[Cite as *State v. Reedy*, 2010-Ohio-1911.]

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Plaintiff-Appellee	:	Hon. Sheila G. Farmer, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	
AARON REEDY	:	Case No. 09CA28
	:	
Defendant-Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Municipal Court, Case No. CRB0800687
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	April 26, 2010

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
MATTHEW B. WIDEMAN P.O. Box 1008 123 East Chestnut Street Lancaster, OH 43130	JAMES M. LINEHAN 207 East Wheeling Street Lancaster, OH 43130 LARRY HAYMAN 3010 Hayden Road Columbus, OH 43235

Farmer, J.

{¶1} On March 25, 2008, a complaint was filed in the municipal court charging appellant, Aaron Reedy, with one count of sexual imposition in violation of R.C. 2907.06. Said charge arose from an incident between appellant and a sixteen year old male.

{¶2} On August 21, 2008, appellant filed a motion to suppress his statements made to the police. A hearing was held on December 5, 2008. The trial court denied the motion and filed findings of fact and conclusions of law on January 16, 2009.

{¶3} A jury trial commenced on March 17, 2009. The jury found appellant guilty as charged. By journal entry filed April 23, 2009, the trial court sentenced appellant to fifty-eight days in jail, thirty-eight days suspended.

{¶4} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶5} "THE TRIAL COURT ERRED IN FAILING TO SUPPRESS DEFENDANT'S CONFESSION."

II

{¶6} "THE TRIAL COURT ERRED IN FAILING TO GRANT DEFENDANT'S CRIM.R. 29 MOTION BECAUSE THERE WAS INSUFFICIENT EVIDENCE OF MENS REA OFFENSIVENESS."

III

{¶7} "THE TRIAL COURT ERRED BECAUSE DEFENDANT'S CONVICTION IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

IV

{¶8} "THE TRIAL COURT ERRED IN FAILING TO ALLOW THE JURY TO HEAR EVIDENCE THAT THE INVESTIGATING OFFICER DID NOT BELIEVE A CRIME HAD OCCURRED."

V

{¶9} "THE TRIAL COURT VIOLATED DUE PRECESS (SIC) IN SENTENCING BY IMPERMISSIBLY RELYING ON RELIGION IN SENTENCING."

I

{¶10} Appellant claims the trial court erred in denying his motion to suppress his statements made to the police as his statements were not voluntary because he was led to believe that no charges would be filed against him. We disagree.

{¶11} There are three methods of challenging on appeal a trial court's ruling on a motion to suppress. First, an appellant may challenge the trial court's findings of fact. In reviewing a challenge of this nature, an appellate court must determine whether said findings of fact are against the manifest weight of the evidence. *State v. Fanning* (1982), 1 Ohio St.3d 19; *State v. Klein* (1991), 73 Ohio App.3d 485; *State v. Guysinger* (1993), 86 Ohio App.3d 592. Second, an appellant may argue the trial court failed to apply the appropriate test or correct law to the findings of fact. In that case, an appellate court can reverse the trial court for committing an error of law. *State v. Williams* (1993), 86 Ohio App.3d 37. Finally, assuming the trial court's findings of fact are not against the manifest weight of the evidence and it has properly identified the law to be applied, an appellant may argue the trial court has incorrectly decided the ultimate or final issue raised in the motion to suppress. When reviewing this type of claim, an

appellate court must independently determine, without deference to the trial court's conclusion, whether the facts meet the appropriate legal standard in any given case. *State v. Curry* (1994), 95 Ohio App.3d 93; *State v. Claytor* (1993), 85 Ohio App.3d 623; *Guysinger*. As the United States Supreme Court held in *Ornelas v. U.S.* (1996), 116 S.Ct. 1657, 1663, "…as a general matter determinations of reasonable suspicion and probable cause should be reviewed *de novo* on appeal."

{¶12} "In determining whether a pretrial statement is involuntary, a court 'should consider the totality of the circumstances, including the age, mentality, and prior criminal experience of the accused; the length, intensity, and frequency of interrogation; the existence of physical deprivation or mistreatment; and the existence of threat or inducement.' *State v. Edwards* (1976), 49 Ohio St.2d 31, 3 O.O.3d 18, 358 N.E.2d 1051, paragraph two of the syllabus." *State v. Brown,* 100 Ohio St.3d 51, 2003-Ohio-5059, ¶13.

{¶13} Appellant argues his statements were improperly induced because the investigating officer, Fairfield County Sheriff's Detective Diana Brown, indicated no crime had occurred and she needed to speak to appellant in order to close the case. It is conceded that prior to making any statements, appellant was read his constitutional rights. December 5, 2008 T. at 12-13.

{¶14} In its findings of fact and conclusions of law filed January 16, 2009, the trial court found Detective Brown's recollection of what transpired to be more accurate:

{¶15} "During the hearing the Defense presented the testimony of two witnesses: the Defendant's father and a pastor, Carly Sparrow. Both testified that after

speaking with Detective Brown they were under the impression that the sexual imposition allegation would not result in a charge.

{¶16} "According to Detective Brown's testimony and State's Exhibit B, an Investigative Narrative Report, this Court further finds that Detective Brown's telephone conversation with Carly Sparrow occurred at approximately 8:57 a.m. on February 25, 2008. According to the exhibit, the prosecutor did not even inform Detective Brown that she would not file any charge against the Defendant until 9:43 a.m. on that same day.

{¶17} "The discrepancy may be due to multiple conversations occurring between the detective and those who testified. But it seems clear to the Court that both defense witnesses were uncertain as to the chronological order of things that occurred nine months previously.

{¶18} "***

{¶19} "Charges were not approved by the City Prosecutor's office until March 25, 2008. And so for nearly thirty days many of the individuals involved were aware that the County Prosecutor's Office was declining to file charges. But it is quite obvious that Detective Brown was continuing her investigation. What is important is what Detective Brown told specific individuals (especially the Defendant) prior to the obtained confession. While this Court does find the Defendant's witnesses credible, the Court further finds that the witnesses are confused as to the points in time that they learned bits of information.

{¶20} "Detective Brown testified that she had contacted a felony prosecutor and that a prosecutor indicated that if the Defendant stopped having sexual contact with the complaining witness after the complaining witness had told Defendant to stop, then no

crime had occurred. It is clear to the Court that Detective Brown was honest when speaking to the Defendant's father, pastor, victim, victim's family, and Defendant. Detective Brown had indicated to them that the assistant county prosecutor did not believe that a crime occurred. Detective Brown further indicated to these same individuals that she was continuing to investigate the matter to determine if a crime occurred. Furthermore, Detective Brown stated that she wanted to close out her file as soon as possible.

{¶21} "***

{¶22} "Perhaps most importantly here is that the Defendant told Detective Brown that he was going to speak with an attorney before agreeing to an interview. We further know from the hearing that the Defendant spoke with his attorney and was told not to agree to the interview with Detective Brown. Despite his attorney's advice, the Defendant confessed his alleged crime to Detective Brown."

{¶23} As noted in *Brown,* supra, the totality of the circumstances must be considered to resolve the issue. The gravamen of this issue is whether appellant spoke to Detective Brown because he believed no charges would be filed or because "he just wanted to clear the air." December 5, 2008 T. at 11. Both appellant's father and Mr. Sparrow testified they were under the impression no charges would be filed. Id. at 56-57, 58-59, 61, 64, 77-78, 80-81. As the trial court noted, the testimony of Mr. Sparrow was discounted because of the timing of the call by Detective Brown to Mr. Sparrow and the subsequent call from the prosecutor's office. Id. at 80-83, 87. Furthermore, it is clear from the facts that Detective Brown was still investigating the case and had told

both appellant and his father that it was up to the prosecutor to determine if any charges would be filed. Id. at 90.

{¶24} We concur with the trial court's finding that appellant, against advice of counsel, went to the interview with Detective Brown voluntarily to "clear the air."

{¶25} Upon review, we find the trial court did not err in denying appellant's motion to suppress.

{¶26} Assignment of Error I is denied.

II, III

{¶27} Appellant claims the trial court erred in denying his Crim.R. 29 motion as there was insufficient evidence to establish the mens rea of the offense, and his conviction was against the manifest weight of the evidence. We disagree.

{¶28} Crim.R. 29 governs motion for acquittal. Subsection (A) states the following:

{¶29} "The court on motion of a defendant or on its own motion, after the evidence on either side is closed, shall order the entry of a judgment of acquittal of one or more offenses charged in the indictment, information, or complaint, if the evidence is insufficient to sustain a conviction of such offense or offenses. The court may not reserve ruling on a motion for judgment of acquittal made at the close of the state's case."

{¶30} The standard to be employed by a trial court in determining a Crim.R. 29 motion is set out in *State v. Bridgeman* (1978), 55 Ohio St.2d 261, syllabus:

{¶31} "Pursuant to Crim.R. 29(A), a court shall not order an entry of judgment of acquittal if the evidence is such that reasonable minds can reach different conclusions

as to whether each material element of a crime has been proved beyond a reasonable doubt."

{¶32} On review for manifest weight, a reviewing court is to examine the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine "whether in resolving conflicts in the evidence, the jury 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. Martin* (1983), 20 Ohio App.3d 172, 175. See also, *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52. The granting of a new trial "should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction." *Martin* at 175.

{¶33} Appellant was convicted of sexual imposition in violation of R.C. 2907.06(A)(1) which states the following:

{¶34} "(A) No person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies:

{¶35} "(1) The offender knows that the sexual contact is offensive to the other person, or one of the other persons, or is reckless in that regard."

{¶36} "Sexual contact" is defined in R.C. 2907.01(B) as "any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person."

{¶37} The gravamen of these assignments of error is whether a history of appellant touching the non-erogenous zones of the victim, W.K., gave appellant tacit permission to touch W.K.'s penis, and whether appellant, given the continual relationship with W.K., could have known or was reckless in that regard that the touching was offensive.

{¶38} Appellant was the youth leader at W.K.'s church. W.K., along with a group of youth from the church, hung out together with appellant. T. at 182-183. On the night of the incident, appellant picked up W.K. to go to a church function. T. at 185. W.K. was on the computer in a "sound booth" above the church sanctuary. T. at 187-188. Appellant entered the sound booth, sat down next to W.K., and proceeded to rub his leg (knee to groin). T. at 193-194. W.K. described it as caressing or lightly rubbing of the leg. T. at 195. As appellant rubbed his leg, W.K. became sexually aroused. Id. Appellant then touched his penis and surrounding groin area, describing it as something more than a light rub. T. at 196-197. Appellant did not ask W.K. if he could touch him, nor did W.K. consent to the touching. T. at 197-198. W.K. described his reaction as follows:

{¶39} "A. I didn't know like what I should do.

{¶40} "Q. Were you at all uncomfortable?

{¶41} "A. Yes.

{¶42} "Q. And why were you uncomfortable?

{¶43} "A. Because it's not something I would have, had expected from him.

{¶44} "Q. And why is it not something you would have expected from him?

{¶45} "A. Because he's older and I assume he has a friend.

{¶46} "Q. Is this, did you trust Aaron?

{¶47} "A. Yes." T. at 198.

{¶48} W.K. testified appellant also massaged his back and while having one hand on his back and one hand on his groin area, moved his hand down his back on his bare skin to the "crack of my, my butt." T. at 200.

{¶49} Appellant asked W.K. if he should stop and when W.K. replied in the affirmative, appellant stopped and walked away. T. at 202.

{¶50} Appellant admitted to rubbing and touching W.K.'s penis. T. at 523-526. However, appellant testified W.K. facilitated his actions by moving his arms to give appellant better access to his groin. T. at 525. Appellant readily admitted that what he did was wrong in the eyes of God, he should not have gone so far, and he crossed over the line. T. at 582.

{¶51} Appellant and his witnesses (other members of the youth group) described an atmosphere of freedom created by appellant in his home where he entertained the teenage boys and permitted weekend overnights. One youth described being able to discuss things with appellant that he could not discuss with his parents. It was in this atmosphere that W.K. permitted appellant to rub his leg and his back and put his head on his shoulder during a six month period prior to the incident. T. at 232-234.

{¶52} Appellant argues this continual relationship and "flirting" led him to believe that touching W.K.'s penis and causing arousal was welcomed by W.K. The issue centers on whether appellant was reckless in his actions given the cited history between the two.

{¶53} "A person acts recklessly when, with heedless indifference to the consequences, he perversely disregards a known risk that his conduct is likely to cause a certain result or is likely to be of a certain nature. A person is reckless with respect to circumstances when, with heedless indifference to the consequences, he perversely disregards a known risk that such circumstances are likely to exist." R.C. 2901.22(C).

{¶54} There is no doubt that appellant's social, and admittedly, moral compass was not functioning. Clearly, the instant rebuke by W.K. when appellant asked if he should stop and the feeling of being uncomfortable as testified to by W.K. was more than sufficient to withstand a Crim.R. 29 motion for acquittal.

{¶55} The jury, as trier of fact, was left to determine from all the surrounding circumstances whether appellant was reckless in knowing his actions would be offensive to W.K.

{¶56} We note there is nothing in the record to indicate that appellant advocated homosexuality when being with the group of teenagers. There is also no indication of any sexual touching between the teenagers and appellant.

{¶57} Upon review, we find the jury as the trier of fact did not lose its way in finding appellant's actions were reckless and constituted an unwarranted and offensive touching. We find no manifest miscarriage of justice.

{¶58} Assignments of Error II and III are denied.

IV

{¶59} Appellant claims the trial court erred in excluding evidence that Detective Brown did not believe a crime had occurred. We disagree.

{¶60} The admission or exclusion of evidence lies in the trial court's sound discretion. *State v. Sage* (1987), 31 Ohio St.3d 173. In order to find an abuse of that discretion, we must determine the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217.

{¶61} As a general rule, all relevant evidence is admissible. Evid.R. 402. However, "[a]lthough relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury." Evid.R. 403(A).

{¶62} During the testimony of appellant's mother, the following proffer was made:

{¶63} "Q. Did Detective Brown explain to you that due to [W.K.'s] age and because Aaron had stopped when he was asked to stop, it was questionable as to whether or not a crime had been committed?

{¶64} "A. Yes.

{¶65} "Q. And what was your response to that?

{¶66} "A. My response? I was surprised." T. at 312.

{¶67} The following proffer was offered during the testimony of Mr. Sparrow:

{¶68} "Q. Mr. Sparrow, now tell me about your conversation with Detective Brown please.

{¶69} "A. Um, she just, she just reiterated, I mean, I don't if I, she basically said that, uh, the, uh, (pause) asked me about, we talked about the age of consent. I don't remember all the details specifically word for word, but she basically talked about age of

consent saying that at ages sixteen or seventeen, if there was an act, a sexual act or sexual advance that was rebuffed and the act continued, then, then the crime was committed. But that if there was an act and it was stopped when their discomfort or their statement that, 'No, I don't like this. Stop,' then there was not crime.

{¶70} "Q. And did that come as a surprise to you?

{¶71} "A. A big shock, yeah. Yeah, because when I, um, I remember sitting, I was sitting in front of the post office because I just checked the mail and called her and when she said that, I actually said that and hit the horn on my car. It reminded me, I mean, that's in my mind that I was like, and I said to her, I said, 'You've got to be kidding me. I thought anybody over the age, at age eighteen, whenever there was an action of that kind that that was basically a criminal offense and, um, she said, 'No, in the state of Ohio, it's that way.' And she, um, yeah, basically we talked about that briefly and then I said to her, uh, 'Then you probably need to talk to Aaron, don't you? Because it sounds like that's what everyone has told you happened.' And she said it would be helpful if I could talk to Aaron. And then I said to her, 'I probably shouldn't talk to Aaron myself and tell him this, should I?' and she said, 'I should probably talk to Aaron,' so, meaning her. So, then when we got off the phone, I called her, his father and was kind of emphatic to him to call Mrs. Brown, Ms. Brown and, um, talk to her and coordinate getting together on it. T. at 335-337.

{¶72} During appellant's testimony, the following proffer was made:

{¶73} "Did you have a conversation with Detective Brown about whether she thought or she'd been told as to whether there existed a criminal offense in this particular matter?

{¶74} "A. Yes, sir.

{¶75} "Q. Tell the Court about that, please.

{¶76} "A. She called me and she said that there's no, no crime has been committed. She said she's already talked to the prosecutor and that no crime had been committed. She had told that to my friend, Carly, who called my dad, who then had me call her and she said no crime had been committed. It's not a big deal, I just need you to come in and give your statement and you'll get a letter within a couple weeks from the prosecuting attorney's office." T. at 537-538.

{¶77} Detective Brown proffered that she told appellant's mother "it was questionable as to whether or not a crime was committed, explaining that the age of sixteen was consensual age according to the law." T. at 387. Detective Brown admitted to having a similar conversation with Mr. Sparrow, appellant, and his father. T. at 387-388.

{¶78} As cited supra, relevant evidence is evidence which tends to prove a fact in question. The fact in question sub judice was not the relevant age of W.K. or Detective Brown's opinion. The fact in question was whether there was a violation of the sexual imposition statute.

{¶79} During a pretrial hearing, the trial court found the following:

{¶80} "THE COURT: Okay. So then when we deal with the second issue, conversations about whether a crime was involved, uh, okay. I, I believe that it is not important what the prosecutor thinks. In fact, I think, I think that it's inappropriate. You know? I think a prosecutor can't during a jury trial say, uh, I think he's guilty because, that's an improper statement and that could be, uh, that be could objected to and the

Court could make that statement go away so that the Court does not consider it. It's not important what the prosecutor thinks.

{¶81} "During a jury trial, the fact finder is the jury. It is only important what the jury thinks about the case and the strength or the weaknesses of each element of the offense as it's presented to them.

{¶82} "In terms of the officer, likewise, I think it's inappropriate for a prosecutor to say, now I'm not saying this doesn't happen, a lot of times there's no objections to keep a law enforcement officer's opinion as to whether someone violated the law. I don't think that's important. What's important are the presentation of facts and for the fact-finder to make the determination of whether a law has been committed. So, I don't think that it's relevant. I want to hear about the facts of this case and I want the jurors to make their own mind up as to whether a crime was involved." March 12, 2009 T. at 13-14.

{¶83} Upon review, we find the trial court did not err in excluding evidence that Detective Brown did not believe a crime had occurred.

{¶84} Assignment of Error IV is denied.

V

{¶85} Appellant claims the trial court erred in sentencing by relying on religion. We disagree.

{¶86} In sentencing appellant, the trial court stated the following:

{¶87} "And, obviously, the perspective of a Christian is not always the same as a non-believer. Um, Mr. Reedy, what, what I want to say to you is this, I, you know, I heard a lot about your actions and I, I have to tell you they did bother me on a number

of levels. Um, this case has nothing to do with your sexuality, absolutely nothing. It has everything to do with you being a youth leader at a church. And, and really, what came out more than anything was not what happened on one given evening. What came out was a series of conduct, you know, where you're forming your relations, relationship with at least sixteen-year-olds, possibly younger, but at least let's just say sixteen-year olds, who, by the way, at age sixteen are extremely impressionable.***

{¶88} "***

{¶89} "And, and frankly, one of the, and I'll have to say it, despicable acts, most despicable was the act that occurred in the church. You know, anywhere but the church. And as fellow believers, I think that that's any important aspect of this particular case. That is a place of sanctuary and as a fellow Christian and as a church leader, you should of known that more than anybody else. To prey on a child, yes, a sixteen-year-old child, but a child nonetheless, inside the church, Mr. Reedy, (pause) was the lowest of all." April 23, 2009 T. at 27-28 and 30, respectively.

{¶90} Appellant does not argue that the sentence is unlawful. Despite the trial court's stream of consciousness statement, the trial court gave appellant the sentence recommended by the state. Id. at 3, 34-35.

{¶91} Upon review, we find the trial court did not abuse its discretion in sentencing appellant.

{¶92} Assignment of Error V is denied.

{¶93} The judgment of the Municipal Court of Fairfield County, Ohio is hereby affirmed.

By Farmer, J.

Gwin, P.J. and

Delaney, J. concur.

_s/ Sheila G. Farmer_____

_s/ W. Scott Gwin_____

_s/ Patricia A. Delaney_____

JUDGES

SGF/sg 0311

IN THE COURT OF APPEALS FOR FAIRFIELD COUNTY, OHIO

FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
AARON REEDY	:	
Defendant-Appellant	:	CASE NO. 09CA28

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Municipal Court of Fairfield County, Ohio is affirmed. Costs to appellant.

_s/ Sheila G. Farmer_____

_s/ W. Scott Gwin_____

_s/ Patricia A. Delaney_____

JUDGES