

[Cite as *State v. Bishop*, 2010-Ohio-3192.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93629

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

TRACEY BISHOP

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-516432

BEFORE: Dyke, P.J., Jones, J., and Cooney, J.

RELEASED: July 8, 2010

**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), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten 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. 2.2(A)(1).

ANN DYKE, P.J.:

{¶ 1} Defendant Tracey Bishop appeals from a conviction for sexual imposition. For the reasons outlined below, we affirm.

{¶ 2} Defendant Tracey Bishop was indicted for gross sexual imposition in connection with an incident that was alleged to have occurred at the Cleveland House of Corrections. Defendant pled not guilty, and the matter proceeded to trial to the bench on April 17, 2009.

{¶ 3} The evidence demonstrated that, beginning in July 2008, in the weeks preceding the alleged incident, defendant made repeated remarks to the victim about the victim's body. Defendant additionally made two graphic sexual suggestions to the victim. Following each instance, the victim told defendant that the remark was inappropriate and made her feel uncomfortable. Later, defendant walked past the victim's bunk, told her to watch out, and threatened to perform a sexual act on her in the middle of the night.

{¶ 4} Approximately one week later, the victim was in line, and defendant was immediately in front of her. Defendant did not advance in the line. The victim became crowded and asked defendant to move forward. At this point, defendant looked back at her, reached back and grabbed the victim's groin.

{¶ 5} The victim reported the contact to corrections officers on August 17, 2008. She wrote a second statement about ten days later and forwarded it to the local police. At this time, the victim reported that she had seen defendant in the shower and that defendant has male genitalia. A second inmate testified that

she had heard defendant make remarks to the victim about the victim's body.

{¶ 6} A corrections officer testified that, after having a discussion with the victim about defendant, she kept these inmates apart from one another. A second corrections officer testified that she spoke with the victim about the matter, then prepared an incident report that was logged into the House of Corrections logbook. This officer spoke with defendant about the matter, and defendant denied the contact. The officer then spoke to the victim. At this time, the victim was upset, crying, and shaking. Later, the officer heard defendant call the victim a bitch.

{¶ 7} Defendant testified at trial and denied ever touching the victim. Defendant admitted making sexual comments to the victim but stated that the victim had initiated this discussion by asking about defendant's penis.

{¶ 8} Defendant was convicted of the lesser charge of sexual imposition and was determined to be a Tier I sexual offender. The trial court sentenced defendant to time served. Defendant now appeals and assigns a single error for our review.

{¶ 9} In the sole assignment of error, defendant asserts that there is insufficient evidence to support the conviction for sexual imposition because there is no corroboration as required under R.C. 2907.06(B), and there is no evidence that defendant's conduct was for the purpose of sexual gratification.

{¶ 10} In *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus, the Ohio Supreme Court set forth the following

standard of review to be applied by an appellate court when reviewing a claim of insufficient evidence:

{¶ 11} “An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of a defendant's guilt beyond a reasonable doubt. 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. (*Jackson v. Virginia* [1979], 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560, followed.)”

{¶ 12} The essential elements of sexual imposition are set forth in R.C. 2907.06 as follows:

{¶ 13} “(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:

{¶ 14} “(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.

{¶ 15} “* * *

{¶ 16} “(B) No person shall be convicted of a violation of this section solely upon the victim's testimony unsupported by other evidence.”

{¶ 17} R.C. 2907.01 in turn defines “sexual contact” as “any touching of an

erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region or * * * breast for the purpose of sexually arousing or gratifying either person.”

{¶ 18} With regard to the issue of corroboration, we note that “[t]he 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.” See *State v. Economo*, 76 Ohio St.3d 56, 1996-Ohio-426, 666 N.E.2d 225, syllabus. Moreover, “[t]he corroboration requirement of R.C. 2907.06(B) is a threshold inquiry of legal sufficiency to be determined by the trial judge, not a question of proof, which is the province of the factfinder.” *Id.*

{¶ 19} In *Economo*, supra, the Ohio Supreme Court found sufficient evidence of corroboration of a doctor's sexual imposition upon a patient where the evidence demonstrated the physician-patient relationship at the relevant time period, and third parties observed that the patient was scared, on the verge of tears, and did not want to be alone with the doctor. The court noted that the corroboration requirement does not mandate proof of the facts that are the very substance of the crime charged, and that the corroboration requirement of R.C. 2907.06(B) is simply a threshold inquiry of legal sufficiency to be determined by the trial judge, not a question of proof, which is the province of the factfinder. *Id.*

{¶ 20} In this matter, the victim testified that defendant verbally harassed

the victim over several weeks, and made graphic comments about her body. Another workhouse inmate also testified that she heard defendant making comments of a sexual nature to the victim. In addition, the victim reported the contact to a corrections officer who, in turn, prepared an incident report and logged it into the Cleveland House of Corrections logbook. In light of this evidence, the trial court could properly find that the requirement of corroboration was established. With regard to the issue of whether there is sufficient evidence to meet the requirements of “sexual contact,” we note that “[w]hether the touching was undertaken for the purpose of sexual arousal or gratification is a question of fact to be inferred from the type, nature and circumstances surrounding the contact. The determination of a defendant's mental state, absent some comment on his or her part, must of necessity be determined by the nature of the act, when viewed in conjunction with the surrounding facts and circumstances.” *State v. Mundy* (1994), 99 Ohio App.3d 275, 650 N.E.2d 502, quoting *State v. Lott* (1990), 51 Ohio St.3d 160, 168, 555 N.E.2d 293. Accord *State v. Collins*, Cuyahoga App. No. 82200, 2003-Ohio-4817.

{¶ 21} In this matter, the state's evidence, if believed, is sufficient for the judge to infer defendant touched the victim's groin for the purpose of sexual arousal or gratification. In light of defendant's repeated and graphic comments about the victim's body and repeated suggestions of various sexual activities, as well as the evidence that defendant was changing or had changed her gender and had male genitalia, there was sufficient evidence to establish that the contact

was made for the purpose of sexually arousing or gratifying defendant. The requirement of “sexual contact” was therefore met herein.

{¶ 22} From all of the evidence of record, there is sufficient evidence to support the conviction for sexual imposition. The evidence demonstrated that, while waiting in line at the House of Corrections, defendant turned around and grabbed the victim’s groin. There was also evidence of corroboration, in light of the victim’s statements to the officers, and evidence tending to establish that defendant grabbed the victim for the purpose of sexual arousal or gratification. Finally, there was evidence that defendant knew that the sexual contact was offensive to the victim, or acted reckless with regard to whether it was offensive, as the evidence established that the victim repeatedly told defendant that the sexual comments and remarks about the victim’s body were inappropriate and made her feel uncomfortable. Accordingly, the assignment of error is without merit.

Judgment affirmed.

It is ordered that appellee recover from appellant 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 common pleas court 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.

ANN DYKE, PRESIDING JUDGE

LARRY A. JONES, J., and
COLLEEN CONWAY COONEY, J., CONCUR