[Cite as *State v. Catlett*, 2024-Ohio-386.]

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
ALLEN COUNTY

STATE OF OHIO,

PLAINTIFF-APPELLEE,

v.

SCOTT L. CATLETT,

DEFENDANT-APPELLANT.

CASE NO. 1-22-83

O P I N I O N

STATE OF OHIO,

PLAINTIFF-APPELLEE,

v.

SCOTT L. CATLETT,

DEFENDANT-APPELLANT.

CASE NO. 1-23-06

O P I N I O N

Appeals from Allen County Common Pleas Court
Trial Court No. CR2021 0351

Judgment Affirmed in Case 1-22-83
Judgment Dismissed in Case 1-23-06

Date of Decision: February 5, 2024

APPEARANCES:

Erika LaHote **for Appellant**

John R. Willamowski, Jr. **for Appellee**

ZIMMERMAN, J.

{¶1} Defendant-appellant, Scott L. Catlett ("Catlett"), appeals the December 16, 2022 judgment entry of sentence and the January 30, 2023 sex-offender-classification entry of the Allen County Court of Common Pleas. We affirm appellate case number 1-22-83 and dismiss appellate case number 1-23-06.

{¶2} On November 10, 2021, the Allen County Grand Jury indicted Catlett on Count One of kidnapping in violation of R.C. 2905.01(A)(2), (C)(1), a first-degree felony; Count Two of rape in violation of R.C. 2907.02(A)(2), (B), a first-degree felony; and Count Three of gross sexual imposition in violation of R.C. 2907.05(A)(1), (C)(1), a fourth-degree felony. The indictment includes a repeat violent offender specification under R.C. 2941.149(A) as to Counts One and Two. On November 16, 2021, Catlett filed a written plea of not guilty to the counts and specifications in the indictment.

{¶3} The case proceeded to a jury trial on December 13-16, 2022. On December 16, 2022, the jury found Catlett not guilty of the kidnapping charge alleged in Count One and the rape charge alleged in Count Two, but guilty of abduction (as a lesser-included offense of kidnapping) in violation of 2905.02(A)(2), a third-degree felony, as well as guilty of the gross-sexual imposition charge alleged in Count Three.

{¶4} That same day, the trial court merged Counts One and Three for purposes of sentencing and sentenced Catlett to 36 months in prison on Count One. (Doc. No. 134). Further, because Catlett committed the offenses in this case while on post-release control in another case, the trial court terminated Catlett's post-release control and sentenced him to 1,247 days in prison in that case, which the trial court ordered Catlett to serve consecutively to the prison term imposed in this case for an aggregate sentence of 36 months and 1,247 days in prison.

{¶5} On January 30, 2023, the trial court classified Catlett as a Tier I sex offender after recognizing on January 10, 2023 that "the Court received a notification from the Department of Corrections that the sentencing entry in this case, filed on December 16, 2022, did not reflect a Tier designation." (Doc. Nos. 144, 148, 149).

{¶6} Catlett filed his notices of appeal on December 28, 2022 (assigned appellate case number 1-22-83) and February 22, 2023 (assigned appellate case number 1-23-06). This court consolidated the cases for purposes of appeal. Catlett raises three assignments of error for our review. For ease of our discussion, we will address Catlett's third assignment of error, followed by his first and second assignments of error together.

Third Assignment of Error

Catlett's convictions were against the manifest weight of the evidence, in violation of his right to due process of law under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 10 of the Ohio Constitution.

{¶7} In his third assignment of error, Catlett argues that his abduction and gross-sexual-imposition convictions are against the manifest weight of the evidence. Specifically, Catlett contends that his abduction and gross-sexual-imposition convictions are against the manifest weight of the evidence because "[t]he testimony offered by [the victim] was riddled with inconsistencies, evasion, and contractions." (Appellant's Brief at 18).

Standard of Review

{¶8} In determining whether a conviction is against the manifest weight of the evidence, a reviewing court must 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 [trier of fact] 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. Thompkins*, 78 Ohio St.3d 380, 387 (1997), quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983). A reviewing court must, however, allow the trier of fact appropriate discretion on matters relating to the weight of the evidence and the credibility of the witnesses. *State v. DeHass*, 10 Ohio St.2d 230, 231 (1967). When applying the

manifest-weight standard, "[o]nly in exceptional cases, where the evidence 'weighs heavily against the conviction,' should an appellate court overturn the trial court's judgment." *State v. Haller*, 3d Dist. Allen No. 1-11-34, 2012-Ohio-5233, ¶ 9, quoting *State v. Hunter*, 131 Ohio St.3d 67, 2011-Ohio-6524, ¶ 119.

Analysis

{¶9} In this case, Catlett was convicted of abduction in violation of R.C. 2905.02(A)(2) and gross sexual imposition under R.C. 2907.05(A)(1). The abduction offense of which Catlett was conviction provides, in its relevant part, that "[n]o person, without privilege to do so, shall knowingly * * *[b]y force or threat, restrain the liberty of another person under circumstances that create a risk of physical harm to the victim or place the other person in fear." R.C. 2905.02(A)(2). *See State v. Coyle*, 2d Dist. Montgomery No. 27800, 2018-Ohio-3194, ¶ 10 (specifying that "a conviction for abduction requires proof that the defendant—lacking any legal immunity, license or right—knowingly: (1) used force or made threats directed at another person; (2) restrained the other person's liberty; and (3) either created a risk that the other person would thereby suffer physical harm, or caused the other person to experience fear"). "'Force' means any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing." R.C. 2901.01(A)(2). "A person acts knowingly, regardless of purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature." R.C. 2901.22(B).

{¶10} R.C. 2907.05 sets forth the offense of gross sexual imposition and provides, in its relevant part:

> (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:
>
> (1) The offender purposely compels the other person, or one of the other persons, to submit by force or threat of force.

R.C. 2907.05(A)(1). To prove the offense of gross sexual imposition under R.C. 2907.05(A)(1), the State must prove that the defendant had sexual contact with a person, not the defendant's spouse, and that the offender purposely compelled the victim to submit to the sexual contact by force or threat of force. *See State v. Wine*, 3d Dist. Auglaize No. 2-12-01, 2012-Ohio-2837, ¶ 39-40.

In addressing the force-or-threat-of-force language under the rape statute,

> [t]he Supreme Court of Ohio has further clarified that "[a] defendant purposely compels another to submit to sexual conduct by force or threat of force if the defendant uses physical force against that person, or creates the belief that physical force will be used if the victim does not submit. A threat of force can be inferred from the circumstances surrounding sexual conduct[.]"

State v. Henry, 3d Dist. Seneca No. 13-08-10, 2009-Ohio-3535, ¶ 26 (applying the Supreme Court of Ohio's discussion of the force-or-threat-of-force element to Ohio's gross-sexual-imposition statute), quoting *State v. Schaim*, 65 Ohio St.3d 51 (1992), paragraph one of the syllabus. Indeed, "'[f]orce' is defined as '*any* violence, compulsion, or constraint physically exerted by any means upon or against a person

or thing.'" (Emphasis sic.) *State v. Euton*, 3d Dist. Auglaize No. 2-06-35, 2007-Ohio-6704, ¶ 60 (Preston, J., concurring in part and dissenting in part), quoting R.C. 2901.01(A)(1). *See State v. Stevens*, 3d Dist. No. 1-14-58, 2016-Ohio-446, ¶ 18. *See also* R.C. 2907.05(D) (asserting that "[a] victim need not prove physical resistance" for the offender to be guilty of gross sexual imposition). "'[T]he key inquiry for determining whether the State presented sufficient evidence [of] the element of force is whether (based on the totality of the circumstances) the "victim's will was overcome by fear or duress."'" *Stevens* at ¶ 20, quoting *Wine* at ¶ 40, quoting *In re N.F.*, 3d Dist. Auglaize No. 2-09-20, 2010-Ohio-2826, ¶ 40.

{¶11} On appeal, Catlett argues that his abduction and gross-sexual-imposition convictions are against the manifest weight of the evidence because the victim's testimony lacks credibility and reliability. In particular, Catlett asserts that the jury lost its way in concluding that he committed the offenses because (1) the victim's explanation of the events was not plausible; (2) the victim "offered only vague reasons why he was fearful of Catlett and believed him capable of using force to cause [the victim] harm"; and (3) the victim's testimony was contradictory. (Appellant's Brief at 21). Further, Catlett contends that the evidence of a "text [message] exchange between [the victim] and his brother" and the DNA evidence presented at trial weigh against his convictions because—absent the victim's testimony—that evidence does not demonstrate that Catlett restrained the victim's

liberty or "prove how [Catlett's] DNA was deposited" on the victim's underwear. (*Id.* at 22).

{¶12} However, we will not second-guess the weight that the jury assigned to the evidence that Catlett committed the offenses or the jury's witness-credibility determination unless it is clear that the jury lost its way and a miscarriage of justice occurred. *See State v. Mitchell*, 8th Dist. Cuyahoga No. 93076, 2010-Ohio-520, ¶ 20 (announcing that courts of appeal will not second guess witness-credibility determinations unless it is clear that the jury lost its way and a miscarriage of justice occurred); *State v. Banks*, 8th Dist. Cuyahoga No. 96535, 2011-Ohio-5671, ¶ 13 ("Although we review credibility when considering the manifest weight of the evidence, the credibility of witnesses is primarily a determination for the trier of fact."), citing *DeHass*, 10 Ohio St.2d 230, at paragraph one of the syllabus. "The trier of fact 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.'" *Banks* at ¶ 13, quoting *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, ¶ 24. "Therefore, typically, '[m]ere disagreement over the credibility of witnesses is not a sufficient reason to reverse a judgment on manifest weight grounds.'" *State v. Poindexter*, 10th Dist. Franklin No. 19AP-394, 2021-Ohio-1499, ¶ 33, quoting *State v. Harris*, 10th Dist. Franklin No. 13AP-770, 2014-Ohio-2501, ¶ 25.

{¶13} Furthermore, "[a] defendant is not entitled to a reversal on manifest weight grounds merely because inconsistent evidence was presented at trial." *State v. Campbell*, 10th Dist. Franklin No. 07AP-1001, 2008-Ohio-4831, ¶ 23, citing *State v. Raver*, 10th Dist. Franklin No. 02AP-604, 2003-Ohio-958, ¶ 21. The trier of fact """may take note of the inconsistencies and resolve or discount them accordingly, [but] such inconsistencies do not render [a] defendant's conviction against the manifest weight or sufficiency of the evidence."""" *State v. Ealy*, 10th Dist. Franklin No. 15AP-600, 2016-Ohio-1185, ¶ 19, quoting *State v. Samatar*, 152 Ohio App.3d 311, 2003-Ohio-1639, ¶ 113 (10th Dist.), quoting *State v. Craig*, 10th Dist. Franklin No. 99AP-739, 2000 WL 297252, *3 (Mar. 23, 2000).

{¶14} After reviewing the entirety of the record, we conclude that Catlett's arguments concerning the weight of the evidence are unpersuasive. Even though the "'credibility of the witnesses was the primary factor in determining guilt'" in this case, """the choice between credible witnesses and their conflicting testimony rests solely with the finder of fact and an appellate court may not substitute its own judgment for that of the finder of fact."""" *State v. White*, 3d Dist. Seneca No. 13-16-21, 2017-Ohio-1488, ¶ 50, quoting *In re N.Z.*, 11th Dist. Lake Nos. 2010-L-023, 2010-L-035, and 2010-L-041, 2011-Ohio-6845, ¶ 79, quoting *State v. Awan*, 22 Ohio St.3d 120, 123 (1986). Importantly, Catlett's trial counsel explored the credibility issue at trial and thoroughly cross-examined the victim. *See State v. Bachman*, 6th Dist. Fulton No. F-17-006, 2018-Ohio-1242, ¶ 18. Thus, in reaching

its verdict, the trier of fact was free to believe all, part, or none of the testimony of the witnesses, and the trier of fact was permitted to draw reasonable inferences from the evidence presented. *State v. Dewberry*, 2d Dist. Montgomery No. 27434, 2020-Ohio-691, ¶ 44.

{¶15} Likewise, contrary to Catlett's contention that the text-message and DNA evidence weighs against his convictions, that evidence bolsters the victim's testimony. Indeed, similar to the jury's dominion over gauging the credibility of witnesses, "it was the prerogative of the jury to take note of [any] inconsistencies and resolve or discount them accordingly." *Ealy*, 2016-Ohio-1185, ¶ 20. Importantly, """while the [factfinder] may take note of the inconsistencies and resolve or discount them accordingly, * * * such inconsistencies do not render [a] defendant's conviction against the manifest weight * * * of the evidence."""" *Ealy* at ¶ 29, quoting *State v. Samatar*, 152 Ohio App.3d 311, 2003-Ohio-1639, ¶ 113 (10th Dist.), quoting *State v. Craig*, 10th Dist. Franklin No. 99AP-739, 2000 WL 297252, *3 (Mar. 23, 2000).

{¶16} Notwithstanding the jury's superior role in resolving inconsistency and credibility issues, Catlett's DNA-evidence argument fails to consider "that a criminal conviction can be based in whole or in part on circumstantial evidence." *State v. Marques*, 10th Dist. Franklin No. 17AP-849, 2019-Ohio-42, ¶ 29. "'Circumstantial evidence' is the 'proof of facts by direct evidence from which the trier of fact may infer or derive by reasoning or other facts.'" *State v. Lawwill*, 12th

Dist. Butler No. CA2007-01-014, 2008-Ohio-3592, ¶ 12, quoting *State v. Wells*, 12th Dist. Warren No. CA2006-02-029, 2007-Ohio-1362, ¶ 11. Importantly, circumstantial evidence has no less probative value than direct evidence. *State v. Griesheimer*, 10th Dist. Franklin No. 05AP-1039, 2007-Ohio-837, ¶ 26. Thus, contrary to Catlett's contention regarding the lack of proof as to "how [Catlett's] DNA was deposited" on the victim's underwear, the jury could *infer* how the DNA was deposited based on the victim's testimony. (Appellant's Brief at 22). *See State v. Frye*, 5th Dist. Richland No. 17CA5, 2017-Ohio-7733, ¶ 47.

{¶17} Therefore, after reviewing the evidence, the trier of fact did not lose its way and create such a manifest miscarriage of justice requiring that we reverse Catlett's convictions and order a new trial. Thus, Catlett's abduction and gross-sexual-imposition convictions are not against the manifest weight of the evidence.

{¶18} Catlett's third assignment of error is overruled.

First Assignment of Error

> **The trial court did not retain jurisdiction to impose the requirements of R.C. 2950.01, *et seq*. and erred when it ordered Catlett to register as a Tier I sex offender after his sentence had been imposed and his appeal perfected. The judgment entry classifying Catlett as a sex offender is void and must be vacated. See Dec. 16, 2022, *Judgment Entry* Convicting and Sentencing, C.P. Case No. CR 2021-0351; Jan. 30, 2023, *Judgment Entry*, C.P. Case No. CR 2021-0351; *State v. Harper*, 160 Ohio St.3d 480, 2020-Ohio-2913, 159 N.E.3d 248.**

Second Assignment of Error

> **The trial court violated Catlett's Due Process and Double Jeopardy Rights when, following his December 16, 2022, sentencing, it held a subsequent sex offender classification hearing imposing additional punishment for a conviction for which he was already sentenced. *See* Fifth Amendment to the United States Constitution; Article I, Section 10 of the Ohio Constitution.**

{¶19} In his first and second assignments of error, Catlett argues that the trial court erred by classifying him as a Tier I sex offender. Catlett specifically contends in his first assignment of error that the trial court was without jurisdiction to classify him as a sex offender since he "had filed a notice of appeal" from the trial court's December 16, 2022 judgment entry of sentence. Furthermore, Catlett argues in his second assignment of error that the trial court deprived him of due process and violated his protection from double jeopardy by classifying him as a sex offender after it imposed his sentence.

Standard of Review

{¶20} Under R.C. 2953.08(G)(2), an appellate court will reverse a sentence "only if it determines by clear and convincing evidence that the record does not support the trial court's findings under relevant statutes or that the sentence is otherwise contrary to law." *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, ¶ 1. Clear and convincing evidence is that "'which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.'" *Id.*

at ¶ 22, quoting *Cross v. Ledford*, 161 Ohio St. 469 (1954), paragraph three of the syllabus.

Analysis

{¶21} In this case, the trial court notified Catlett of his Tier I sex-offender status and reporting requirements on January 30, 2023—that is, the trial court notified Catlett of his sex-offender status and registration requirements more than one month after the trial court sentenced Catlett *and* after Catlett filed his notice of direct appeal. Specifically, at Catlett's sentencing hearing, the trial court decided "not [to] impose any duty to register on [Catlett] at th[at] time" after questioning whether Catlett was subject to such sex-offender registration. (Dec. 13-16, 2022 Tr., Vol. III, at 541). Catlett filed his notice of direct appeal of the trial court's December 16, 2022 judgment entry of sentence on December 28, 2022. Nevertheless, the trial court—on its own motion—concluded on January 10, 2023 that such notification is required as a matter of law. Consequently, the trial court notified Catlett of his sex-offender classification and registration requirements on January 30, 2023.

{¶22} "'It is well established that a trial court cannot reconsider a valid final judgment in a criminal case.'" *State v. Clark*, 3d Dist. Logan No. 8-18-10, 2018-Ohio-4168, ¶ 12, quoting *State v. Cozzone*, 11th Dist. Geauga No. 2017-G-041, 2018-Ohio-2249, ¶ 34. *See also State v. Raber*, 134 Ohio St.3d 350, 2012-Ohio-5636, ¶ 20 (addressing a trial court's "'lack [of] authority to reconsider their own

valid final judgments in criminal cases'" when the trial court reconsidered its prior judgment to classify the defendant as a Tier I sex offender more than a year after it imposed the original sentence). "[A] motion for reconsideration of a final judgment in the trial court is a nullity and a purported judgment ruling on a motion for reconsideration is likewise a nullity." *Clark* at ¶ 13. *See also State v. Dunn*, 4th Dist. Washington No. 06CA23, 2007-Ohio-854, ¶ 12 (noting that "the Ohio Rules of Criminal Procedure provide no authority for a motion for reconsideration and they * * * are a nullity").

{¶23} In this case, because a trial court's reconsideration of a final and appealable order is a nullity and not subject to appeal, we conclude that the trial court's January 30, 2023 sex-offender notification is not a final, appealable order. *See Clark* at ¶ 14. In other words, the trial court's January 30, 2023 entry is null and void and of no legal consequence. Thus, we lack jurisdiction to consider the appeal in appellate case number 1-23-06—that is, we lack jurisdiction to consider Catlett's first and second assignments of error. Therefore, we dismiss the appeal in appellate case number 1-23-06.

{¶24} Moreover, even though there may be an issue as to whether the trial court was statutorily required to notify Catlett at sentencing of his sex-offender-registration requirements, we cannot reach that issue in this appeal since the State did not appeal from the trial court's December 16, 2022 judgment entry.

{¶25} Consequently, we dismiss appellate case number 1-23-06 and affirm the judgment of the trial court in appellate case number 1-22-83.

Judgment Affirmed
in Case Number 1-22-83.
Appeal Dismissed in
Case Number 1-23-06

MILLER and HESS, J.J., concur.

**** Judge Michael D. Hess of the Fourth District Court of Appeals, sitting by Assignment of the Chief Justice of the Supreme Court of Ohio.**