

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. John F. Boggins, P.J.
Plaintiff-Appellee	:	Hon. William B. Hoffman, J.
	:	Hon. Sheila G. Farmer, J.
vs.	:	
	:	
KENNETH PRINCE	:	Case No. 2004CA00197
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas,
Case No. 2004CR0206

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: January 24, 2005

APPEARANCES:

For Plaintiff-Appellee

AMY S. ANDREWS
P.O. Box 20049
Canton, OH 44701-0049

For Defendant-Appellant

ARNOLD F. GLANTZ
4883 Dressler Road NW
Canton, OH 44718

Farmer, J.

{¶1} On February 18, 2004, the Stark County Grand Jury indicted appellant, Kenneth Prince, on two counts of sexual battery in violation of R.C. 2907.03 and one count of gross sexual imposition in violation of R.C. 2907.05. Said charges arose from incidents involving appellant's daughter.

{¶2} A jury trial commenced on May 24, 2004. The jury found appellant guilty of the gross sexual imposition count and not guilty of the sexual battery counts. By judgment entry filed June 1, 2004, the trial court sentenced appellant to four years in prison.

{¶3} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

I

{¶4} "APPELLANT'S CONVICTION FOR GROSS SEXUAL IMPOSITION MUST BE REVERSED AS IT WAS CONTRARY TO THE MANIFEST WEIGHT OF THE EVIDENCE."

I

{¶5} Appellant claims his conviction for gross sexual imposition was against the manifest weight of the evidence. We disagree.

{¶6} On review for manifest weight, a reviewing court is to examine 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 jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

See also, *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52. The granting of a new trial "should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction." *Martin* at 175. We note the weight to be given to the evidence and the credibility of the witnesses are issues for the trier of fact. *State v. Jamison* (1990), 49 Ohio St.3d 182, certiorari denied (1990), 498 U.S. 881.

{¶7} Appellant was convicted of gross sexual imposition in violation of R.C. 2907.05(A)(4) which states as follows:

{¶8} "(A) No person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies:

{¶9} "(4) The other person, or one of the other persons, is less than thirteen years of age, whether or not the offender knows the age of that person."

{¶10} Appellant argues the evidence concerning the victim's age at the time of the incidents was vague and contradictory. In support of this argument, appellant points to several instances wherein appellant could not remember when certain incidents had occurred. T. at 94-95. The only testimony regarding the victim's age was when she stated she told her paternal grandmother, Emma Wilfong, of the incidents when she was ten years old. T. at 97-98, 123. The victim stated her grandmother told her not to tell anyone or her father would go to jail. T. at 123. Ms. Wilfong testified the victim never disclosed to her that anyone ever sexually abused or fondled her. T. at 280-281.

{¶11} Appellant and the victim's mother were divorced when the victim was ten years old. T. at 86. After the divorce, appellant moved in with Don and Judy Bridges,

appellant's now in-laws. T. at 86, 247. The victim testified most of the incidents, including oral sex, "real" sex and fondling occurred at Don and Judy's house. T. at 94-97. When she was ten, the victim went to the hospital and tested positive for chlamydia. T. at 98, 156-157. After the hospital visit, the victim told her grandmother about the incidents. T. at 97-98.

{¶12} Admittedly, the greater amount of the evidence centered upon a Thanksgiving 2002 incident of which appellant was acquitted. However, based upon the facts that the victim testified to fondling at or after her parent's divorce and she was diagnosed with contracting a sexually transmitted disease when she was ten years old, we find sufficient evidence, if believed, to support the offense of gross sexual imposition prior to the victim's thirteenth birthday, and no manifest miscarriage of justice.

{¶13} The sole assignment of error is denied.

{¶14} The judgment of the Court of Common Pleas of Stark County, Ohio is hereby affirmed.

By Farmer, J.

Boggins, P.J. and

Hoffman, J. concur.

