

[Cite as *In re T.B., Jr.*, 2004-Ohio-4986.]

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

IN THE MATTER OF: :

T.B., JR. : CASE NO. CA2003-12-116

: O P I N I O N

: 9/20/2004

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: :

APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
JUVENILE DIVISION
Case No. 03 N 12692

Rachel A. Hutzal, Warren County Prosecuting Attorney, Derek B. Faulkner, 500 Justice Drive, Lebanon, Ohio 45036, for plaintiff-appellee

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VALEN, J.

{¶1} Appellant, T.B., Jr., appeals his adjudication as a delinquent child in the Warren County Juvenile Court for committing acts that would constitute the crime of first-degree rape if committed by an adult.

{¶2} Appellant was alleged to be a delinquent child for committing rape in violation of R.C. 2907.02(A)(2). A hearing was held before the trial court and appellant was adjudicated a delinquent child. A magistrate presided over a hearing on the

issue of disposition. The magistrate ordered appellant committed to the Ohio Department of Youth Services, but suspended the commitment on the condition that appellant successfully complete a sex offender program at Mary Haven Youth Center. Appellant filed objections to the magistrate's decision on the adjudication issue, and the trial court overruled the objections.

{¶3} Appellant now appeals the trial court's decision to adjudicate him a delinquent child and raises the following single assignment of error for our review:

{¶4} "THE TRIAL COURT'S DECISION TO ADJUDICATE APPELLANT A DELINQUENT CHILD WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶5} When evaluating whether a judgment is against the manifest weight of the evidence in a juvenile court, the standard of review is the same as that in the criminal context.

See In re Washington (1998), 81 Ohio St.3d 337, 339. "The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines 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. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction." State v. Thompkins (1997), 78 Ohio St.3d 380,

387, 1997-Ohio-52, quoting State v. Martin (1983), 20 Ohio App.3d 172, 175.

{¶6} Appellant was adjudicated delinquent for committing acts that would constitute rape in violation of R.C. 2907.02(A)(2) if he were an adult. This provision states that "[n]o person shall engage in sexual conduct with another when the offender purposely compels the other person to submit by force or threat of force."

{¶7} At the hearing, appellant and the victim presented different versions of the events that led to the rape charge. The victim, a 14-year-old girl, and her friend stopped by appellant's house on the way to a festival. The victim, her friend, appellant and others left the house for ice cream. After returning from getting ice cream, appellant, the victim and her friend were alone in appellant's house. The three teenagers sat around talking while appellant played video games. After a while, appellant went to his bedroom and asked the victim to join him.

{¶8} The victim testified that she told appellant several times that she did not want to come to his bedroom. She stated that she eventually told appellant to come and get her if he wanted her. Appellant took her hand and pulled her off the couch and dragged her into the bedroom. According to the victim, once they were inside the bedroom, appellant closed the door and locked it. She testified that appellant pulled her onto the bed, then asked her to perform oral sex on him. She

stated that she told him "no," but he continued to ask five or six times, and she responded "no" each time.

{¶9} According to the victim, after asking several times, appellant pulled down his gym shorts and pulled out his erect penis. She testified that appellant forcefully pulled her head down on his penis and his penis went into her mouth, choking her and making it hard for her to breathe. The victim stated that when appellant lessened his grip on her, she was able to get her head up. When he reached his hands out like he was going to unbutton her pants, the victim yelled for her friend.

Appellant put his hand over her mouth and told her to be quiet. She then pushed him back with her hands and kicked him between the legs. The victim testified that when appellant fell back, she got up, unlocked the door and ran out.

{¶10} The victim testified that her friend stayed at the house while she went to a gas station and tried to call her mom. When the line was busy, she called her boyfriend who came and picked the two girls up. The victim's mother came and took her home. After the victim talked to her mother, the two went to the police station and reported the incident.

{¶11} Appellant testified that the victim asked him if she could perform oral sex on him. According to his version of the events, he playfully dragged her into his room, and she closed the door. He testified that he then decided he did not want oral sex from her and when she made a move, he said "no." Appellant testified that when she tried to reach down his

pants, he walked out, and she got mad and left.

{¶12} The victim's friend testified that appellant went back to his bedroom, called for the victim, then came out and pulled her into the bedroom. She stated that she heard the victim call her name two or three times, and when her friend came out of the bedroom she was very upset and crying. She also testified that there was a lot of sexual joking around that day and that the victim had "flashed" her breasts earlier that day for money. The girl testified that she did not believe the victim was an honest person, but that she believed appellant was honest. She also stated that she and the victim had been friends in the past, but weren't close now, and admitted that she was interested in appellant in a romantic way.

{¶13} The victim's boyfriend testified that the victim was upset and crying when she called him to come get her. He stated that she was still upset when he arrived to pick her up, and that she told him appellant had tried to rape her.

{¶14} A police officer testified that appellant told differing versions of the incident. He first told police that the victim came into his room, shut the door and asked if she could give him oral sex. Appellant told police that he said "no," but she pulled his pants down and at the same time yelled for her friend. According to appellant, the victim then left.

Appellant initially told police he was not interested in oral sex, nor was he interested in either of the girls.

{¶15} The officer talked to appellant and discussed the fact that several parts of his story did not make sense. After further discussion, appellant admitted to police that he yelled for the victim, then went out and dragged her into his room. He stated that they sat on the bed and he told her he wanted her to perform oral sex. At that point in the interview, appellant's mother and brother entered the room, and appellant did not discuss the incident any further with police.

{¶16} The trial court specifically found that the victim was a credible witness and that the description of the other witnesses regarding her demeanor after the incident supported her testimony. The trial court also found the fact that appellant initiated the incident to be significant.

{¶17} Appellant contends that the trial court committed a manifest miscarriage of justice when it found the victim's testimony more credible. However, when reviewing the evidence, an appellate court must be mindful that the original trier of fact was in the best position to judge the credibility of witnesses and the weight to be given the evidence. State v. DeHass (1967), 10 Ohio St.2d 230, paragraph one of the syllabus.

{¶18} Appellant argues that the victim's testimony was "inconsistent with the testimony of an unbiased witness" on the issues of whether the victim kicked appellant in the groin and how long after the incident that the victim left the residence. Appellant further argues that trial testimony proved that he

was the more credible witness because the victim's friend testified that she did not think the victim was an honest person and that she had falsely accused someone else of rape in the past. Finally, appellant argues that the victim's actions earlier in the day contradicted her testimony that she was not the aggressor in appellant's bedroom. Appellant argues that the fact that the victim flashed her breasts and told her friend that she promised to perform oral sex on appellant discredit her testimony that appellant forced her to perform oral sex.

{¶19} After reviewing the record and considering all of appellant's arguments, we cannot say that his adjudication as a delinquent child was against the manifest weight of the evidence. Although appellant characterizes the victim's friend as "an unbiased witness," the girl testified that the two were no longer close friends and that she was interested in appellant romantically, evidencing possible bias in her testimony. In addition, appellant's credibility was questioned because he told differing stories of the event. The trial court did not clearly lose its way or create a manifest miscarriage of justice when it determined that the victim's testimony was credible. The assignment of error is overruled.

{¶20} Judgment affirmed.

YOUNG, P.J., and WALSH, J., concur.