

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

STATE OF OHIO,	:	
	:	CASE NOS. CA2014-03-005
Plaintiff-Appellee,	:	CA2014-03-006
	:	
- vs -	:	<u>OPINION</u>
	:	3/2/2015
	:	
CHARLES GRANT,	:	
	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM BROWN COUNTY COURT OF COMMON PLEAS  
Case No. CRI2013-2164

Jessica A. Little, Brown County Prosecuting Attorney, Mary McMullen, 510 East State Street, Suite 2, Georgetown, Ohio 45121, for plaintiff-appellee

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**PIPER, P.J.**

{¶ 1} Defendant-appellant, Charles Grant, appeals his convictions and sentence in the Brown County Court of Common Pleas on multiple counts of gross sexual imposition, felonious sexual penetration, and rape.

{¶ 2} In 1994, Grant moved in with a single mother who had a son and two daughters. Grant acted as a father to the children, disciplining them, taking them fishing and

camping, and helping them work on cars. In 1998, Grant and the mother married. At the time of the marriage, one daughter was eight years old and one was 11.

{¶ 3} In 2003, when the children were 13 and 15 respectively, they reported to Brown County Children Services that Grant had been sexually abusing them. As part of the investigation, the children were examined at the Mayerson Clinic and interviewed by an investigator with the child services agency. Both children later recanted their allegations against Grant and continued living in the home with their mother, brother, and Grant. Given the children's recantation, no criminal charges were brought against Grant.

{¶ 4} In 2013, when the daughters were 23 and 26, the older daughter was living in Indiana and the younger daughter continued to live in her mother's home with Grant. The younger daughter had a child, and that child also resided with her in her mother's home. The younger daughter, who had become addicted to drugs, asked her brother to care for her child and participated in a rehabilitation program. The younger daughter's mother and Grant indicated their intent to seek custody of the younger daughter's child. After rehabilitation, the younger daughter contacted Brown County Children Services and reinstituted her allegations that Grant had sexually abused her and her sister throughout their childhood.

{¶ 5} Based on the renewed allegations and resulting investigation, Grant was indicted on six charges of gross sexual imposition, felonious sexual penetration, rape, and sexual battery. Grant pled not guilty to the charges and the matter proceeded to a two-day jury trial. During trial, the daughters testified to the sexual abuse inflicted upon them by Grant, including digital penetration and forced fellatio. The daughters also explained that their mother had pressured them into recanting their allegations as children.

{¶ 6} The jury found Grant guilty of five of the six charges, but not guilty as to the sexual battery. The trial court then sentenced Grant to an aggregate sentence of 28 to 75 years. Grant now appeals his convictions and sentence, raising the following assignments of

error. Because Grant's assignments of error are interrelated, we will address them together.

{¶ 7} Assignment of Error No. 1:

{¶ 8} THE TRIAL COURT ERRED WHEN IT PROVIDED THE JURORS WITH THE WRONG DEFINITION OF 'FORCE,' AN ESSENTIAL ELEMENT OF THE CRIME OF RAPE.

{¶ 9} Assignment of Error No. 2:

{¶ 10} THE APPELLANT'S CONVICTION [SIC] IN THE INSTANT MATTER ARE NOT SUPPORTED BY SUFFICIENT EVIDENCE.

{¶ 11} Assignment of Error No. 3:

{¶ 12} THE UNDERLYING CONVICTIONS ARE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶ 13} Grant argues in his three assignments of error that his convictions are against the manifest weight of the evidence and are not supported by sufficient evidence, and that the trial court incorrectly defined force in its jury instructions.

{¶ 14} When reviewing the sufficiency of the evidence underlying a criminal conviction, an appellate court examines the evidence in order to determine whether such evidence, if believed, would support a conviction. *State v. Wilson*, 12th Dist. Warren No. CA2006-01-007, 2007-Ohio-2298. "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. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus, superseded on other grounds.

{¶ 15} A manifest weight challenge examines the inclination of the greater amount of credible evidence, offered at a trial, to support one side of the issue rather than the other. *Wilson*, 2007-Ohio-2298.

In determining whether a conviction is against the manifest weight of the evidence, the court, reviewing the entire record,

weighs the evidence and all reasonable inferences, considers the credibility of the 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.

*State v. Cummings*, 12th Dist. Butler No. CA2006-09-224, 2007-Ohio-4970, ¶ 12.

{¶ 16} While appellate review includes the responsibility to consider the credibility of witnesses and the weight given to the evidence, "these issues are primarily matters for the trier of fact to decide since the trier of fact is in the best position to judge the credibility of the witnesses and the weight to be given the evidence." *State v. Walker*, 12th Dist. Butler No. CA2006-04-085, 2007-Ohio-911, ¶ 26. Therefore, an appellate court will overturn a conviction due to the manifest weight of the evidence only in extraordinary circumstances to correct a manifest miscarriage of justice, and only when the evidence presented at trial weighs heavily in favor of acquittal. *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997).

{¶ 17} Grant was convicted of gross sexual imposition in violation of R.C. 2907.05(A)(4), which provides, "no person shall have sexual contact with another, not the spouse of the offender; \* \* \* when any of the following applies: 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."

{¶ 18} Grant was also convicted of two counts of felonious sexual penetration in violation of R.C. 2907.12(A)(1)(B), which at the time of the crimes, prohibited the insertion of "any part of the body or any instrument, apparatus, or other object into the vaginal or anal cavity of another who is not the spouse of the offender" when the other person is less than 13 years old.

{¶ 19} Grant was also convicted of two counts of rape. One count was specific to R.C. 2907.02(A)(2), which provides, "no person shall engage in sexual conduct with another when the offender purposely compels the other person to submit by force or threat of force." The

other rape conviction was specific to R.C. 2907.02(A)(1)(B), which provides, "no person shall engage in sexual conduct with another who is not the spouse of the offender" when the victim is less than 13 years old.

{¶ 20} Specific to rape in violation of R.C. 2907.02(A)(2), Grant challenges the way in which the trial court defined "force." In regard to the rape of an adult, the element of "force" is defined in R.C. 2901.01(A) as "any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing." However, the definition of "force" changes when the victim is a child, accounting for the fact that adults can compel children to submit to sexual conduct by means of psychological coercion or use of authority over the child. *State v. Eskridge*, 38 Ohio St.3d 56 (1988); *State v. Dye*, 82 Ohio St.3d 323 (1998).

{¶ 21} In *Eskridge* the victim, who was four years old, was raped by her father, who was 28 years old. Because of the young age of the victim and the parental relationship that existed between her and the appellant, the Ohio Supreme Court concluded,

the force and violence necessary to commit the crime of rape depends upon the age, size and strength of the parties and their relation to each other. With the filial obligation of obedience to a parent, the same degree of force and violence may not be required upon a person of tender years, as would be required were the parties more nearly equal in age, size and strength.

*Eskridge* at paragraph one of the syllabus.

{¶ 22} After *Eskridge*, the Ohio Supreme Court expanded the definition of "force" to include perpetrators who are not a parent or stepparent to the child victim. In *Dye*, the appellant raped a child who was younger than 13 years old, but was not his child. Instead, Dye was a friend and neighbor of the child's mother. The *Dye* court cited the definition of "force" from *Eskridge*, and determined that even though Dye was not the victim's father or a parental figure, he nonetheless occupied "a position of authority" and, therefore, could be convicted of raping the child with force even absent "evidence of express threat of harm or

evidence of significant physical restraint." *Dye* at 326.

{¶ 23} This court has specifically recognized that the "force" requirement "need not be overt and physically brutal, but can be subtle and psychological." *State v. Rankin*, 12th Dist. Clinton No. CA2004-06-015, 2005-Ohio-6165, ¶ 47. A child's will can be overcome by fear and duress when an important figure of authority tells the child to do something, and commands the child not to tell anyone about it. *State v. Dehner*, 12th Dist. Clermont No. CA2012-12-090, 2013-Ohio-3576, ¶ 19. When the state proves that the child's will was overcome by fear or duress, the forcible element of rape is established. *Id.*

{¶ 24} In the case sub judice, Grant argues that the trial court erred by providing the jury with a definition of force that applies to children according to the legal principles set forth in *Eskridge* and *Dye*. The trial court gave the following instruction.

Force means any violence, compulsion, or restraint physically exerted, by any means upon, or against a person, or thing. That is modified, as somewhat, by the following instruction:

When the relationship between the victim and the Defendant is one of child and parent, the element of force need not be openly displayed or physically brutal. It can be subtle, or slight, and psychological, or emotionally powerful. Evidence of an expressed threat of harm, or evidence of significant physical restraint, is not required.

If [sic] find, beyond a reasonable doubt, that under the circumstances, in evidence, that the victim's will was overcome by fear, or duress, or intimidation, the element of force has been proved.

{¶ 25} Grant asserts that he could not have compelled the older daughter to submit by authority or due to his relationship with the child because he had not yet married the child's mother at the time the rape was alleged to have occurred.

{¶ 26} As alleged in the indictment, the rape that occurred by use of force was perpetrated at a time when the older daughter was eight years old, and prior to Grant's marriage to her mother. Grant argues that because he was not the child's stepparent and did

not occupy a position of authority over the child, the trial court erred in defining "force" as it did. We disagree with Grant, and find that at the time of the rape, Grant held a position of authority over the child and that her will was overcome by fear or duress when she submitted to Grant's forced sexual contact.

{¶ 27} During trial, the state presented testimony that Grant held authority over the children even though he was not technically their stepfather at the time the sexual abuse began occurring and during the time he raped the older daughter. During the daughters' testimony, they stated that Grant was an authority figure in the house, that he disciplined them, and that they thought of Grant as their father. The daughters also testified that they loved Grant, and that he would do "normal father and daughter" activities with them such as fishing, camping, vacations, and working on cars together.

{¶ 28} Despite the daughters not testifying to the exact timeframe when they first felt Grant's authority, the record is clear that the children grew up treating Grant as a father, and that his authority over the children was established before he married their mother. In fact, the older daughter, the victim in the rape charge, testified that Grant had "*a/ways* been a father figure in my life." (Emphasis added.) The older daughter did not limit her testimony regarding Grant's authority or his occupying a father-like role in her life to only the years after Grant married her mother. Instead, the testimony establishes that the older daughter felt a filial obligation of obedience to Grant as her father even before his marriage to her mother.

{¶ 29} When questioned about the specific rape that occurred by use of force before Grant married her mother, the older daughter testified why she succumbed to the sexual contact. "I was scared. I was eight. He was my father. I was doing what I was told." The older daughter's testimony therefore establishes that she looked at Grant as a father even before he married her mother, and that she felt compelled given her obedience to Grant so that *Eskridge* is applicable.

{¶ 30} Even if we were to assume, arguendo, that *Eskridge* was inapplicable, we would find that the definition set forth in *Dye* would apply because the daughter's will was overcome by fear and duress given the way that Grant threatened her. After Grant would sexually abuse the children, he would tell them that they could not tell anyone about the instances of sexual contact because if they did, they would not see their mother, their mother would go to jail, and the children would be forced to move to another house. Specific to the older daughter, the victim in the rape charge dealing with force, Grant threatened to kill her if she exposed the truth.

{¶ 31} These threats, especially when made to the older daughter when she was around the age of eight, would cause her will to be overcome by fear or duress. These threats constituted force, regardless of whether or not they were made at a time when Grant was officially married to the children's mother. As such, the trial court did not err in defining force as it did.

{¶ 32} Regarding the other elements of rape, sexual imposition, and felonious penetration, the state presented evidence of multiple instances of sexual contact between Grant and the children, and specific to each charge for which Grant was convicted.

{¶ 33} The older daughter testified that on one occasion, she woke up on the middle of the night not feeling well, and that she sought comfort in her mother's bedroom. Grant intercepted the older daughter, and told her that he could make her "feel better." After Grant directed the child to enter his bed, he pulled her nightgown up and rubbed his penis between the child's buttock cheeks and between her legs in the pubic region until he ejaculated. Grant then told the child that she could never tell anyone what had occurred because if she did, she would never see her mother again because the mother would have to go to jail, and that the child would have to move to another home.

{¶ 34} The older daughter also testified to an instance when she and her younger



sister were bathing together and Grant came into the bathroom to dry them off. During the drying off process, Grant inserted his finger into the children's vagina. The older daughter then testified more specifically that Grant inserted his finger "up inside" her vagina often at bath time, and that Grant would warn them not to tell anyone.

{¶ 35} The older daughter also testified that when she was eight years old, she and Grant were in his van, driving on an ice-covered road. Grant's van began to slide, and Grant pulled the van over to the side of the road. Grant then told her that he wanted her to do something for him, and then forced her to perform fellatio. Grant warned the child that she could scream if she wanted to, but that nobody would hear her and that if she told anyone, he would kill her. Grant also told the child that it was her "duty" to perform oral sex on him because her mother refused to.

{¶ 36} The state also elicited testimony from the older daughter regarding an instance that occurred when she was 11 years old. The older daughter testified that she had friends over at her house, and that they played a kissing game, spin the bottle. Grant became aware of the game and sent all the other children home. He told the older daughter that she should have known better than to play the game because she was "for him and him, only." Grant then forced her to perform fellatio on him. During the compelled oral sex, the younger daughter walked in and saw what was occurring. The older daughter testified that Grant told her younger sister to go away because it was not yet "her turn."

{¶ 37} After testifying to the specific acts of sexual abuse, the prosecutor asked the older daughter to explain why she had reported the sexual abuse as a child only to later recant. The older daughter testified that she confided in her young cousin about the abuse and that she later told the authorities about the abuse in an attempt to get Grant to stop sexually abusing the younger daughter. Once the allegations were made, Grant was not permitted in the house, and he stayed somewhere else while the investigation continued.

The children's mother told her daughters that she was distraught, depressed, and unhappy without Grant, and pressured the children into recanting their statements. The children's mother drove the girls to the police and asked them to take their statements back, at which time, the children did. Grant then moved back into the home, and the sexual abuse continued.

{¶ 38} The younger daughter testified to similar abuse. The younger daughter testified that when she was five years old, and before she ever entered school, Grant inserted his fingers into her vagina during bath time, and that he threatened to hurt her if she told about the sexual contact. The younger daughter also testified to the spin the bottle incident, and that she remembered walking in and seeing Grant forcing her older sister to perform fellatio.

{¶ 39} When asked about why she recanted her allegations as a child, the younger daughter testified, "because our mother made us feel bad. He was our provider, and without him, we wouldn't have nothin'." The younger daughter testified that her mother made them feel like they were "bad people for telling the truth," and that they were told they would be homeless without Grant's financial support.

{¶ 40} The younger daughter also testified that she had become addicted to drugs and that she had since sought treatment for her addiction. During the time she sought treatment, her child was cared for by her brother, and she did what was necessary so that Grant and her mother would not get custody of her child. The younger daughter testified that the treatment had been successful, she was able to care for her son, and that she and her son were living on their own in Indiana away from Grant and her mother.

{¶ 41} Grant argues that the daughters' testimony does not provide sufficient evidence that he is guilty of the crimes, and that the daughters were not credible witnesses. Specifically, Grant asserts that his convictions are against the manifest weight of the evidence because the daughters had previously recanted their testimony and because the

younger daughter was a drug addict who was trying not to lose custody of her child by bringing the allegations. However, these issues, including witness credibility, are primarily matters for the trier of fact to decide because the trier of fact is in the best position to judge the credibility of the witnesses and the weight to be given the evidence.

{¶ 42} After reviewing the record and viewing the evidence in a light most favorable to the prosecution, we find that the jury could have found the essential elements of the crimes proven beyond a reasonable doubt, and that the jury did not clearly lose its way or create such a manifest miscarriage of justice that the convictions must be reversed and a new trial ordered. Having found that Grant's convictions are supported by sufficient evidence and were not rendered against the manifest weight of the evidence, his assignments of error are overruled.

{¶ 43} Judgment affirmed.

HENDRICKSON and M. POWELL, JJ., concur.