IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-160746 TRIAL NO. B-1503203
Plaintiff-Appellee,	:	
vs.	:	*JUDGMENT ENTRY.*
VENCENTE HOWARD,	:	
Defandant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Raising five assignments of error, defendant-appellant Vencente Howard appeals his conviction and sentence for the abduction of Denine Winston, his former girlfriend.

When Winston attempted to end their two-year relationship, Howard began to harass Winston by calling repeatedly and visiting her work. When Winston agreed to drive Howard to an impound lot, he aimed a handgun at her and ordered her to drive. Howard accused Winston of cheating on him and failing to help him obtain psychological counseling. He threatened to kill her if she attempted to escape, and told her that she could write a letter to her family before he cut "her fucking fingers off." When Howard ordered her to stop the car at his grandmother's home, Winston ran into traffic seeking assistance. A passing motorist picked her up and described Winston as being "really scared and frantic."

Howard was apprehended and told police investigators that he had been a "little irate" with Winston and that "it just went downhill." He admitted tricking her into giving him a ride. Though he denied having a firearm, he admitted that he had garden shears with him. He told police that he "was just trying to scare her and [the situation] got out of hand." Howard testified at trial and claimed that while he had threatened to cut Winston's fingers off, he had made that threat "jokingly." On cross examination he admitted that he did not like it when women said "no" to him and that he could be violent at times.

The jury found Howard guilty of abduction but not guilty of a weapons-under-a-disability charge. Howard did not request a presentence investigation and asked to be sentenced immediately after the court received the jury verdicts. The trial court imposed the maximum, 36-month prison term for the abduction offense.

For clarity, we will address Howard's assignments of error in temporal order.

Howard maintains, in his fourth assignment of error, that during trial, his counsel was ineffective for opening the door to damaging redirect testimony, when he questioned Winston about a fight with Howard at a friend's wedding. Judicial scrutiny of trial counsel's performance must be highly deferential; this court must indulge a strong presumption that counsel's conduct fell within the wide range of reasonable professional assistance. *See Strickland v. Washington*, 466 U.S. 668, 689, 104 S.Ct. 2052, 80 L.E.2d 647 (1984); *see also State v. Bradley*, 42 Ohio St.3d 136, 142, 538 N.E.2d 373 (1989). We will not ordinarily second-guess strategic decisions made by trial counsel to pursue one course of defense over another. *See State v. Mason*, 82 Ohio St.3d 144, 157-158, 694 N.E.2d 932 (1998); *see also State v. Bandy*, 1st Dist. Hamilton No. C-160402, 2017-Ohio-5593, ¶ 74.

Here, Howard's trial counsel worked to discredit the state's theory of the case and tried to show that Winston and Howard each bore responsibility for the tempestuous

nature of their relationship. After reviewing the record, including Winston's testimony that even though Howard had struck her, insulted her, and thrown a drink on her at the wedding, she nonetheless entered his car and drove home with him, we hold that there were no acts or omissions by trial counsel that deprived Howard of a substantive or procedural right, or that rendered the trial fundamentally unfair. *See Lockhart v. Fretwell*, 506 U.S. 364, 113 S.Ct. 838, 122 L.Ed.2d 180 (1993); *see also Strickland* at 687; *Bradley* at paragraphs two and three of the syllabus. The fourth assignment of error is overruled.

In his third assignment of error, Howard contends that the trial court's admission of other-acts testimony from Stacy Witherspoon, another former girlfriend, in violation of Evid.R. 404(B), denied him a fair trial. Evidence of prior bad acts "is not admissible to prove the character of a person in order to show action in conformity therewith," although the evidence may be admissible for other purposes. Evid.R. 404(B); *see* R.C. 2945.59.

Howard argues that the trial court erred by permitting Witherspoon to testify that during the breakup of their relationship, Howard had lain in wait for her, had used a gun to force her into her car, and had held her captive for over an hour while she drove. She described that she had feared for her life during the ordeal.

At trial, the state argued that Witherspoon's other-acts testimony was probative of Howard's motive and intent and, therefore, was admissible as an exception set forth in Evid.R. 404(B). The trial court agreed in part concluding that while the motive exception did not obtain, Witherspoon's testimony was admissible as evidence of intent, knowledge, and absence of mistake or accident. The trial court permitted her to testify over Howard's objection. When it charged the jury, the court gave the standard admonition that the jury could use Witherspoon's testimony only for limited purposes and could not use it as proof of Howard's character and conforming conduct.

The admission of other-acts evidence under Evid.R. 404(B) rests within the broad discretion of the trial court. *State v. Morris*, 132 Ohio St.3d 337, 2012-Ohio-2407, 972 N.E.2d 528, syllabus. We review the trial court's decision under an abuse-of-discretion standard. *See State v. Kennedy*, 2013-Ohio-4221, 998 N.E.2d 1189, ¶ 76 (1st Dist.).

Here, the crux of Howard's defense was that he had not intended to place Winston in fear or hold her against her will. Witherspoon's description of Howard's prior extrinsic acts tended to demonstrate motive—that as a last resort to prevent the breakup of a prior relationship, Howard had performed similar acts in the past. Her testimony also tended to demonstrate knowledge or absence of mistake—that Howard's actions placing a girlfriend in fear for her life had occurred before under a similar situation and thus his actions against Winston were not accidental but purposeful. These are permissible uses of other-acts evidence. *See* Evid.R. 404(B). Coupled with Howard's own testimony and his statements to police investigators, played for the jury, that he had had the same "problem" with an ex-girlfriend as he had with Winston, the trial court's decision admitting evidence of Howard's prior acts exhibited a sound reasoning process and was not an abuse of its wide discretion. *See Morris* at ¶ 14. The third assignment of error is overruled.

In two interrelated assignments of error, Howard challenges the weight and sufficiency of the evidence adduced to support his conviction for abduction. R.C. 2905.02(A)(2) proscribes, without privilege, knowingly by force or threat of force, restraining the liberty of another under circumstances that created a risk of physical harm to the victim, or placed the victim in fear.

Our review of the entire record fails to persuade us that the jury, acting as the trier of fact, clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. *See State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). The jury was entitled to reject Howard's theory

that he was distraught over the end of the relationship but that he had not intended to place Winston in fear or hold her against her will.

The state adduced ample evidence that Howard had created a risk of physical harm or had placed Winston in fear for her life when he entered her vehicle by deception, held her at gunpoint, and ordered her to drive for 25 minutes while threatening to kill her or cut off her fingers. As the weight to be given the evidence and the credibility of the witnesses was primarily for the trier of fact to determine, the jury, in resolving conflicts in the testimony, could properly have found that Howard had abducted Winston. *See* R.C. 2905.02(A)(2); *see also State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus.

Moreover, the record reflects substantial, credible evidence from which the trier of fact could have reasonably concluded that all elements of the charged crime had been proved beyond a reasonable doubt. *See State v. Conway*, 108 Ohio St.3d 214, 2006-Ohio-791, 842 N.E.2d 996, ¶ 36. The first and second assignments of error are overruled.

In his final assignment of error, Howard argues that the record does not support the lengthy prison sentence imposed, and that a community-control sanction would have more properly advanced the purposes and principles of felony sentencing. Because the trial court imposed the maximum prison term allowed for the third-degree-felony offense of abduction, Howard may appeal as a matter of right the sentence imposed. *See* R.C. 2953.08(A)(1)(a).

But we may only vacate or modify a felony sentence if we "clearly and convincingly find" that it is either contrary to law or that the record does not support mandatory sentencing findings. *See* R.C. 2953.08(G)(2); *see also State v. White*, 2013-Ohio-4225, 997 N.E.2d 629, ¶ 11 (1st Dist.). Here, the trial court was not required to make any mandatory findings to support its sentence. We presume that the experienced trial judge,

having presided over the entire trial, considered the R.C. 2929.11 and 2929.12 factors in crafting Howard's sentence. *See State v. Wilson*, 129 Ohio St.3d 214, 2011-Ohio-2669, 951 N.E.2d 381, ¶ 31.

The sentence imposed was within the permissible statutory range for a third-degree felony. *See* R.C. 2905.02(C) and 2929.14(A)(2)(b). For the type of abduction offense committed by Howard, there is no presumption that the sentence would be one of community control. *See* R.C. 2929.13(C). *Compare* 2929.13(B)(1)(a) (presumption of a community-control sanction for most nonviolent felonies of the fourth or fifth degree). From our review of the record, we have no basis to find that Howard's sentence is clearly and convincingly contrary to law. *See* R.C. 2953.08(G)(2). The fifth assignment of error is overruled.

Therefore, the trial court's judgment is affirmed.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., MYERS and **MILLER, JJ.**

To the clerk:

Enter upon the journal of the court on September 8, 2017
per order of the court _____.
Presiding Judge