

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

State of Ohio/City of Toledo

Court of Appeals No. L-12-1160

Appellee

Trial Court No. CRB-12-02330

v.

Sean Fraizer

**DECISION AND JUDGMENT**

Appellant

Decided: May 31, 2013

\* \* \* \* \*

David L. Toska, Chief Prosecuting Attorney, and  
Arturo Quintero, Assistant Prosecuting Attorney, for appellee.

Tim A. Dugan for appellant.

\* \* \* \* \*

**SINGER, P.J.**

{¶ 1} Appellant appeals his conviction for sexual imposition entered following a trial to the bench in the Toledo Municipal Court. Because we conclude that there was sufficient corroborating evidence presented to support the allegations against appellant, we affirm.

{¶ 2} Appellant, Sean Frazier, is a licensed massage therapist. On January 25, 2012, appellant had a 9:00 p.m. appointment to perform a deep tissue massage upon a female client who was preparing for a fitness competition. According to the client, she held a membership at the business at which appellant worked and averaged one massage per month over the prior year. Two of these had been with appellant.

{¶ 3} The client later testified that when she arrived she was ushered into a treatment room where she disrobed completely and lay on her back, her breasts and private areas covered with blankets. Appellant began massaging her abdominal area and then moved to her lower extremities. According to the client, when appellant reached her upper thigh, he put his hands under the blanket and began to rub her “inside on the outside lips of my vaginal area down to the vaginal opening.” The client testified that, when she turned her body during this, appellant discontinued touching that area and completed massaging her leg.

{¶ 4} The client reported similar acts when appellant massaged her other leg. When she turned over, “he just continued to touch me inappropriately in my, with, in my butt.” After that, “he came back up to the top and massaged my breasts \* \* \* then finished by kissing the back of my neck.”

{¶ 5} According to the client’s boyfriend, when he picked her up, she was sullen and uncommunicative. The boyfriend later testified that when the client told him what was wrong, they first went back to the massage spa, but it was closed. They then sought out police.

{¶ 6} Police eventually charged appellant with sexual imposition in violation of Toledo Municipal Code 533.04. Appellant pled not guilty and the matter proceeded to a trial to the court. At the conclusion of the trial, the court found appellant guilty as charged and sentenced him to 60 days in jail, a \$50 fine and costs. The court also adjudicated him a tier one sex offender.

{¶ 7} From this judgment, appellant now brings this appeal. Appellant sets forth the following two assignments of error:

1. The City presented legally insufficient evidence to sustain Appellant's conviction for Sexual Imposition.
2. Appellant's conviction fell against the manifest weight of the evidence.

{¶ 8} We shall discuss appellant's assignments of error together. In a criminal appeal, a verdict may be overturned if it is either against the manifest weight of the evidence or because there is an insufficiency of evidence. In the former, the appeals court acts as a "thirteenth juror" to determine whether the trier of fact lost its way and created such a manifest miscarriage of justice that the conviction must be overturned and a new trial ordered. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541(1997). In the latter, the court must determine whether the evidence submitted is legally sufficient to support all of the elements of the offense charged. *Id.* at 386-387. Specifically, we must determine whether the state has presented evidence which, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The test

is, viewing the evidence in a light most favorable to the prosecution, could any rational trier of fact have found the essential elements of the crime proven beyond a reasonable doubt. *Id.* at 390 (Cook, J., concurring); *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. *See also State v. Eley*, 56 Ohio St.2d 169, 383 N.E.2d 132 (1978); *State v. Barnes*, 25 Ohio St.3d 203, 495 N.E.2d 922 (1986).

{¶ 9} In material part, Toledo Municipal Code 533.04 provides:

(a) No person shall have sexual contact with another, not the spouse of the offender \* \* \* when any of the following apply:

(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.

\* \* \*

(b) No person shall be convicted of a violation of this section solely upon the victim's testimony unsupported by other evidence.

{¶ 10} The language of the ordinance is identical to R.C. 2907.06. The definition of sexual contact is also the same. "Sexual contact' means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if such person is a female, a breast, for the purpose of sexually arousing or gratifying either person." Toledo Municipal Code 533.01(b); R.C. 2907.01(B).

{¶ 11} The element that appellant asserts is unproven in this offense is corroboration. Appellant insists that the only testimony corroborating the victim's account of this event was that of her boyfriend who could only report that the victim was

distraught and quiet when he picked her up. Any other evidence the boyfriend had to contribute was nothing more than what he was told by the victim. This, appellant maintains, should be insufficient evidence to provide independent corroboration of the offense.

{¶ 12} Appellee responds that corroboration of all of the elements of the offense is not required. It is sufficient to provide evidence connecting the accused with the material facts set forth by the victim. In support, appellee cites *State v. Economo*, 76 Ohio St.3d 56, 666 N.E.2d 225 (1996).

{¶ 13} *Economo* was a plurality opinion, with five of seven justices agreeing on the following syllabus language:

The corroborating evidence necessary to satisfy R.C. 2907.06(B) need not be independently sufficient to convict the accused, and it need not go to every essential element of the crime charged. Slight circumstances or evidence which tends to support the victim's testimony is satisfactory. *Id.* at syllabus.

{¶ 14} In the *Economo* opinion, the court surveyed the manner in which other jurisdictions interpret corroboration requirements. The court noted with approval the manner in which the court of appeals for the District of Columbia construed a corroboration requirement by example: "For example, reasonably prompt reporting of the incident to one's family, friends or police is considered corroboration here." *Id.* at 59, quoting *Fitzgerald v. United States*, 443 A.2d 1295, 1301-1302 (D.C. 1982).

{¶ 15} The *Economo* court elaborated:

The *Fitzgerald* case is a suitable example of the minimal evidence necessary to fulfill a victim-corroboration requirement. In *Fitzgerald*, there was evidence that the victim ran to her room crying when she returned from a car ride with the defendant during which he allegedly attempted to rape her. The victim complained that her head hurt, which confirmed her testimony that her head had struck the sidewalk when she fell from the defendant's car during commission of the sexual offense. The victim told her friend about the incident the next day. This evidence was sufficient to satisfy the need for corroboration. *Id.*

{¶ 16} In the present matter, the victim reported the event to her boyfriend in time to return to the massage spa before all the employees had left. The victim and the boyfriend then informed the police a short time later. Additionally, both the receptionist at the massage spa and appellant himself corroborated appellant's appointment with the victim. Following the *Fitzgerald* template, this is sufficient corroboration to satisfy Toledo Municipal Code 533.01(b) or R.C. 2907.01(B).

{¶ 17} Since the lack of sufficient corroboration was the only element of the offense that appellant suggested was missing, appellant's first assignment of error is not well-taken.

{¶ 18} With respect to the verdict being against the manifest weight of the evidence, we have fully reviewed the transcript of the trial and examined the evidence

admitted. We fail to find anything that suggests that the trier of fact lost its way or that manifest injustice resulted. Accordingly, appellant's second assignment of error is not well-taken.

{¶ 19} On consideration whereof, the judgment of the Toledo Municipal Court is affirmed. It is ordered that appellant pay the court costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

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JUDGE

Arlene Singer, P.J.

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JUDGE

Thomas J. Osowik, J.  
CONCUR.

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JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: <a href="http://www.sconet.state.oh.us/rod/newpdf/?source=6">http://www.sconet.state.oh.us/rod/newpdf/?source=6</a>.</p>
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