

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
WASHINGTON COUNTY

State of Ohio,	:	Case No. 25CA35
Plaintiff-Appellee,	:	
	:	<u>DECISION AND</u>
v.	:	<u>JUDGMENT ENTRY</u>
	:	
Kristofer R.L. Eye,	:	
Defendant-Appellant.	:	RELEASED 10/8/2026

APPEARANCES:

Christopher Pagan, Repper-Pagan Law, Ltd., Middletown, Ohio, for appellant.

Kelsey R. Riffle, Washington County Assistant Prosecuting Attorney, Marietta, Ohio, for appellee.

Hess, J.

{¶1} Kristofer R.L. Eye appeals from a judgment of the Washington County Common Pleas Court convicting him, following a jury trial, of rape of a child under the age of 13. Eye then waived a jury trial on the sexually violent predator specification. The trial court found Eye a sexually violent predator and sentenced him to a mandatory prison term of 25 years to life. Eye presents three assignments of error: (1) his sentence is contrary to law because the trial court applied the improper standard of proof to Eye's sexually violent predator specification and his trial counsel was ineffective for failing to object to the use of the improper standard; (2) the trial court failed to obtain a valid jury trial waiver on the sexually violent predator specification; and (3) his rape conviction was

against the manifest weight of the evidence because the victim's testimony was not credible or supported by other evidence. For the following reasons, we overrule the assignments of error and affirm the trial court's judgment.

I. FACTS AND PROCEDURAL HISTORY

{¶2} In February 2024, Eye was indicted by a Washington County grand jury on 19 counts: one count of complicity in the commission of gross sexual imposition, a third-degree felony; four counts of rape, first-degree felonies; two counts of gross sexual imposition, third-degree felonies; ten counts of pandering sexually-oriented matter involving a minor or impaired person, fourth-degree felonies; and one count each of tampering with records and failure to provide notice of change of address, both third-degree felonies. The rape counts involved two different victims, one child between the ages of 10-11 years and one child between the ages of 4-5 years.

{¶3} Ultimately two of the four rape counts, the complicity count, the tampering and failure to register counts, and all the pandering sexually-oriented matter counts were dismissed by the State. Evidence of the two remaining rape counts and the two gross sexual imposition counts were presented to the jury. The jury found Eye guilty of one count of rape in violation of R.C. 2907.02(A)(1)(b) and (B) and not guilty of the remaining rape count or the two gross sexual imposition counts.

{¶4} Following the jury verdict, Eye waived his right to have the sexually violent predatory specification tried to the jury. The trial court took evidence on that specification and found Eye was a sexually violent predator and sentenced him to a mandatory prison term of 25 years to life, a period of mandatory post-release control for 5 years, and found he was a Tier III sex offender registrant.

{¶15} Eye appealed.

II. ASSIGNMENTS OF ERROR

{¶16} Eye presents three assignments of error:

- I. The trial court committed sentencing error.
- II. The trial court failed to obtain a valid waiver from Eye of his jury-trial right on the SVP [sexually violent predator] specification.
- III. The Statutory Rape conviction was against the manifest weight of the evidence.

III. LAW AND ANALYSIS

A. Standard of Proof for Sexually Violent Predator Specification

{¶17} For his first assignment of error, Eye contends that his sentence is contrary to law because the trial court used the incorrect standard of proof when considering the State's evidence on the sexually violent predator specification. Eye argues that the trial court used an improper "preponderance standard," not the proper "beyond a reasonable doubt" standard.

{¶18} The parties agree that the correct standard of proof for the sexually violent predator specification is "beyond a reasonable doubt." *State v. Williams*, 88 Ohio St.3d 513, 532 (2000) ("Because there are punitive aspects of the sexually violent predator specification, the law requires that, like any other specification, those aspects be determined by proof beyond a reasonable doubt."). Eye argues that the trial court used the "preponderance standard" but cites no place in the record where this error occurred. "The court may disregard an assignment of error presented for review if the party raising it fails to identify in the record the error on which the assignment of error is based" App.R. 12(A)(2). The trial court does not make any references to the incorrect

“preponderance standard” of proof in either the transcript of the proceeding or the sentencing entry. Neither the parties nor the trial court referenced the applicable standard of proof at the hearing where the State presented its evidence on the sexually violent predator specification. Without evidence in the record of an error, we do not presume the trial court erred in applying the proper standard of proof. To the contrary, “[a] reviewing court must presume that the trial court applied the law correctly.” *State v. Coombs*, 18 Ohio St.3d 123, 125 (1985); *State v. Eubank*, 60 Ohio St.2d 183, 187 (1979) (a judge is presumed to apply the proper law in arriving at a judgment, “unless the contrary affirmatively appears from the record”).

{¶9} In a second argument under the first assignment of error, Eye contends that his trial counsel was ineffective for failing to object to the trial court’s use of the improper standard of proof. First, we note that this argument was not presented as a separate assignment of error in Eye’s brief. Appellate courts review assignments of error, not mere arguments. App.R. 12(A)(2) provides that “[t]he court may disregard an assignment of error presented for review if the party raising it fails to ... argue the assignment separately in the brief, as required under App.R. 16(A). *State v. Samamra*, 2025-Ohio-126, ¶ 56 (9th Dist.) (refusing to consider an ineffective assistance of counsel argument that was raised under an assignment of error challenging the separation of witnesses order).

{¶10} Second, to prevail on an ineffective assistance of counsel claim, a defendant must show: “(1) deficient performance by counsel, i.e., performance falling below an objective standard of reasonable representation, and (2) prejudice, i.e., a reasonable probability that, but for counsel's errors, the proceeding's result would have been different.” *State v. Short*, 2011-Ohio-3641, ¶ 113, citing *Strickland v. Washington*,

466 U.S. 668, 687-688, 694, (1984). Failure to satisfy either part of the test is fatal to the claim. See *Strickland* at 697; *State v. Gipson*, 2026-Ohio-1707, ¶ 34 (4th Dist.). Eye cannot show any deficient performance by counsel for failing to make an objection where there is no evidence in the record that the trial court made any error.

{¶11} We overrule Eye's first assignment of error.

B. Waiver of Jury Trial on Sexually Violent Predator Specification

{¶12} Eye contends that the trial court erred in accepting his trial counsel's representation that Eye waived his right to a jury trial on the sexually violent predator specification. He argues that he did not personally acknowledge the waiver or provide it in writing.

{¶13} The requirements of a jury trial waiver in criminal cases are in R.C. 2945.05, which states in relevant part, "Such waiver by a defendant, shall be in writing, signed by the defendant, and filed in said cause and made a part of the record thereof." However, the Supreme Court of Ohio has held that the waiver requirements in R.C. 2945.05 do not apply to specifications. *State v. Nagel*, 84 Ohio St.3d 280 (1999). In *Nagel*, as in Eye's case, defense counsel waived the right to a jury trial on behalf of the defendant on certain specifications. The defendant did not make a written waiver or personal affirmation to the trial court. The Supreme Court of Ohio held that "a specification is, by its very nature, ancillary to, and completely dependent upon, the existence of the underlying criminal charge or charges to which the specification is attached. Therefore, we have difficulty understanding precisely how it is that R.C. 2945.05 could be found to apply in circumstances where, as here, a defendant has received a jury trial on the merits of the underlying charges alleged in the indictment." *Id.* at 286.

{¶14} Instead, the procedures for determining whether a defendant is a sexually violent predator are contained in R.C. 2971.02, which provide for a jury trial and allow the defendant to waive that right, but does not require the waiver be made in writing or affirmed to by the defendant, “In any case in which a sexually violent predator specification is included in the indictment . . . the defendant may elect to have the court instead of the jury determine the sexually violent predator specification.”

{¶15} Eye contends that *Nagel*, which held that the written waiver requirements in R.C. 2945.05 do not apply to specifications, “likely does not survive” *Apprendi v. New Jersey*, 530 U.S. 466 (2000), which involved a hate crime sentencing enhancement. In *Apprendi*, the Court held that the United States Constitution requires that any fact that increases the penalty for a crime beyond the prescribed statutory maximum, other than the fact of a prior conviction, must be submitted to a jury and proved beyond a reasonable doubt. A defendant can waive the *Apprendi* right to a jury trial. *Blakely v. Washington*, 542 U.S. 296, 310 (2004) (“nothing prevents a defendant from waiving his *Apprendi* rights”).

{¶16} Eye cites no legal authority that has determined that *Nagel*, which allows these types of jury trial waivers to be made by trial counsel, was overturned by *Apprendi*. Nor has Eye cited any legal authority that requires a defendant’s jury trial waiver under R.C. 2971.02 to be in writing or made by the defendant’s personal affirmation to the trial court, rather than through defense counsel. To the contrary, courts continue to permit defendants to make jury trial waivers under R.C. 2971.02 through defense counsel and cite *Nagel* for authority. See, e.g., *State v. Johnson*, 2025-Ohio-2770, ¶ 33-34 (8th Dist.), citing *State v. Jordan*, 2017-Ohio-381, ¶ 24-26 (8th Dist.) (finding no error when the trial

judge determined the sexual motivation specification without the defendant executing a waiver in open court) and *State v. Burks*, 2015-Ohio-1246 (9th Dist.) (finding that the defendant's election to have the trial court determine the sexually violent predator specification did not need to be in writing).

{¶17} We find that defense counsel's waiver of Eye's jury trial rights under R.C. 2971.02 was a valid waiver. We overrule Eye's second assignment of error.

C. Manifest Weight of the Evidence

{¶18} Eye contends that his rape conviction of a child between the ages of 10-11 years was against the manifest weight of the evidence because the only evidence was the victim's testimony.

1. Standard of Review

{¶19} In determining whether a conviction is against the manifest weight of the evidence, an appellate court

must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that reversal of the conviction is necessary. In order to satisfy this test, the state must introduce substantial evidence on all the elements of an offense, so that the [trier of fact] can find guilt beyond a reasonable doubt.

Although a court of appeals may determine that a judgment of a trial court is sustained by sufficient evidence, that court may nevertheless conclude that the judgment is against the weight of the evidence. However, we are reminded that generally, it is the role of the [trier of fact] to determine the weight and credibility of evidence.

(Citations omitted.) *State v. Anderson*, 2019-Ohio-395, ¶ 14-15 (4th Dist.). "The trier of fact is free to believe all, part, or none of the testimony of any witness, and we defer to the trier of fact on evidentiary weight and credibility issues because it is in the best position

to gauge the witnesses' demeanor, gestures, and voice inflections, and to use these observations to weigh their credibility." *State v. Chafin*, 2017-Ohio-7622, ¶ 32 (4th Dist.), citing *State v. Dillard*, 2014-Ohio-4974, ¶ 28 (4th Dist.), citing *State v. West*, 2014-Ohio-1941, ¶ 23 (4th Dist.).

2. Analysis

{¶20} Eye was convicted of rape under R.C. 2907.02(A)(1)(b) and (B):

(A)(1) No person shall engage in sexual conduct with another when any of the following applies: . . .

(b) The other person is less than thirteen years of age, whether or not the offender knows the age of the other person.

(B) Whoever violates this section is guilty of rape, a felony of the first degree.
. . .

{¶21} Eye contends that the State failed to prove that he was the person who raped the victim because the victim's testimony was not credible, not corroborated by forensic evidence, not supported by a confession by him, and the caseworker's testimony showed that there were inconsistencies in the victim's accusations.

{¶22} The victim, who was 21 years old at the time of the trial, testified that Eye came into her life when she was about 10 or 11 years old after her mother became friends with him. Eye was in her life for approximately three months. Eye would watch movies with her or pick her up from elementary school and it would just be the two of them, without her mother present. Eye would also have her sit on his lap while Eye was driving the car and allow her to steer the car and press the gas pedal. She testified that when Eye was over at her house, they would play video games and Eye would have her sit on his lap.

{¶23} The victim testified that on one occasion while they were playing video games in the living room, her mother was in the room and had dozed off. Eye inserted his

finger into the victim's vagina and moved his fingers. She testified that this happened on more than one occasion. The State introduced photographs of the living room and chair that the victim described as the place where the digital penetration occurred.

{¶24} The victim testified that she told a friend at school about it and law enforcement and children services became involved. She did not want to talk about it initially but then was able to talk to the caseworker from children services about it. She did not tell the caseworker everything that happened, but testified, "I told her what I could spit out." She testified that she told the caseworker that Eye had touched her, but not about other incidents that had occurred at Eye's house. After she reported the incident to children services, she was placed in a foster home. Eventually she was able to live with her father. After she was placed in foster care, she never saw Eye again.

{¶25} On cross-examination, the victim admitted that as a 10- or 11-year-old child, she sometimes lied about things. Initially when law enforcement and children services came to talk to her, there were two people in the room asking her questions. She initially said that nothing had happened, but then the investigator left the room and she was alone with the caseworker and was able to open up and confide in her. However, even then the victim only disclosed the digital penetration incident and did not discuss any of the other incidents that occurred.

{¶26} On redirect, the victim testified that Eye had told her not to tell anyone, and he said that "it was something that didn't need to be talked about."

{¶27} Ginger Davey was the caseworker who interviewed the victim when she was an 11-year-old child. Davey testified about the forensic interviewing technique and related processes. Davey initially became involved with the case due to allegations of

neglect against the victim's mother, but then sexual abuse allegations concerning Eye were brought to Davey's attention. The interview was conducted in one of the elementary school offices by Davey and a detective. Davey testified that while the victim was initially denying things, her body language indicated she was very uncomfortable. The detective left the room and a little while after that, the victim disclosed to Davey what Eye had done.

{¶28} After the interview, Davey went to the victim's home and spoke to the mother. At the time, Eye was present in the home and law enforcement spoke to him. Davey testified that the layout and furniture in the living room was as the victim described it to her. Davey testified that she spoke to Eye who admitted he was in the home, smoked marijuana, and wanted "to change his life" but he denied allegations that he had done anything to the victim. The mother admitted to abusing marijuana and being a long-term alcoholic.

{¶29} Scott Parks testified that he had been a detective for the Washington County Sheriff's Office and interviewed Eye after learning of sexual abuse allegations against him. The audio-recorded interview of Eye was played for the jury in which Eye admitted to playing video games and watching movies with the victim, being alone in the home with her while her mother was at work, and engaging in "tickle fights" with the victim, but said that her mother was also engaged in the tickle fights when they occurred. He denied that he ever touched the victim inappropriately but stated that he is changing his life, has become an ordained minister, and has started a lawn care business.

{¶30} Based on the record, the weight of the evidence and all reasonable inferences, and considering the credibility of the witnesses, we do not find that Eye's conviction is against the manifest weight of the evidence. We note that " 'a rape conviction

may rest solely on the victim's testimony, if believed, and that '[t]here is no requirement that a rape victim's testimony be corroborated as a condition precedent to conviction.' ” *State v. Horsley*, 2018-Ohio-1591, ¶ 74 (4th Dist.); *State v. Johnson*, 2006-Ohio-6404, ¶ 53 (noting “[c]orroboration of victim testimony in rape cases is not required”). “ ‘[T]here is no requirement that testimonial evidence of sexual abuse must be corroborated by physical or other evidence.’ ” *State v. Maloney*, 2018-Ohio-316, ¶ 61 (2d Dist.) quoting *State v. Barnes*, 2014-Ohio-47, ¶ 31 (2d Dist.); *State v. Lykins*, 2019-Ohio-3316, ¶ 48-49 (4th Dist.).

{¶31} In addition, we do not believe that the record suggests that the victim's testimony “suffers from such serious discrepancies that we, as a reviewing court relying on ‘a cold, paper record,’ must supplant the jury's determination of credibility.” *State v. Thomas*, 2015-Ohio-5247, (9th Dist.), ¶ 30, quoting *In re B.B.*, 2003-Ohio-5920, ¶ 31 (8th Dist.). Although the victim initially denied anything happened, in the same interview after the detective left, the victim was able to confide in the caseworker and described at least some of Eye's sexual offenses. The jury listened to all the testimony by each witness. They were able to observe the witnesses' demeanors, gestures, and voice inflections and used these observations in weighing the credibility of each.

{¶32} Thus, we do not believe that this case is one of those exceptional cases in which the evidence weighs heavily against the conviction. We cannot say that in this case, the jury lost its way and created a manifest miscarriage of justice requiring reversal of Eye's conviction. We find his convictions are supported by the manifest weight of the evidence and overrule Eye's third assignment of error.

IV. Conclusion

{¶33} We overrule the assignments of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Washington County Common Pleas Court to carry this judgment into execution.

If a stay of execution of sentence and release upon bail has been previously granted by the trial court or this court, it is temporarily continued for a period not to exceed 60 days upon the bail previously posted. The purpose of a continued stay is to allow appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the 60-day period, or the failure of the appellant to file a notice of appeal with the Supreme Court of Ohio in the 45-day appeal period set forth in the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of 60 days, the stay will terminate as of the date of such dismissal.

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

Smith, P.J. & Wilkin, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
Michael D. Hess, Judge

NOTICE TO COUNSEL

This document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.