them for a cigarette. Michael stated that after he and Tiffany got into bed, he was unable to sleep and so he returned to the living room and started watching a movie. According to Michael, M.F. was sleeping on the love seat in the living room at that time. Michael soon fell asleep on the floor for about 45 minutes, and when he woke up, he returned to bed. The next morning, Michael denied that M.F. appeared upset. He stated that he learned of the incident three or four days later from M.F.’s father when he

and Tiffany went to Columbus to visit M.F.'s parents. Michael denied that M.F. told him what had happened.

{¶ 62} Elisha also testified on behalf of Matthew. According to Elisha, Matthew went with her to the bedroom after she and Tiffany were finished in the kitchen, and she and Michael watched a movie and had sex. Elisha stated she and Matthew entered their bedroom as Tiffany and Michael walked to the shower, and that Matthew was in the bedroom with her while Tiffany and Michael were in the shower. Halfway through the movie, Elisha asked Matthew to go out to the kitchen and get her some juice and a cigarette. She stated that he was gone from the bedroom for “[t]wo minutes tops if that.” Elisha stated that M.F. “was in the bedroom with the children most of the night and in the kitchen with Tiffany and I.” Elisha testified that in the course of the night, she “did not sleep. I stayed up to wake Tiffany up. She had to be up at four for work the next morning.” When asked if Matthew shaves his pubic region, Elisha stated that he trims the area as follows: “He takes it down to about an inch or half an inch I’d say. There’s always hair there. It’s just short.” Elisha testified that on the following day, Matthew took a shower, and “[h]e got out of the shower, came out and said I shaved. And when he said that I asked him if he shaved everything and I was referring to his chest and stuff and he said yes.” Elisha stated that M.F. was present at the time, and that Matthew made the statement in the kitchen. When asked how she felt when she learned of M.F.’s allegations, Elisha stated, “I was upset. I was pregnant with his child. I was with him the entire night I was there.”

{¶ 63} Finally, Matthew testified. He stated that he and Elisha went to bed together when Michael and Tiffany got into the shower. He stated that he and Elisha had sex in the

bedroom. According to Matthew, “about 45 minutes later, I heard the shower kick off. My bedroom is right next to the shower. I heard that shower kick off. And so I knew they was getting out of the shower and Elisha was - - will you get a cigarette? And so I was walking out the door to go get - - to go out the door. She was like will you get me something to drink, too? I was like, yeah.” Matthew testified that he left the bedroom and went to the kitchen to pour some Kool-Aid for Elisha, and then he asked Tiffany for a cigarette when she and Michael left the bathroom. When he returned to the bedroom, Matthew stated that he went to sleep. He stated that in the course of the evening he did not talk to M.F. because she was busy taking care of the children. When asked if he shaved his pubic region, Matthew replied, “I shave my chest and my stomach. I don’t shave down there. I have years ago, but it irritates my skin. * * * And I have not done that. I have this Quattro with a - - it’s called a Quattro with a flip blade. You can flip on one side for the beard and a razor on the other side. And I use the beard part for my genital area.” Matthew stated that his pubic hair was about a half an inch long and Elisha “was complaining about it when we was having sex. She was getting pricked by my hair.” Matthew testified, “I went to bed and woke up the next morning around 10 or 10:30 and I got in the shower. That’s usually where I shave at was in the shower.

{¶ 64} “So I went in there and I was thinking, you know, Elisha wanted me to shave so I’m going to keep it nice for her. So that’s when I shaved. I shaved there. When I got out she was preparing a olive tray or something for guests we were going to have later on that day. And I told her - - [M.F.] was actually in there. We was talking to each other and I told her, I said, Elisha, I shaved, you know, for you. I shaved for you, Baby.”

{¶ 65} Matthew asserts two assigned errors. His first assigned error is as follows:

{¶ 66} “THE JURY ERRED WHEN IT FOUND APPELLANT GUILTY OF FELONIOUS ASSAULT AS SUCH A FINDING IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND THE EVIDENCE PRESENTED WAS INSUFFICIENT TO SUPPORT THE CONVICTION.”

{¶ 67} We initially note that Matthew was not convicted of felonious assault. We will assume this is an editing error in the brief and address the manifest weight and sufficiency of the evidence as to the convictions for importuning and unlawful sexual conduct with a minor.

{¶ 68} “When an appellate court analyzes a conviction under the manifest weight of the evidence standard it must review the entire record, weigh all of the evidence and all the reasonable inferences, consider the credibility of the witnesses and determine whether in resolving conflicts in the evidence, the fact finder clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. (Internal citations omitted). Only in exceptional cases, where the evidence ‘weighs heavily against the conviction,’ should an appellate court overturn the trial court’s judgment.” *State v. Dossett*, Montgomery App. No. 20997, 2006-Ohio-3367, ¶ 32.

{¶ 69} The credibility of the witnesses and the weight to be given to their testimony are matters for the trier of facts to resolve. *State v. DeHass* (1997), 10 Ohio St.2d 230, 231.

“Because the factfinder * * * 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

factfinder's determinations of credibility. The decision whether, and to what extent, to credit the testimony of particular witnesses is within the peculiar competence of the factfinder, who has seen and heard the witness." *State v. Lawson* (Aug. 22, 1997), Montgomery App. No. 16288.

{¶ 70} This court will not substitute its judgment for that of the trier of facts on the issue of witness credibility unless it is patently apparent that the trier of fact lost its way in arriving at its verdict. *State v. Bradley* (Oct. 24, 1997), Champaign App. No. 97-CA-03.

{¶ 71} "In reviewing a claim of insufficient evidence, '[t]he relevant inquiry is whether, after reviewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.' *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus, following *Jackson v. Virginia* (1979), 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560; see, also, *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386, * * * ." *State v. McKnight*, 107 Ohio St.3d 101, 112, 2005-Ohio-6046, ¶ 70.

{¶ 72} R.C. 2907.07(B) proscribes importuning and provides, "No person shall solicit another, not the spouse of the offender, to engage in sexual conduct with the offender, when the offender is eighteen years of age or older and four or more years older than the other person, and the other person is thirteen years of age or older but less than sixteen years of age, whether or not the offender knows the age of the other person." Solicit means "[t]o appeal for something; to apply to for obtaining something; to ask earnestly; to ask for the purpose of receiving; to endeavor to obtain by asking or pleading." *Black's Law Dictionary* (6th Ed. Rev.1991) 1392.

{¶ 73} R.C. 2907.04(A) proscribes unlawful sexual conduct with a minor and provides, “No person who is eighteen years of age or older shall engage in sexual conduct with another, who is not the spouse of the offender, when the offender knows the other person is thirteen years of age or older but less than sixteen years of age, or the offender is reckless in that regard.” “Sexual conduct’ means vaginal intercourse between a male and female, anal intercourse, fellatio, cunnilingus between persons regardless of sex * * * .” R.C. 2907.01(A).

{¶ 74} In the body of his brief, regarding his conviction for importuning, Matthew argues that “consent is akin to solicitation. The testimony of [M.F.] was clear that she wanted to engage in sexual conduct with the defendant. Taking [M.F.’s] statements as true, she and the defendant engaged in sexual conduct consensually. As such, any conduct was not solicited.” Matthew further argues, “as [M.F.] testified, she never told the defendant what her age was. There was no testimony of how old [M.F.] looked or how the defendant may have been reckless as to [M.F.’s age].

{¶ 75} “The defendant denied having any contact with [M.F.]”

{¶ 76} We initially note that the jurors had the opportunity to hear and observe all of the witnesses, and they clearly believed M.F.’s version of events over Matthew’s, and we defer to their assessment of credibility. We also note that the jury could have reasonably concluded that Elisha’s testimony was motivated by a desire to protect the father of her unborn child and that Michael sought to protect his brother.

{¶ 77} M.F. testified that Matthew “was like saying do you want to fuck and stuff like that,” and that he asked her repeatedly to have sex with him. He also removed his penis

from his pants, indicating to M.F., “just do it.” M.F. stated that she engaged in oral sex with him because Matthew “asked me to.” In other words, Matthew solicited M.F. to engage in sexual conduct in violation of R.C. 2907.04. The fact that M.F. admittedly acquiesced to his advances does not negate the fact of Matthew’s solicitation or constitute a defense.

{¶ 78} Regarding Matthew’s conviction for unlawful sexual conduct, we note that M.F., contrary to Matthew’s assertion, did testify specifically that she told him on the night of the offenses, prior to any sexual conduct, that she was 13 years old. Based on this testimony, the jury could find that Matthew knew M.F.’s age.

{¶ 79} Having thoroughly reviewed the entire record, we cannot say that the jury lost its way by convicting Matthew of importuning and unlawful sexual conduct with a minor, and we conclude that Matthew’s convictions are not against the manifest weight of the evidence. Further, after reviewing the evidence in a light most favorable to the State, we conclude that Matthew’s convictions are supported by sufficient evidence. Accordingly, Matthew’s first assigned error is overruled.

{¶ 80} Matthew’s second assigned error is as follows:

{¶ 81} “THE APPELLANT WAS DENIED HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION.

{¶ 82} “ALTERNATIVELY, THE TRIAL COURT COMMITTED PLAIN ERROR WHEN IT ALLOWED THE ADMISSION OF EVIDENCE/TESTIMONY AT TRIAL WHICH IRREVERSIBLY PREJUDICED APPELLANT.”

{¶ 83} “We review the alleged instances of ineffective assistance of trial counsel under the two prong analysis set forth in *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674, and adopted by the Supreme Court of Ohio in *State v. Bradley* (1989), 42 Ohio St.3d 136, * * * . Pursuant to those cases, trial counsel is entitled to a strong presumption that his or her conduct falls within the wide range of reasonable assistance. *Strickland*, 466 U.S. at 688. To reverse a conviction based on ineffective assistance of counsel, it must be demonstrated that trial counsel’s conduct fell below an objective standard of reasonableness and that his errors were serious enough to create a reasonable probability that, but for the errors, the result of the trial would have been different. *Id.* Hindsight is not permitted to distort the assessment of what was reasonable in light of counsel’s perspective at the time, and a debatable decision concerning trial strategy cannot form the basis of a finding of ineffective assistance of counsel.” (Internal citation omitted). *State v. Mitchell*, Montgomery App. No. 21957, 2008-Ohio-493, ¶ 31.

{¶ 84} Matthew initially directs our attention to Tiffany’s testimony on direct examination regarding Matthew’s response when she confronted him about the incident, specifically, when Tiffany testified, “he was like, you didn’t hear something * * * Like if he had been doing something that she would have been screaming * * * I wasn’t hearing it so it didn’t happen.” Matthew argues that “this statement was purely opinion, was pure speculation on the part of the witness and was highly prejudicial to the defendant.” Tiffany’s testimony at trial described Matthew’s reaction to being confronted about M.F.’s allegations. Although an objection should have been lodged to the inference Tiffany drew from Matthew’s statement about screaming, given M.F.’s detailed testimony regarding the

incident, which the jury credited, we cannot find that the outcome of the trial would have been different had counsel objected to the inference drawn by Tiffany in her testimony.

{¶ 85} Matthew next asserts, incorrectly, that a juror sought to ask Tiffany whether M.F. “had an ax to grind” with Matthew. Matthew argues, “without any objection from counsel, the witness went to again speculate as to what [M.F.’s] thoughts or motives were at that time. * * * The court committed error by asking the witness the question and counsel was ineffective in not objecting to the answer.” Matthew mischaracterizes the record in two respects. First, this was not a question submitted by a juror to the court, but rather a question posed by the prosecutor (only repeated by the court because Tiffany did not hear it). Secondly, the defense attorney did in fact enter an objection to the question.

{¶ 86} Finally, while Matthew suggests that he was unfairly prejudiced by the admission of Tiffany’s response, Matthew does not explain how Tiffany’s testimony, that M.F. was “bragging” (and known to be untruthful) aroused the jurors’ emotional sympathies for M.F., evoked a sense of horror or appealed to the jury’s sense to punish. See *Oberlin v. Akron Gen. Med. Ctr.*, 91 Ohio St.3d 169, 172, 2001-Ohio-248. If anything, Tiffany’s description of M.F. as an untruthful braggart undermined M.F.’s credibility and did not prejudice Matthew. Although Matthew complains generally of the court’s failure to give limiting instructions, citing pages 155 and 212 of the transcript, such failure does not constitute error. It is not readily apparent from the record what limiting instruction counsel was requesting. We also note that during portions of this testimony, counsel’s objections were in fact sustained. We further note, “[i]t is well settled that a trial court has wide latitude in the admission or rejection of evidence.” *State v. Mcadams* (April 12, 1983), Clark

App. No. 1728. Clearly, unfair prejudice to Matthew is not demonstrated, and Matthew's ineffective assistance claim fails.

{¶ 87} Matthew's second assigned error is overruled, and the judgment of the trial court is affirmed.

.....

FROELICH, J. and HALL, J., concur.

Copies mailed to:

Nick A. Selvaggio
Charles W. Slicer, III
Hon. Roger B. Wilson