

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN RE: R. G., Juvenile
Delinquent Offender

JUDGES:

Hon. W. Scott Gwin, P.J.
Hon. William B. Hoffman, J.
Hon. John W. Wise, J.

Case No. 2009-CA-00218

OPINION

CHARACTER OF PROCEEDING:

Civil appeal from the Stark County Court of
Common Pleas, Juvenile Division, Case
Nos. 2009JCR01442 and 2009JCR01383

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

January 19, 2010

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Gwin, P.J.

{¶1} Fifteen year old R.G. appeals a judgment of the Court of Common Pleas, Juvenile Division, of Stark County, Ohio, which found him delinquent by reason of rape, an offense which would be a felony of the first degree if committed by an adult. Appellant assigns two errors to the trial court:

{¶2} “I. THE TRIAL COURT ERRED WHEN IT DETERMINED THAT THE EVIDENCE SUPPORTED A FINDING OF DELINQUENCY TO THE OFFENSE OF RAPE PURSUANT TO R.C. 2907.02.

{¶3} “II. THE TRIAL COURT ABUSED ITS DISCRETION BY SENTENCING THE APPELLANT TO A TERM OF DYS RATHER THAN A LESS RESTRICTIVE PLACEMENT.”

{¶4} Appellant was charged with raping his cell mate, thirteen year old J.U., while the two were housed at the Stark County Juvenile Attention Center.

I.

{¶5} In his first assignment of error, appellant argues the court erred in finding him delinquent by reason of rape pursuant to R.C. 2907.02, which provides in pertinent part”

{¶6} ***

{¶7} “(2) 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.”

{¶8} Appellant admitted the two had engaged in sexual conduct, but asserted the activity was consensual. J.U. testified appellant struck him in the head and then raped him after he had refused to perform fellatio on appellant. The State presented

testimony of three other juveniles who had heard various noises, although none had actually seen the incident, which occurred in appellant's cell.

{¶9} Essentially, appellant argues the State presented no physical evidence of force, and the case ultimately hinged on J.U.'s testimony the act was not consensual. Appellant urges the evidence was insufficient to support the court's findings as a matter of law, and the court's decision was against the manifest weight of the evidence.

{¶10} Juvenile delinquency proceeds are civil, not criminal, and due process protections apply. *In Re: S.B.*, 121 Ohio St. 3d 279, 2009-Ohio-507, 903 N.E. 2d 1175, at paragraph 10, citing *In Re: Anderson* (2001), 92 Ohio St. 3d 63, 66, 748 N.E. 2d 67; *Schall v. Martin* (1984), 467 U.S. 253, 263, 104 S. Ct. 2403, 81 L. Ed. 2d 207. See also *In Re: Gault* (1967), 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527. We apply the same standard of review for weight and sufficiency of the evidence in juvenile delinquency adjudications as for adult criminal defendants. *In the Matter of: Joshua M.*, Ottawa App. No. OT-04-038, 2005-Ohio-3067 at paragraph 29.

{¶11} Our analysis for manifest weight differs from our review for sufficiency of the evidence. *State v. Thompkins*, 78 Ohio St. 3d 380, 1997-Ohio-52, 678 N.E. 2d 541. A challenge to the sufficiency of the evidence presents a question of law. *Thompkins* at 387, citations deleted. The proper analysis 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. Williams*, 74 Ohio St 3d 569, 576, 1996-Ohio-91, 446 N.E. 2d 444, quoting *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus.

{¶12} While the test for sufficiency requires a determination of whether the State has met its burden of production, a manifest weight challenge questions whether the State has met its burden of persuasion. *Thompkins*, supra, 390. We must review 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 a manifest miscarriage of justice such that the conviction must be reversed and a new trial ordered. A new trial should be granted only in exceptional cases where the evidence weighs heavily against the conviction. *Thompkins* at 387, quoting *State v. Martin* (1983), 20 Ohio App. 3d 172, 485 N.E. 2d 717.

{¶13} We have reviewed the record, and find the evidence is sufficient to prove each element of rape. We also find the trial court's determination is not against the manifest weight of the evidence presented.

{¶14} The first assignment of error is overruled.

II

{¶15} In his second assignment of error, appellant argues the trial court abused its discretion in committing him to the custody of the Department of Youth Services rather than placing him in a behavior modification program as recommended by the Probation Department and the Youth Services Review Board.

{¶16} Appellant concedes a Juvenile Court has broad discretion to craft an appropriate disposition for a child adjudicated dependent. *In Re: D.S.*, 111 Ohio St. 3d 361, 2006-Ohio-5851, 856 N.E. 2d 921. Pursuant to R.C. 2152.16, a Juvenile Court may commit a delinquent child to the custody of DYS for an indefinite term of a

minimum of one year and a maximum period of not to exceed the child's attainment of the age of twenty-one, for a felony of the first degree if committed by an adult. Our standard of reviewing the Juvenile Court's decision is the abuse of discretion standard. *Id.* The Supreme Court has repeatedly held the term abuse of discretion means the decision of the trial court was unreasonable, arbitrary, or unconscionable. See, e.g., *Blakemore v. Blakemore* (1983), 5 Ohio St. 3d 217, 450 N.E. 2d 1140.

{¶17} R.C. 2152.01 provides a Juvenile Court must make dispositions reasonably calculated to achieve the overriding purposes of providing for the care, protection and mental and physical development of the delinquent child, holding the delinquent child accountable for his actions, restoring the victim, and rehabilitating the delinquent child. The court's disposition must be commensurate with, and not demeaning to, the seriousness of the child's conduct and its impact on the victim, and must be consistent with dispositions for similar acts committed by similar delinquent children. The court does so through a graduated system and sanctions and services.

{¶18} At the dispositional hearing, the court heard from the review panel and the probation department, which recommended appellant be placed in a behavior modification program. Appellant's mother also requested that appellant get the treatment he needs. However, the State and the victim's family asked the court to commit appellant to the Department of Youth Services. The State argued appellant had committed the instant offense while in a locked facility, and thus, there was no other type of facility that could possibly contain appellant except another locked facility with a more structured environment, where appellant could receive the treatment he needs. The State expressed concern about appellant being maintained in the community. The

court noted appellant had a 2007 offense which would have been a fourth degree felony if committed by an adult, as well as a 2009 offense which would have been a felony three.

{¶19} The court stated appellant must be placed in the best possible place where treatment is available, and where he will be motivated to seriously avail himself of the treatment. The court concluded the most appropriate disposition would be to commit appellant to the custody of the Department of Youth Services for a minimum of one year not to exceed his 21st birthday.

{¶20} On the record before us we cannot find the trial court abused its discretion in making its determination. The second assignment of error is overruled.

{¶21} For the foregoing reasons, the judgment of the Court of Common Pleas, Juvenile Division, of Stark County, Ohio, is affirmed.

By Gwin, P.J.,
Hoffman, J., and
Wise, J., concur

HON. W. SCOTT GWIN

HON. WILLIAM B. HOFFMAN

HON. JOHN W. WISE

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO

FIFTH APPELLATE DISTRICT

IN RE: R. G., Juvenile
Delinquent Offender

JUDGMENT ENTRY

CASE NO. 2009-CA-00218

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas, Juvenile Division, of Stark County, Ohio, is affirmed. Costs to appellant.

HON. W. SCOTT GWIN

HON. WILLIAM B. HOFFMAN

HON. JOHN W. WISE