[Cite as *In re F.M.*, 2009-Ohio-6317.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93255

IN RE: F.M.
A MINOR CHILD

JUDGMENT:
AFFIRMED AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. DL-08128622

BEFORE: Stewart, P.J., Dyke, J., and Celebrezze, J.

RELEASED: December 3, 2009

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

MELODY J. STEWART, P.J.:

{¶ 1} Defendant-appellant, F.M., appeals the judgment of the Common Pleas Court of Cuyahoga County, Juvenile Division, that adjudicated him delinquent for committing rape and committed him to the custody of the Ohio Department of Youth Services for an indefinite term.[1] For the following reasons, we affirm the judgment of the juvenile court, but remand the matter for the court to correct its April 6, 2009 judgment entry.

{¶ 2} The following is a brief statement of the facts established by the state's evidence at the March 26, 2009 adjudicatory hearing. Additional facts will be recounted as necessary in the review of the assignments of error.

{¶ 3} The 16-year-old victim, V.C., testified that on the afternoon of Saturday, October 18, 2008, she was at home watching TV in the apartment where she lived with her grandmother and her younger sister, A.C. She was alone because her grandmother had gone shopping with her older sister, and A.C. had left to walk to a neighborhood store. F.M., a 15-year-old boy who had briefly dated V.C.'s younger sister, came to the door looking for A.C. When she told him her sister was not at home, F.M. asked V.C. if she was pregnant. She said she was and he asked if he could feel her stomach. V.C. said no, but he grabbed for

[1]In this appeal, the appellant, the victim, and one of the witnesses are juveniles. In keeping with this court's established policy of protecting the identity of juveniles, we will refer to each of them by their initials or title.

her and tried to feel her stomach. She tried to push him away, but he pushed her back into the apartment. He pushed her down on the couch, pulled her pants down with one hand, and held her down while he had vaginal intercourse with her. She told him to stop and tried to push him off, but was unable to stop him. When her sister and grandmother came home later that day, she did not tell them what had happened.

{¶ 4} The next day, while she was at church, V.C. told her sister that F.M. had raped her. The sister told their grandmother, who took V.C. to the hospital. V.C. was examined at the hospital, but a rape kit was not prepared.

{¶ 5} A.C. testified that, on the afternoon of the rape, she saw F.M. through the second floor hall window of her building when she left to walk to the store. She said F.M. looked right at her.

{¶ 6} David Patterson, the victim's boyfriend and presumed father of the child, testified that, prior to the rape, he was hanging out with F.M. at Patterson's brother's house, which was in the same apartment building as the victim's apartment. Later, the two were outside the building talking when F.M. told him, "I want to fuck your baby mama." F.M. said this repeatedly, "like it was a joke or game or something," and the two almost fought over it. F.M. then said he was going to go see A.C. Patterson left and went back to his brother's apartment.

{¶ 7} On October 21, 2008, a complaint was filed charging F.M. with one count of rape in violation of R.C. 2907.02(A)(2), a felony of the first degree if committed by an adult. F.M. denied the charge. Following the evidentiary

hearing, the court adjudicated F.M. delinquent on the single count and committed him to the custody of the Ohio Department of Youth Services for a minimum term of one year, maximum to the age of 21. F.M. timely appeals, setting forth three assignments of error for review.

{¶ 8} In his first assignment of error, appellant contends that the juvenile court erred in its April 6, 2009 entry where it stated that he admitted the allegations of the complaint. We agree.

{¶ 9} In Ohio, a court speaks through its journal. *State ex rel. Worcester v. Donnellon* (1990), 49 Ohio St.3d 117. It is imperative that the court's journal reflect the truth. Id. Crim.R. 36 permits the court to correct clerical mistakes in judgments, orders, or other parts of the record at any time.

{¶ 10} Our review reveals that the April 6, 2009 judgment entry contains misstatements of fact and does not reflect what actually happened during the proceedings. The entry states that appellant "knowingly and voluntarily admitted the allegations of the complaint." The entry also states: "The Court, after due consideration accepts such admission pursuant to Juvenile Rule 29. It is therefore, Ordered that the child herein is found to be delinquent. " This is not what happened. The record reflects that F.M., through counsel, denied the allegations in the complaint on October 21, 2008. Furthermore, the court's finding of delinquency was based upon evidence presented at the adjudicatory hearing, not upon an admission by appellant. Finally, the entry misstates that appellant was found to be delinquent of the specification found at R.C. 2941.141,

a firearm specification. There is no evidence or allegation in the record that F.M. possessed a firearm during the commission of the rape.

{¶ 11} On May 6, 2009, the court issued a nunc pro tunc entry to correct the record, but this entry repeats the same errors.

{¶ 12} The state does not dispute the errors in the entries. Accordingly, we sustain the first assignment of error and remand the matter to the trial court to issue a nunc pro tunc entry correcting the April 6, 2009 judgment entry to accurately reflect what occurred during the proceedings of this case.

{¶ 13} In his second assignment of error, appellant asserts there was insufficient evidence to support the adjudication of delinquency on the charge of rape. Appellant argues that the testimony establishes that he was trying to pull V.C. out of the house and that she was trying to pull him into the apartment, and therefore, she is the one who forced him into the house and on top of her. He asserts that "logic dictates that the 'alleged victim' was the party using force in this incident." We disagree.

{¶ 14} An adjudication of delinquency of a juvenile is reviewed under the same standards as a criminal conviction of an adult. *In re W.H.*, Cuyahoga App. No. 89327, 2008-Ohio-915. A challenge to the sufficiency of the evidence supporting a conviction requires a court to determine whether the state has met its burden of production at trial. *State v. Thompkins*, 78 Ohio St.3d 380, 390, 1997-Ohio-52. An appellate court's function when reviewing the sufficiency of the evidence to support a conviction is to examine the evidence admitted at trial to

determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. Id. 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* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus.

{¶ 15} Appellant was adjudicated delinquent for rape as defined in R.C. 2907.02(A) as follows:

{¶ 16} "(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."

{¶ 17} R.C. 2907.01(A) defines "sexual conduct" in relevant part as follows:

{¶ 18} "Sexual conduct means vaginal intercourse between a male and female * * *. Penetration, however slight, is sufficient to complete vaginal or anal intercourse."

{¶ 19} R.C. 2901.01(A)(1) defines the term force as "any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing." The victim testified, "He put his penis inside of me. * * * My vagina." She testified that appellant forced her to have sexual intercourse with him. Her testimony included: she is 4 feet 11 inches tall and weighs 103 pounds; F.M. is larger and heavier than she is; he pushed her into the apartment, and they fell on the couch with him on top of her; he held her down on the couch

while he pulled her pants down; she told him to stop and tried to kick him away; he engaged in vaginal intercourse with her against her will.

{¶ 20} Testimony from the state's other witnesses places F.M. at the victim's apartment the day and time of the rape and indicates a prior intent on his part to have sex with the victim. Viewed in a light favorable to the prosecution, there is sufficient evidence for a rational trier of fact to conclude that appellant engaged in sexual contact with the victim and purposely used force to compel her to submit. Accordingly, we overrule the second assignment of error.

{¶ 21} In his third assignment of error, appellant argues that the delinquency finding is against the manifest weight of the evidence. He contends that V.C.'s testimony is not believable and that the evidence "just doesn't add up." He argues that it would be impossible for F.M. to hold the victim down with one hand while simultaneously pulling down her pants and opening his pants with his free hand as alleged. He notes a conflict between the hospital record, which indicates the victim said the rape occurred on Friday, and V.C.'s testimony that F.M. raped her on Saturday. He challenges inconsistencies in the testimony of the state's witnesses relating to the passage of time. V.C. first testified her sister was gone for about an hour before F.M. came to the door but, on cross-examination, she stated A.C. was gone about 20 minutes before F.M. showed up. A.C. was also uncertain as to exactly how long she took to go to the store. Finally, F.M. stresses that there was no physical evidence of trauma or injury to the victim's

vagina nor any bruises to her body, and he questions why she did not try to protect herself by screaming.

{¶ 22} While the test for sufficiency requires a determination of whether the state has met its burden of production at trial, a manifest weight challenges questions whether the state has met its burden of persuasion. *Thompkins* at 390. When a defendant asserts that a conviction is against the manifest weight of the evidence, an appellate court must review 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 fact-finder clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. Id. at 387. 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. Id.

{¶ 23} We are mindful that the weight to be given the evidence and the credibility of the witnesses are matters primarily for the trier of fact. *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus. The trier of fact has the authority to "believe or disbelieve any witness or accept part of what a witness says and reject the rest." *State v. Antill* (1964), 176 Ohio St. 61, 67.

{¶ 24} In this case, there are inconsistencies in the testimony of the victim and her sister as to exactly how long the sister was gone when she walked to the store and how long she had been gone before F.M. came to the door. These conflicts in the evidence are minor, and the court could have resolved them by

considering the age of the witnesses and the passage of time between the rape and the trial. Additionally, while appellant claims the hospital record shows V.C. was confused over what day of the week she was raped, both V.C. and her sister were firm in their testimony that V.C. reported the rape to her family the day following the rape, on Sunday at church. Finally, the absence of medical evidence of trauma or injury to the victim's genitals does not preclude a finding of rape. See, e.g., *State v. Davis*, Franklin App. No. 05AP-538, 2006-Ohio-3707; *State v. Carpenter* (1989), 60 Ohio App.3d 104.

{¶ 25} Having reviewed the entire record, we cannot say that this is one of the exceptional cases in which the evidence weighs heavily against the conviction. *Thompkins* at 387. Accordingly, appellant's third assignment of error is overruled. The judgment of the juvenile court is affirmed, and the matter is remanded for the court to correct the judgment entry.

It is ordered that appellee recover of appellant its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas – Juvenile Division to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MELODY J. STEWART, PRESIDING JUDGE

ANN DYKE, J., and
FRANK D. CELEBREZZE, JR., J., CONCUR