

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	
v.	:	No. 115884
KORY KANE,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: August 27, 2026

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-20-647749-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Margaret Graham, Assistant Prosecuting Attorney, *for appellee*.

Mary Catherine Corrigan, *for appellant*.

MICHAEL JOHN RYAN, J.:

{¶ 1} Defendant-appellant Kory Kane appeals his conviction for gross sexual-imposition, which was rendered after a jury trial. We affirm.

{¶ 2} Appellant was charged in an eight-count indictment with three counts of gross sexual imposition, in violation of R.C. 2907.05(A)(4); two counts of rape, in violation of R.C. 2907.02(A)(1)(b); and three counts of kidnapping, in violation of R.C. 2905.01(A)(4). Two of the three kidnapping charges contained a sexual-motivation specification.

{¶ 3} In 2015, “Mother” and her young daughter “Jane” moved in with appellant, whom Mother was dating. Mother and Jane moved out of appellant’s home in 2017, shortly after Jane turned six.

{¶ 4} At some point, Jane told her mother that appellant had sexually abused her; according to Mother, the disclosure was “maybe” in 2019. Jane testified that she made the disclosure before they moved from the apartment but also testified that she was eight years old when she disclosed, which would have been after they moved from appellant’s home. Months after that disclosure, Mother contacted the Cuyahoga County Division of Children and Family Services (“CCDCFS”) to report the abuse and the agency referred Jane to University Hospitals.

{¶ 5} Kathleen Hackett, a pediatric forensic sexual assault nurse examiner (“SANE nurse”) program coordinator at University Hospitals Rainbow Babies and Children’s Hospital, testified to her extensive background as a nurse and the specialized training she received to become a SANE nurse.

{¶ 6} Hackett explained that University Hospitals has a Care Clinic where patients are referred when there is a concern or disclosure of any type of sexual violence. Hackett testified about the types of injuries patients may present with in

cases of alleged sexual violence but emphasized that a patient may not have a current physical injury either because the assault might not have caused an injury or, in the case of delayed disclosure, the injury could have healed.

{¶ 7} In December 2019, Jane presented with a complaint of vaginal pain. Mother reported that Jane was potty trained by four years old but started bedwetting at age five, when living with appellant. She further reported that Jane periodically complained of both vaginal and rectal pain when she was five years old. Hackett performed a physical exam on Jane and concluded that Jane’s vaginal area was normal and she did not have any infections.

{¶ 8} Jane, who was 14 years old when she testified at trial, stated that appellant had been a “father figure” to her. Appellant babysat Jane at night when Mother was at work. Jane testified regarding five incidents during which appellant sexually abused her, all of which took place when she was five years old and living with appellant.

{¶ 9} Jane testified that one time appellant was tucking her into bed and he put his mouth on her vagina. She testified to a second occurrence when appellant put his mouth on her vagina and a third time where he picked her up so she could brush her teeth and he began to “hump” her.¹

¹ Jane testified to two other incidents during which appellant allegedly raped her. Because appellant was acquitted of rape, we need not discuss the details of those events.

{¶ 10} Jane confirmed that she moved out of appellant's house with Mother when she was six years old. Jane explained that she waited to tell Mother about the abuse because she was worried Mother and she would get into a fight.

{¶ 11} Mother testified that she took Jane to see a doctor in July 2017 and April 2018. The July 2017 visit was a well-child checkup that occurred while Mother and Jane still lived with appellant. Mother shared her concern that Jane was frequently touching her vagina and telling lies. When the doctor inquired about sexual abuse, Jane denied any abuse had occurred. The 2018 appointment was because of an unrelated head injury and occurred after Mother and Jane moved out of appellant's home. At that visit, Mother told the doctor that Jane was making progress regarding her previous issues.

{¶ 12} Sally McHugh ("McHugh"), who at the time of trial was retired, was the CCDCFS social worker who interviewed Jane. McHugh was employed with the agency's specialized sex abuse unit. She testified regarding her extensive training and work in the sex abuse unit. According to McHugh, she conducted over 2,000 forensic interviews with children during her career. McHugh talked about the reasons for delayed disclosure and that many children wait, sometimes years, to disclose abuse.

{¶ 13} McHugh conducted a forensic interview with Jane, interviewed Mother, and completed a home visit. The forensic interview, which was recorded and entered into evidence, was played for the jury. During the interview, Jane told McHugh that she could not remember dates of the abuse, only that it occurred

during the day. When asked if what happened occurred on top of or underneath her clothes, Jane stated that it happened over her clothes.

{¶ 14} Cleveland police detective Theresa Cavett (“Cavett”) investigated the case. As part of her investigation, she twice interviewed Jane. She unsuccessfully attempted to interview appellant.

{¶ 15} The jury returned a finding of guilty on one count of gross sexual imposition and acquitted appellant of the other charges. The trial court sentenced appellant to a total of 48 months in prison and classified him as a Tier II sex offender.

{¶ 16} This appeal followed.

{¶ 17} Appellant raises three assignments of error:

I. Plain error occurred when the State asked the jury to “speak to the community” by finding Mr. Kane guilty.

II. Mr. Kane’s trial counsel provided ineffective assistance by failing to object to prosecutorial misconduct.

III. Mr. Kane’s conviction was against the manifest weight of evidence.

{¶ 18} In the first and second assignments of error, appellant challenges a statement the prosecutor made in closing arguments and the effectiveness of his trial counsel, who did not object to the prosecutor’s statement.

{¶ 19} Because trial counsel did not object to the offending statement, our review is for plain error. Crim.R. 52(B) provides that “[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.” Under Crim.R. 52(B), three requirements must be met to

find plain error: “there was an obvious defect in the proceedings, the defect affected substantial rights, and the outcome of the trial would clearly have been different absent the error.” *State v. Parker*, 2026-Ohio-346, ¶ 42 (8th Dist.), citing *State v. Barnes*, 94 Ohio St.3d 21 (2002). “Plain error is reserved for exceptional circumstances and only to prevent a manifest miscarriage of justice.” *Parker* at *id.*, citing *Barnes*.

{¶ 20} During closing argument, the prosecutor said to the jury, “I ask you to speak to the community with your verdict. If you believe [Jane], you have your verdict, ladies and gentlemen. I ask you to follow that and find the defendant guilty of every single count.” Appellant contends that this statement constituted prosecutorial misconduct that rises to the level of plain error.

{¶ 21} “The test for prosecutorial misconduct is whether remarks were improper and, if so, whether they prejudicially affected substantial rights of the accused.” *State v. Newman*, 2020-Ohio-658, ¶ 7 (8th Dist.), quoting *State v. Smith*, 87 Ohio St.3d 424, 442 (2000). “Prosecutors are entitled to state their opinion during closing arguments, as long as it is based on the evidence at trial.” *State v. McAlpin*, 2022-Ohio-1567, ¶ 180, citing *State v. Jackson*, 2006-Ohio-1. “It is not improper for a prosecutor to call on the jury to do its duty by convicting the defendant.” *State v. Myers*, 2018-Ohio-1903, ¶ 158. Statements by the prosecutor in closing arguments that implore the jury to do its duty are appropriate, so long as they are not retributive in nature, but instead designed to “maintain community standards.” *State v. Lorraine*, 66 Ohio St.3d 414, 419-420 (1993); *see also State v.*

Williams, 23 Ohio St.3d 16, 20 (1986) (“A request that the jury maintain community standards is not equivalent to the exhortation that the jury succumb to public demand.”).

{¶ 22} In *State v. Moritz*, 63 Ohio St.2d 150 (1980), the Ohio Supreme Court upheld a bribery conviction when the prosecutor made a statement during closing arguments that a conviction would “put all corrupt police officials, public officials on notice that this community will not stand for this kind of activity.” *Id.* at 157. The Court noted “that the quoted passage was premised upon an establishment of the guilt of appellant.” *Id.* at 158. Here, too, the prosecutor’s statement exhorting the jury to uphold community standards was based on the jury first determining appellant’s guilt.

{¶ 23} The prosecutor’s statement does not amount to misconduct, and appellant’s substantial rights were not adversely affected by the State’s closing argument. Therefore, no plain error occurred.

{¶ 24} Because we find no plain error in the prosecutor’s statement, we also do not find that counsel was ineffective for failing to object to the prosecutor’s statement.²

{¶ 25} The first and second assignments of error are overruled.

{¶ 26} In the third assignment of error, appellant argues that his conviction was against the manifest weight of the evidence.

² See *State v. Holmes*, 2026-Ohio-736, ¶ 69 (8th Dist.), quoting *State v. Young*, 2020-Ohio-462, ¶ 103 (10th Dist.) (“[W]here the failure to object does not constitute plain error, the issue cannot be reversed by claiming ineffective assistance of counsel.”).

{¶ 27} A manifest-weight challenge requires this court to examine whether the State met its burden of persuasion. *State v. Reillo*, 2026-Ohio-2701, ¶ 24.

Under a manifest-weight review, a court weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether 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.

(Cleaned up.) *Reillo* at ¶ 24.

{¶ 28} Appellate courts may “vacate a jury’s verdict and order a new trial only in the exceptional case in which the evidence weighs heavily against the conviction.”

(Cleaned up.) *Reillo* at ¶ 27. “In such cases, the court sits as a thirteenth juror who may disagree with the fact-finder’s resolution of the conflicting evidence.” (Cleaned up and emphasis deleted.) *Reillo* at *id.* The appellate court “sits as the thirteenth juror only when evidence contradicts a fact-finder’s findings . . . or when a witness’s testimony is so inconsistent as to material facts, so impeached, or so fantastical as to make it patently unbelievable.” *Reillo* at ¶ 3.

{¶ 29} As the *Reillo* Court reiterated, an appellate court must “be mindful of the presumption in favor of the finder of fact.” *Reillo* at *id.*, quoting *Eastley v. Volkman*, 2012-Ohio-2179, ¶ 21. Importantly, where “evidence is susceptible of more than one construction, [we are] bound to give it that interpretation which is consistent with the verdict and judgment.” (Cleaned up.) *Reillo* at ¶ 28. “The underlying rationale of giving deference to the findings of the [factfinder] rests with the knowledge that the [factfinder] is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations

in weighing the credibility of the proffered testimony.” *Reillo* at *id.*, quoting *Seasons Coal* at 80.

{¶ 30} Appellant contends that his conviction should be reversed because Jane and Mother contradicted each other on when Jane made her disclosure, Mother delayed telling anyone about the abuse, Jane could not testify about the events in a chronological order, Jane’s statements at trial versus her forensic interview were “completely different,” and Mother previously told a doctor that Jane lies about people.

{¶ 31} Appellant fails to support his argument with any citations to the record and fails to develop his argument beyond making unsupported conclusions. We are not obligated to construct or develop appellant’s arguments for him or to guess at undeveloped claims. Although we recognize that there are some inconsistencies in witness testimony, appellant has not pointed to any contradictory material facts or directly impeached testimony, nor has he presented any evidence satisfying the “fantastical” standard as set forth in *Reillo*, 2026-Ohio-2701. This is not the exceptional case requiring this court to step in as the “thirteenth juror,” reverse his conviction, and order a new trial. Affording proper deference to the factfinder’s verdict, we find the jury did not clearly lose its way and create such a manifest miscarriage of justice that reversal is required. Accordingly, appellant’s convictions are not against the manifest weight of the evidence.

{¶ 32} The third assignment of error is overruled.

{¶ 33} Judgment 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. Case remanded to the trial court for execution of sentence.

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

MICHAEL JOHN RYAN, JUDGE

MICHELLE J. SHEEHAN, A.J., and
EMANUELLA D. GROVES, J., CONCUR