

[Cite as *State v. Oliver*, 2019-Ohio-101.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106985

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

GERALD OLIVER

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-17-622469-A

BEFORE: Keough, J., E.T. Gallagher, P.J., and Blackmon, J.

RELEASED AND JOURNALIZED: January 10, 2019

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KATHLEEN ANN KEOUGH, J.:

{¶1} Defendant-appellant, Gerald Oliver (“Oliver”), appeals from the trial court’s judgment finding him guilty of failure to provide notice of his change of address in violation of R.C. 2950.05(F)(1), and sentencing him to one year in prison. For the reasons that follow, we affirm.

I. Background

{¶2} In October 2017, Oliver was indicted on one count of rape in violation of R.C. 2907.02(A)(1)(b); one count of kidnapping in violation of R.C. 2905.01(A)(4); and one count of failing to provide notice of his change of address in violation of R.C. 2950.05(F)(1). The charges arose out of an incident that allegedly occurred on October 16, 2017 at the victim’s home; the alleged victim was three years old. Oliver pleaded not guilty and waived his right to a jury trial.

{¶3} Prior to trial, the state amended the rape charge to attempted rape. The state presented six witnesses and various exhibits at trial; Oliver put on no evidence. At the close of the evidence, the state dismissed the kidnapping charge. The trial court subsequently found Oliver not guilty of attempted rape, but guilty of failing to give notice of his change of address, and sentenced him to one year in prison. This appeal followed.

II. Law and Analysis

{¶4} In his first assignment of error, Oliver asserts that his conviction was not supported by sufficient evidence. In his second assignment of error, he contends that his conviction was against the manifest weight of the evidence.

{¶5} The test for sufficiency requires a determination of whether the prosecution met its burden of production at trial. *State v. Bowden*, 8th Dist. Cuyahoga No. 92266, 2009-Ohio-3598. ¶ 12. The relevant inquiry is whether, after viewing 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. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997).

{¶6} A manifest weight challenge, on the other hand, questions whether the state met its burden of persuasion. *State v. Hill*, 8th Dist. Cuyahoga No. 98366, 2013-Ohio-578, ¶ 32. To determine whether a conviction is against the manifest weight of the evidence, the reviewing court must look at the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the 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 the conviction must be reversed and a new trial ordered. *Thompkins* at 388.

{¶7} Although we review credibility when considering the manifest weight of the evidence, we are cognizant that determinations regarding the credibility of witnesses and the weight given to the evidence are primarily matters for the trier of fact to decide. *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967). The trier of fact 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.” *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, ¶ 24. Thus, an appellate court will overturn a conviction due to the manifest weight of the evidence only in extraordinary circumstances where the evidence presented at trial weighs heavily against the conviction. *Thompkins* at 388.

{¶8} Oliver was convicted of violating R.C. 2950.05(F)(1), which states that “[n]o person who is required to notify a sheriff of a change of address pursuant to division (A) of this section * * * shall fail to notify the appropriate sheriff in accordance with that division.”

{¶9} Oliver does not dispute that he was required to notify the sheriff of a change in his residence address.¹ Rather, he contends that the evidence at trial did not demonstrate that he had changed his residence from what he had previously reported to the sheriff, and therefore, his conviction for failing to report a change of address was not supported by sufficient evidence and was against the manifest weight of the evidence.

{¶10} Upon our review, we conclude there was sufficient evidence to prove that Oliver changed his residence in September 2017, but did not report his change of address to the sheriff.

¹Oliver stipulated at trial to the authenticity of a journal entry in Cuyahoga C.P. No. CR-05-468878 in which the trial court found him guilty of gross sexual imposition in violation of R.C. 2907.05(A)(1), sentenced him to 15 months in prison, and determined he was a sexually oriented offender. Pursuant to R.C. 2950.04, each offender who is convicted of or pleads guilty to a sexually oriented offense must register with the sheriff of the applicable county at specified times, including when their residence address changes.

{¶11} S.F., the alleged victim's mother, testified that Oliver lived with her mother and sister on East 61st Street in Cleveland, but she told him he could move in with her because he was "getting into it" with them. S.F.'s apartment was on Central Avenue in Cleveland. S.F. testified that Oliver moved in with her and her children at the beginning of September 2017. She said that she gave him the children's bedroom, and she and her children slept in the other bedroom. She said that Oliver brought his Xbox, clothes, and shoes with him when he moved in, and that he kept them in his bedroom. State's exhibit Nos. 14 and 15 showed Oliver's clothes neatly stacked on an ironing board in his bedroom. S.F. testified that Oliver "was there every night" from the beginning of September 2017, when he moved in, until he left immediately after the alleged incident on October 16, 2017. She testified that Oliver's girlfriend would sometimes spend the night with him at her apartment, and that the girlfriend picked up Oliver's belongings from her apartment after the alleged October incident. S.F. testified that Oliver did not pay rent while he lived with her, but in exchange for living with her rent free, he would babysit her children while she was working. She said that she and Oliver never discussed how long he was going to be living with her; they "were just going with it."

{¶12} Jerome Wilcoxson, a deputy with the Cuyahoga County Sheriff's Department, testified that his duties include taking information from sex offenders who report their addresses to the Sheriff's Department, and then inputting that information into the registration database. He testified that on June 20, 2017, Oliver changed his address with the sheriff's department to register that he was living at the East 61st Street address. Wilcoxson identified state's exhibit No. 24 as the form reflecting this change of address. Wilcoxson testified that the form further noted that Oliver was due to return to the sheriff's office on January 4, 2018, for his annual

registration. Wilcoxson testified that there are no records showing that Oliver ever changed his address with the sheriff's department after June 2017.

{¶13} Viewing this evidence in a light most favorable to the prosecution, we find that any rational trier of fact could have found the essential elements of failure to report a change of address proven beyond a reasonable doubt. Accordingly, Oliver's conviction was supported by sufficient evidence.

{¶14} Further, the conviction was not against the manifest weight of the evidence. Oliver argues on appeal that he did not live at S.F.'s apartment but was merely working there because he babysat her children while she was at work. He further contends that he did not consider her apartment to be his residence because it was just a transitional place for him to stay.

But the evidence reflects otherwise. S.F. testified that Oliver brought his clothes and other belongings to her apartment when he moved in. She testified further that he slept at her apartment every night from the beginning of September 2017 until he left in mid-October after the alleged incident. S.F. also testified that there had been no discussions between her and Oliver regarding when he would move out. On this evidence, it is apparent that both Oliver and S.F. considered S.F.'s apartment to be Oliver's new residence.

{¶15} The evidence established that Oliver was a sexually oriented offender who was required to report any change of address to the Cuyahoga County Sheriff. The evidence further established that Oliver had a new address as of early September 2017, but never reported that new address to the sheriff. Accordingly, his conviction for failing to report a change of address in violation of R.C. 2950.05(F)(1) is not against the manifest weight of the evidence.

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

{¶17} In his third assignment of error, Oliver asserts that it was error to even charge him with violating R.C. 2950.05(F)(1). He contends that he was in jail when he was required to notify the sheriff in January 2018 of his address, so it would have been impossible for him to comply with the reporting requirements. Oliver's argument is without merit.

{¶18} Oliver was charged in October 2017, with violating R.C. 2950.05(F)(1) because he did not report to the sheriff in September 2017 that he had moved from East 61st Street to Central Avenue. He was not charged with nor convicted of not reporting on January 4, 2018 to fulfill his annual registration requirement.

{¶19} Oliver also contends in his third assignment of error that his conviction was against the manifest weight of the evidence, raising many of the same arguments he raises in the second assignment of error. We find no merit to Oliver's arguments because, as discussed above, his conviction was not against the manifest weight of the evidence. The third assignment of error is therefore overruled.

{¶20} 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.

KATHLEEN ANN KEOUGH, JUDGE

EILEEN T. GALLAGHER, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR