

[Cite as *State v. Medrano*, 2012-Ohio-3972.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 11AP-847 (C.P.C. No. 10CR-10-6367)
Virginio Medrano,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on August 30, 2012

Ron O'Brien, Prosecuting Attorney, and *Sheryl L. Prichard*,
for appellee.

Todd W. Barstow, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶ 1} Defendant-appellant, Virginio Medrano, appeals the judgment of the Franklin County Court of Common Pleas, which convicted him of gross sexual imposition. For the following reasons, we affirm.

I. BACKGROUND

{¶ 2} Appellant was indicted on one count of rape and one count of gross sexual imposition. He pleaded not guilty to the charges, and a jury trial ensued. At trial, appellant's daughter, J.D., testified as follows. One evening, when J.D. was seven or eight years old, appellant asked her to get in bed with him. While she was lying next to him, he pulled his penis out from his underwear, lifted her panties, and put his penis in

her buttocks. After J.D. testified, the jury acquitted appellant of rape, but it found him guilty of gross sexual imposition.

II. ASSIGNMENT OF ERROR

{¶ 3} Appellant appeals and assigns the following as error:

THE TRIAL COURT ERRED AND DEPRIVED APPELLANT OF DUE PROCESS OF LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE ONE SECTION TEN OF THE OHIO CONSTITUTION BY FINDING HIM GUILTY OF GROSS SEXUAL IMPOSITION AS THAT VERDICT WAS NOT SUPPORTED BY SUFFICIENT EVIDENCE AND WAS ALSO AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

III. DISCUSSION

{¶ 4} In his single assignment of error, appellant initially argues that his conviction is based on insufficient evidence. We disagree.

{¶ 5} Sufficiency of the evidence is a legal standard that tests whether the evidence introduced at trial is legally sufficient to support a verdict. *State v. Drummond*, 111 Ohio St.3d 14, 2006-Ohio-5084, ¶ 192. We examine the evidence in the light most favorable to the state and conclude whether any rational trier of fact could have found that the state proved beyond a reasonable doubt the essential elements of the crime. *State v. Robinson*, 124 Ohio St.3d 76, 2009-Ohio-5937, ¶ 34. We will not disturb the verdict unless we determine that reasonable minds could not arrive at the conclusion reached by the trier of fact. *State v. Treesh*, 90 Ohio St.3d 460, 484 (2001). In determining whether a conviction is based on sufficient evidence, we do not assess whether the evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction. *State v. Lindsey*, 190 Ohio App.3d 595, 2010-Ohio-5859, ¶ 35 (10th Dist.). *See also State v. Yarbrough*, 95 Ohio St.3d 227, 2002-Ohio-2126, ¶ 79 (noting that courts do not evaluate witness credibility when reviewing a sufficiency of the evidence claim).

{¶ 6} Appellant was convicted of gross sexual imposition pursuant to R.C. 2907.05(A)(4), which prohibits a person from having sexual contact with a child who is

less than 13 years old. Appellant contends that his conviction cannot stand because he did not have sexual contact with J.D. Sexual contact is "any touching of an erogenous zone of another, including without limitation the thigh, genitals, [or] buttock * * * for the purpose of sexually arousing or gratifying either person." R.C. 2907.01(B).

{¶ 7} J.D. testified that appellant touched her buttocks. Appellant argues, however, that he did not touch J.D. for sexual arousal or gratification. A defendant's purpose to attain sexual arousal or gratification can be inferred from a "touching that a reasonable person would perceive as sexually stimulating." *State v. Jackson*, 10th Dist. No. 00AP-183 (Feb. 20, 2001), citing *State v. Astley*, 36 Ohio App.3d 247, 250 (10th Dist.1987). We are able to make that inference here because appellant touched J.D. in a manner that a reasonable person would consider to be for the purpose of sexual stimulation. *See Jackson*. Therefore, if believed, the evidence establishes that appellant had sexual contact with J.D., and we hold that his gross sexual imposition conviction is based on sufficient evidence.

{¶ 8} Next, appellant argues that his conviction is against the manifest weight of the evidence. Again, we disagree.

{¶ 9} When presented with a manifest weight challenge, we weigh the evidence to determine whether 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. *State v. Lang*, 129 Ohio St.3d 512, 2011-Ohio-4215, ¶ 220. The trier of fact is afforded great deference in our review. *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, ¶ 26. And we reverse a conviction on manifest weight grounds for only the most exceptional case in which the evidence weighs heavily against a conviction. *Lang* at ¶ 220.

{¶ 10} According to appellant, the weight of the evidence indicates that he inadvertently touched J.D., but we find nothing in the record to support that contention. Instead, the evidence demonstrates that appellant intentionally touched J.D. In particular, he deliberately pulled out his penis from beneath his underwear and lifted J.D.'s panties in order to have sexual contact with her. Therefore, appellant's gross sexual imposition conviction is not against the manifest weight of the evidence. Having

already determined that the conviction is supported by sufficient evidence, we overrule appellant's single assignment of error.

IV. CONCLUSION

{¶ 11} To conclude, we overrule appellant's single assignment of error and affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN, P.J., and DORRIAN, J., concur.
