

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	No. 25AP-477
Plaintiff-Appellee,	:	(C.P.C. No. 24CR-1482)
v.	:	
	:	(REGULAR CALENDAR)
Desmon M. Kirkendoll,	:	
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on August 20, 2026

On brief: *Shayla D. Favor*, Prosecuting Attorney, and *Mark R. Wilson*, for appellee.

On brief: *The Meade Law Group*, and *Darren L. Meade*, for appellant.

APPEAL from the Franklin County Court of Common Pleas

JAMISON, J.

{¶ 1} Defendant-appellant, Desmon M. Kirkendoll, appeals from a conviction by jury trial in the Franklin County Court of Common Pleas. For the following reasons, we affirm the judgment of the trial court.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} On March 18, 2024, a Franklin County Grand Jury indicted Kirkendoll on a single count of gross sexual imposition, a violation of R.C. 2907.05, a felony of the third degree. He pled not guilty to the charge.

{¶ 3} Prior to trial, Kirkendoll filed a motion in limine to exclude the forensic examination of the minor victim, A.T. In that motion, he alleged that the examination was inadmissible under Evid.R. 404(B)(1) because A.T. allegedly did not discuss the incident for which Kirkendoll was indicted. However, A.T. did discuss several other potential bad

acts. Kirkendoll further alleged it was inadmissible under Evid.R. 403 as its probative value was substantially outweighed by the danger of unfair prejudice.

{¶ 4} A jury trial commenced on March 31, 2025. At the outset, the parties argued their respective positions on Kirkendoll's motion in limine. The plaintiff-appellee, State of Ohio, agreed to remove three pages of the forensic examination report and cut down the video of A.T.'s interview. It was the state's position that the remaining portions of the exhibits were admissible as statements for purposes of medical diagnosis and treatment under Evid.R. 803(4). The trial court granted, in part, Kirkendoll's motion, redacting a statement by A.T. that "it happened more than one time." (Mar. 31, 2025 Tr. Vol. I at 12.) The court also redacted a statement by A.T. that "it was the same thing." *Id.*

{¶ 5} During voir dire, after reading the indictment, the trial court asked all prospective jurors whether they believed it would be difficult for them to be fair and impartial. No one raised their hand. When questioned by the state, Prospective Juror No. 7 stated she was a little nervous and uncomfortable. When asked if she thought maybe this trial was not for her, she replied, "Kind of." (Tr. Vol. I at 61.) She thought she could be deliberate and make a determination. There was nothing that caused her to believe she could not be fair and impartial. When questioned by defense counsel, she stated that she was not a personal victim of sexual assault, but she knew victims. Despite this, she thought she could be fair and impartial. Defense counsel attempted to exercise a challenge for cause with respect to Prospective Juror No. 7, but the trial court denied that request. Thereafter, defense counsel used all peremptory challenges, including one on Prospective Juror No. 7.

{¶ 6} The state's first witness was A.T.'s mother, A.S. She testified that A.T.'s date of birth was May 6, 2014, and in the Summer of 2023, she was nine years old. Kirkendoll was A.S.'s ex-boyfriend. She identified Kirkendoll as the defendant. Kirkendoll moved into her apartment off Fisher Road in Franklin County, Ohio in the middle of June 2023. A.S. and Kirdendoll dated for eight or nine months. A.S. testified that she placed Kirkendoll on her cellphone plan and replaced his phone. After getting his new phone, A.S. noticed that Kirkendoll was more territorial and secretive over it. At one point, he was showing her something on his phone and a text message from another woman appeared. A.S. became concerned that he was cheating on her. One morning, after her two children left for school, A.S. asked Kirkendoll for his phone password, but he refused to provide it. The two argued

all day about the password. She hid the phone in her car. He eventually gave her the password.

{¶ 7} A.S. testified that after the children got home, she decided she needed space. She went by herself to her aunt's house. When she got to her aunt's house, she went through Kirkendoll's phone and found messages indicating he was cheating on her. She became really upset and went back home to kick out Kirkendoll. After telling him he had to leave, Kirkendoll tried to talk to A.S. to convince her to let him stay, but she did not want to talk about it. A.S. returned to her aunt's house with her children. As she was leaving, Kirkendoll was sitting in his car with his belongings.

{¶ 8} Once situated at her aunt's house, she went through Kirkendoll's phone again and found a video of him and A.T. In the video, Kirkendoll is holding A.T. as she is counting. He was holding A.T.'s buttocks. Later in the video, Kirkendoll grabbed A.T.'s buttocks, then panned the phone toward his genital area. A.S. testified that Kirkendoll had an erection. The video then ends with Kirkendoll grabbing A.T.'s buttocks again. She could tell that the video was taken in one of the children's rooms in her apartment. She screen-recorded the time stamp and location information for the video. The video was taken on August 17, 2023 at A.S.'s apartment. The video was played for the jury as state's Exhibit A.

{¶ 9} State's Exhibit A is a video depicting Kirkendoll holding A.T. over his right shoulder. A.T. is wearing bluish shorts that are short in length. Kirkendoll is facing the camera towards them and eventually lowers it so that it is pointed at an upwards angle. During the video, Kirkendoll squeezes A.T.'s buttocks, over the clothes, multiple times. At some points, his middle finger is resting in between A.T.'s buttocks. Towards the end of the video, Kirkendoll moves the camera so that it briefly shows his genital area. He is wearing a pair of sweatpants.

{¶ 10} After seeing the video, A.S. spoke with A.T. A.S. left her aunt's house and called her father. When she reached her apartment, she called the police. When the police arrived, she showed them the video. She did not request Kirkendoll's arrest at the time because she feared upsetting him. She also called children services and made a report. A.T. was taken for a forensic interview at Nationwide Children's Hospital a couple of weeks later.

{¶ 11} On cross-examination, A.S. admitted to meeting Kirkendoll in Elyria after discovering the video. She claimed she wanted to confront him about the video. She also

alleged that he admitted to his wrongdoing via text message. However, those text messages were never entered into evidence. A.S. was reluctant at first about a forensic interview because she did not want to further traumatize A.T.

{¶ 12} The state next called Dr. Amber Hussain, a fellow child abuse physician in pediatrics at Nationwide Children's Hospital. Dr. Hussain performed a physical sexual assault examination of A.T. She found nothing notable in her external examination. A.T. and A.S. declined the genital examination. Having a normal examination does not exclude the possibility of sexual abuse.

{¶ 13} Detective Craig Goodman testified that he was currently assigned to the Juvenile Sexual Abuse Unit with the Columbus Police Department ("CPD"). He was assigned to investigate this matter. Goodman identified the defendant as Kirkendoll. A.S. provided him with the video of A.T. and Kirkendoll. Goodman described what he observed in the video. He indicated that Kirkendoll was holding A.T. in one hand and filming in the other. One of his hands is cupping A.T.'s buttocks. Over the course of the video, which lasts approximately 45 seconds, the video focuses on A.T.'s body and buttocks. At 29 seconds in the video, Kirkendoll grasps and squeezes A.T.'s buttocks. At 34 seconds, Kirkendoll repositioned his hand on A.T.'s buttocks with his fingers near her anus. At 36 seconds, the video shows Kirkendoll's groin and what appears to be the outline of his penis. The video concludes with Kirkendoll again squeezing A.T.'s buttocks.

{¶ 14} After walking through the video, Goodman testified that "in [his] professional opinion, that's sexual abuse." (Apr. 1, 2025 Tr. Vol. II at 221.) Defense counsel objected on the basis that Goodman is offering expert testimony without being qualified as an expert. The trial court overruled the objection, simply stating "[h]e's a detective in the sexual abuse unit, and I will allow that answer." *Id.* On cross-examination, Goodman stated that he was not sure if Kirkendoll's penis was erect in the video. He later clarified that it appeared to him that it was, but it might not have been.

{¶ 15} The state's final witness was Dennette Santamaria, a forensic interviewer with Nationwide Children's Hospital. She conducted a forensic interview with A.T. During that interview, A.T. disclosed that Kirkendoll touched her "butt" over her clothes. (State's Ex. D1.) She said that he would hug her and pet her "butt" like someone would pet a dog.

Id. She stated that it happened two or three months before the interview. A.T. said that she told her mother and her mother kicked Kirkendoll out.

{¶ 16} Following the state resting its case, defense counsel made a Crim.R. 29 motion for acquittal. That motion was overruled by the trial court. In his closing argument, defense counsel stated that Kirkendoll was “in jail over 12 months waiting for his day in court.” (Apr. 2, 2025 Tr. Vol. III at 272.)

{¶ 17} The jury found Kirkendoll guilty as charged in the indictment. The trial court sentenced him to 42 months in prison. Kirkendoll now brings this appeal.

II. ASSIGNMENTS OF ERROR

{¶ 18} Kirkendoll assigns the following as trial court errors:

1. Trial Counsel was Ineffective in His Assistance to Appellant by Biasing the Jury in Declaring that the Appellant Had Been Incarcerated Prior to Trial, Causing the Appellant to be Unduly Prejudiced.
2. The Trial Court Erred in Denying Appellant’s Crim. R. 296 Motion for Acquittal Because the State Failed to Present Sufficient Evidence of “Sexual Contact” For the Purpose of Sexual Arousal or Gratification.
3. The conviction is against the manifest weight of the evidence where the State’s proof rested on speculation, assumption, and internally inconsistent testimony.
4. The trial court abused its discretion and violated Appellant’s right to an impartial jury by denying a defense challenge for cause to a biased prospective juror, thereby forcing Appellant to expend a peremptory strike to cure judicial error.
5. The Trial Court Erred in Admitting Expert Testimony Without the Witness Being Certified as an Expert Under R. Evid. 702.

(Sic passim.) (Emphasis deleted.)

III. STANDARD OF REVIEW

{¶ 19} In considering a claim of ineffective assistance of counsel, this court applies a two-part standard. *State v. Rhoades*, 2020-Ohio-2688, ¶ 42 (10th Dist.), citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 141-142 (1989). First, a defendant must demonstrate that counsel’s performance was

deficient. *Id.* “This requires showing that counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” *Strickland* at 687. To satisfy this prong, the defendant must show that counsel’s representation “fell below an objective standard of reasonableness.” *Id.* A defendant’s claim of deficient performance must overcome the strong presumption that a licensed attorney’s performance fell within the wide range of reasonable professional assistance. *State v. Diallo*, 2025-Ohio-920, ¶ 28 (10th Dist.). “Debatable trial tactics generally do not constitute ineffective assistance of counsel.” *State v. Elmore*, 2006-Ohio-6207, ¶ 116. In the second prong, a defendant must demonstrate that counsel’s deficient performance was prejudicial. *State v. Pardon*, 2022-Ohio-663, ¶ 36 (10th Dist.). Prejudice is established by showing that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland* at 694. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.*

{¶ 20} A sufficiency of the evidence challenge examines “whether the evidence is legally adequate to support a verdict.” *State v. Kurtz*, 2018-Ohio-3942, ¶ 15 (10th Dist.). The test for sufficiency is whether the prosecution has met its burden of production at trial, and is a question of law, not fact. *State v. Boles*, 2013-Ohio-5202, ¶ 34 (12th Dist.). An appellate court’s standard of review for sufficiency of the evidence is whether, after viewing the evidence in the 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. Rankin*, 2011-Ohio-5131, ¶ 12 (10th Dist.), citing *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus, *superseded by state constitutional amendment on other grounds*, as stated in *State v. Smith*, 1997-Ohio-355, ¶ 49, fn. 4. The testimony of one witness, if believed by the trier of fact, is enough to support a conviction. *State v. Strong*, 2011-Ohio-1024, ¶ 42 (10th Dist.).

{¶ 21} While sufficiency of the evidence tests whether the evidence is legally sufficient to support the conviction, the manifest weight of the evidence standard “addresses the evidence’s effect of inducing belief.” *State v. Haas*, 2011-Ohio-2676, ¶ 16 (10th Dist.). A challenge to the weight of the evidence questions whether a greater amount of credible evidence was admitted supporting the conviction rather than acquittal. *State v. Richey*, 2018-Ohio-3498, ¶ 53 (10th Dist.). When weighing the evidence, the court of

appeals must consider whether the evidence in a case is conflicting or where reasonable minds might differ as to the inferences to be drawn from it, consider the weight of the evidence, and consider the credibility of the witnesses to determine if “ ‘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. Williams*, 2011-Ohio-4760, ¶ 20 (10th Dist.), quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist. 1983). A reviewing court must defer to the trier of fact’s determination of witness credibility because it “ ‘is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.’ ” *State v. Cattledge*, 2010-Ohio-4953, ¶ 6 (10th Dist.), quoting *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984). 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. *State v. Carter*, 2024-Ohio-444, ¶ 27 (10th Dist.).

{¶ 22} “ ‘The determination of whether a prospective juror should be disqualified for cause is a discretionary function of the trial court and will not be reversed on appeal absent an abuse of discretion.’ ” *State v. T.L.*, 2020-Ohio-3430, ¶ 46 (10th Dist.), quoting *State v. Cruz*, 2013-Ohio-215, ¶ 28 (12th Dist.). Similarly, the admission of evidence “lies within the broad discretion of the trial court, and a reviewing court should not disturb evidentiary decisions in the absence of an abuse of discretion that has created material prejudice.” *State v. Conway*, 2006-Ohio-2815, ¶ 62. An abuse of discretion exists when the trial court has an unreasonable, arbitrary, or unconscionable attitude in reaching its decision. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

IV. LEGAL ANALYSIS

{¶ 23} In his first assignment of error, Kirkendoll alleges that defense counsel was ineffective by mentioning Kirkendoll’s pre-trial incarceration during closing arguments. He further alleges that he was prejudiced because this served no conceivable purpose and undermined the presumption of innocence. “Courts have held that verbal references to the jail status of a defendant are improper and potentially prejudicial because they erode the presumption of innocence, for the same reason that wearing prison or jail clothing does.” *State v. Stoermer*, 2018-Ohio-4522, ¶ 35 (2d Dist.). As in the second prong of the

Strickland test, if a criminal defendant's pre-trial incarceration was mentioned, it must be determined whether he or she was prejudiced by the reference. *Id.*

{¶ 24} Assuming *arguendo* that counsel was ineffective in mentioning Kirkendoll's pre-trial incarceration, we find that the single, isolated incident did not result in prejudice. Essentially, this case boiled down to the jury reviewing a single 45-second video and deciding whether it depicted what the state said it depicted. The jury found in the affirmative. Indeed, the entirety of the offense was on video. The only disputed issue was whether Kirkendoll touching A.T.'s buttocks was done for purposes of sexual gratification. Given the evidence, we fail to see how defense counsel's comment about Kirkendoll waiting in jail for over one year for his day in court poisoned the jury against him. In fact, several Ohio courts of appeals have held that a single reference to a defendant's custodial status is not enough to demonstrate prejudice. *State v. Sharp*, 2010-Ohio-3470, ¶ 107 (12th Dist.) (prosecutor's isolated question regarding defendant's custodial status was improper but not prejudicial); *State v. Gaona*, 2012-Ohio-3622, ¶ 38 (5th Dist.) (isolated inference that defendant was in jail was not prejudicial). Having failed to establish the second prong of the *Strickland* test, we overrule Kirkendoll's first assignment of error.

{¶ 25} In his second assignment of error, Kirkendoll argues that his conviction for gross sexual imposition was not supported by sufficient evidence. His argument alleges a lack of evidence that the purpose of his actions were for sexual arousal or gratification. Kirkendoll was convicted of gross sexual imposition under R.C. 2907.05(A)(4) which states as follows:

(A) No person shall have sexual contact with another; cause another to have sexual contact with the offender . . . when any of the following applies:

. . .

(4) The other person, or one of the other persons, is less than thirteen years of age, whether or not the offender knows the age of the person.

"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." "A person acts purposely when it is the person's specific intention to cause a

certain result, or, when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is the offender's specific intention to engage in conduct of that nature." R.C. 2901.22(A).

{¶ 26} The testimony of A.S. established that Kirkendoll was the individual in the video with A.T. She also established that at the time A.T. was nine years old. Furthermore, she testified that she recognized that the video was filmed in her apartment in Franklin County, Ohio. The video establishes that Kirkendoll squeezed A.T.'s buttocks multiple times. Thus, the only issue is whether, in a light most favorable to the state, there was sufficient evidence that it was done for the purpose of sexual arousal or gratification.

{¶ 27} Proof of sexual arousal or gratification is typically accomplished by inference rather than direct evidence. *State v. West*, 2006-Ohio-6259, ¶ 17 (10th Dist.). "[T]he trier of fact may infer a purpose of sexual arousal or gratification from the 'type, nature, and circumstances of the contact, along with the personality of the defendant.'" *Id.*, quoting *State v. Cobb*, 81 Ohio App.3d 179, 185 (9th Dist. 1991). In *In Re Moore*, 2004-Ohio-6357, ¶ 13 (10th Dist.), we found there was sufficient evidence of sexual arousal and gratification where there was no evidence that the defendant's penis touched the victim's buttocks by accident. In *State v. Watkins*, 1993 Ohio App. LEXIS 2412, *19 (May 4, 1993, 10th Dist.), we found sufficient evidence of sexual arousal or gratification where the defendant touched the backs of the victim's legs on two occasions and the front of her legs on one occasion. The victim demonstrated for the jury how the defendant touched her. We specifically stated that "it was within the province of the jury to determine . . . whether or not the touching was done for the purpose of sexual arousal or gratification." *Id.*

{¶ 28} In light of the above case law and based on our review of the record, there was sufficient evidence to establish a purpose of sexual arousal or gratification. A.S. testified that Kirkendoll's penis was erect in the video. Even without any evidence that Kirkendoll had an erection, there was sufficient evidence on this issue. He squeezed A.T.'s buttocks, not once, but multiple times. A.S. testified that they were in one of the children's bedrooms and there did not appear to be anybody else around. The primary angle of the video is upwards, which meant that the viewer could see, albeit slightly, up A.T.'s shorts. Furthermore, the simple act of Kirkendoll filming his genital area in the middle of squeezing A.T.'s buttocks is simply unexplainable, except for some purpose of sexual

arousal or gratification. In short, we find that the multiple squeezes, the seemingly private nature of the location, the primary angle of the video, the filming of Kirkendoll's genital area, and A.S.'s testimony all combine to form sufficient evidence to establish a purpose of sexual arousal and gratification. Based on the foregoing, we find that Kirkendoll's conviction was supported by sufficient evidence, and we overrule his second assignment of error.

{¶ 29} Likewise, we cannot find that Kirkendoll's conviction was against the manifest weight of the evidence. Kirkendoll's manifest weight claim relies, in part, on an allegation that A.S. lacked credibility. This claim relies primarily on an inconsistency in A.T.'s statements during the forensic interview and A.S.'s testimony. Namely, A.T. told Santamaria that she told A.S. about the touching before A.S. kicked Kirkendoll out, whereas A.S. testified that A.T. did not tell her first, she just found the video. This discrepancy is not necessarily inconsistent. A.S. testified that following her discovery of the video, she spoke with A.T. Although the contents of that conversation were stricken as hearsay, it is entirely possible that during that conversation, A.T. disclosed some sort of touching to A.S. Thus, if A.T. were not aware of the video or that A.S. already kicked out Kirkendoll, it would appear to A.T. that her disclosure to A.S. was the impetus for Kirkendoll being asked to leave. Furthermore, even if A.S.'s testimony was inconsistent with A.T.'s statements, the fact is that the entire offense is on video, thus rendering the inconsistency, or any other credibility issue, immaterial.

{¶ 30} Kirkendoll also revisits his allegation that the proof that he possessed a purpose of sexual arousal or gratification was lacking. Kirkendoll cites several cases, in both his sufficiency and manifest-weight claims, in support of his purpose of sexual arousal or gratification argument. He cites *State v. Henry*, 2009-Ohio-3535, ¶ 23-25 (3d Dist.), and *State v. Curtis*, 2009-Ohio-192, ¶ 51 (12th Dist.) for the proposition that an inference on Kirkendoll's purpose cannot be based on speculation when the conduct is consistent with a non-sexual purpose. (Appellant's Brief at 17-18, 24.) We have reviewed those cases and cannot find where those courts reach that conclusion. Indeed, there is no mention of "speculation" or consistency with a "non-sexual purpose" within those decisions. Rather, both cases simply discuss the well-settled case law that a defendant's purpose may be

inferred from the circumstances surrounding the contact with the victim. *Henry* at ¶ 24-25; *Curtis* at ¶ 52.

{¶ 31} Kirkendoll also cites to *In re R.C.*, 2020-Ohio-1486, ¶ 60 (4th Dist.), for the proposition that “a sexual purpose may be inferred only where ‘there is no innocent explanation for the behavior.’ ” (Appellant’s Brief at 20, quoting *R.C.* at ¶ 60.) However, the full quote from that case is “[a] reasonable person could conclude that R.C.’s placement of his hand inside M.G.’s pants and on her buttocks constituted contact for purposes of sexual gratification or arousal as there is no innocent explanation for this behavior.” *R.C.* at ¶ 60. That can only be read as strictly applying to the facts of that case. It does not invite a blanket conclusion that purpose cannot be inferred whenever there is a possible innocent explanation.

{¶ 32} Moreover, the actions portrayed in the video do not appear to be those of an “active father” attempting to “engage with the children in a fun and playful way.” (Apr. 2, 2025 Tr. Vol. III at 270.) First, it should be noted that this explanation was suggested in closing arguments. There was no evidence introduced that this was commonplace, appropriate behavior for parents in general, or Kirkendoll specifically. Based on all the facts listed in our sufficiency of the evidence analysis, the jury was well within its right to reject defense counsel’s non-sexual explanation and find that Kirkendoll acted with a purpose of sexual arousal or gratification. Based on the record before us, the jury did not clearly lose its way in convicting him of gross sexual imposition. Accordingly, his third assignment of error is overruled.

{¶ 33} In his fourth assignment of error, Kirkendoll alleges that the trial court abused its discretion in denying his challenge for cause of Prospective Juror No. 7. More specifically, he claims that her comments about being a little uncomfortable and thinking she could be fair and impartial were not unequivocal enough and required her dismissal. Crim.R. 24(C) lists the appropriate reasons for a challenge for cause. Notably, Kirkendoll’s brief fails to mention Crim.R. 24(C) or identify which listed reason required the trial court to dismiss Prospective Juror No. 7. Nevertheless, the only possible reasons would be Crim.R. 24(C)(9) or (14). Crim.R. 24(C)(9) states that a challenge for cause can be made for a juror that possesses “a state of mind evincing enmity or bias toward the defendant or the state.” On the record before us, we can find no evidence of Prospective Juror No. 7

exhibiting any bias or impartiality. When asked by the state if there was anything that would cause her not to be fair and impartial, she replied no. It is true that when asked by defense counsel, she stated she *thought* she could be fair and impartial. However, we note that other courts have found that “the use of ‘I think’ language does not automatically mean that the juror could not be fair and impartial.” *State v. Jakobiak*, 2008-Ohio-5030, ¶ 13 (6th Dist.).

{¶ 34} Crim.R. 24(C)(14) states that a challenge for cause can be used on a juror that is “otherwise unsuitable for any other cause to serve as a juror.” We find that a juror being “a little uncomfortable,” knew victims of sexual assault, and *thought* she could deliberate and make a determination does not rise to the level of being unsuitable for jury service. (Mar. 31, 2025 Tr. Vol. I at 61.) In this case, the trial judge saw and heard Prospective Juror No. 7 “and could legitimately validate her statements.” *State v. Allen*, 1995-Ohio-283, ¶ 15. “The trial court may rely on a prospective juror’s testimony in determining that individual’s impartiality, and a reviewing court must give deference to the trial court’s ability to see and hear the prospective juror and the exchanges during voir dire.” *T.L.*, 2020-Ohio-3430, at ¶ 17 (10th Dist.). Moreover, even if we would have reached a different conclusion than the trial court, under an abuse of discretion standard, “an appellate court may not substitute its judgment for that of the trial court.” *In re J.P.*, 2024-Ohio-4916, ¶ 44 (10th Dist.). In short, on this record, we find nothing unreasonable, arbitrary, or unconscionable about the trial court’s decision. Based on the foregoing, Kirkendoll’s fourth assignment of error is overruled.

{¶ 35} In his fifth assignment of error, Kirkendoll claims that the trial court erred in admitting expert testimony from Goodman without him being certified as an expert. Kirkendoll alleges this occurred when Goodman testified that “in his professional opinion,” the video depicted “sexual abuse.” (Apr. 1, 2025 Tr. Vol. II at 221.) Most of Kirkendoll’s argument relates to the lack of testimony regarding Goodman’s credentials instead of whether his testimony was actually an expert opinion. Although Evid.R. 702 discusses expert testimony, “[i]t is well-settled that a police officer may testify concerning matters that are within his experience and observations that may aid the trier of fact in understanding the other testimony pursuant to Evid.R. 701.” *State v. Tatum*, 2012 Ohio App. LEXIS 895, *18 (10th Dist. Mar. 13, 2012). Evid.R. 701 states:

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

Kirkendoll appears to be seizing on the fact that Goodman used the words "in my professional opinion." (Apr. 1, 2025 Tr. Vol. II at 221.) However, that does not automatically mean he is testifying as an expert. In fact, the state did not even attempt to certify him as an expert.

{¶ 36} In *State v. Poole*, 2026-Ohio-2270, ¶ 69 (10th Dist.), we held that trial counsel was not ineffective in failing to object to a detective's opinion testimony. In that case, the detective testified that the defendant did not come across as someone who shot in self-defense. *Id.* We found that this opinion was admissible under Evid.R. 701. *Id.* In finding that the detective's impression was rationally based on his perception, we noted that his testimony was based on his observations of the defendant during his interview. *Id.* at ¶ 70. We also found that the detective's testimony was helpful in providing a useful perspective for analyzing the defendant's interview. *Id.* Finally, we concluded that the opinion testimony was not so prejudicial that it changed the outcome of the trial. In reaching this conclusion, we noted that the jury viewed the video itself and could form its own opinion of whether it concurred with the detective's testimony. *Id.* at ¶ 71.

{¶ 37} The case at hand is similar to *Poole*. Like the detective's impressions of the defendant in the interview in *Poole*, Goodman's testimony was based on his perception of viewing the video in question. Like our findings in *Poole*, we believe Goodman's testimony was helpful in analyzing what was happening in the video. We note that Goodman did not testify that what was occurring in the video was gross sexual imposition. He classified it generally as sexual abuse. The ultimate issue in the case was whether Kirkendoll's actions were done for purposes of sexual arousal or gratification, not whether the child was sexually abused. Likewise, in *Poole*, the detective's testimony was not directly about the ultimate issue. In *Poole*, the ultimate issue was whether the defendant acted in self-defense, not whether he was behaving like someone who acted in self-defense. *Poole* at ¶ 69. To the extent Kirkendoll is arguing it was impermissible to admit this testimony because it related to the key point in the case, even if we were to agree that the testimony spoke to the ultimate

issue, we would note that Evid.R. 704 states that “[t]estimony in the form of an opinion or inference otherwise admissible is not objectionable solely because it embraces an ultimate issue to be decided by the trier of fact.” *See Poole* at ¶ 70.

{¶ 38} Based on the foregoing, the trial court did not abuse its discretion in admitting the testimony because it was admissible under Evid.R. 701. Even if we agreed that Goodman’s testimony was inadmissible, Kirkendoll has failed to demonstrate material prejudice. Just like the jury in *Poole* could view the defendant’s interview and form its own opinions, the jury here saw the video and was free to reach its own decision. *Poole* at ¶ 71. As previously stated, the entire offense was on video and there was only one real issue for the jury to decide. On this record, we fail to see how Goodman’s brief opinion, not even on the consequential issue, was so prejudicial that it changed the outcome of the trial. Accordingly, we overrule Kirkendoll’s fifth assignment of error.

V. CONCLUSION

{¶ 39} Having overruled each of Kirkendoll’s five assignments of error, we affirm the decision of the Franklin County Court of Common Pleas.

Judgment affirmed.

BOGGS, P.J., and LELAND, J., concur.
