[Cite as *State v. Goodykoontz*, 2023-Ohio-3243.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	No. 112016
v.	:	
DAVID GOODYKOONTZ,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: September 14, 2023

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case Nos. CR-19-641800-A and CR-20-647818-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Fallon Radigan, Melissa Riley, and Carson Strang, Assistant Prosecuting Attorneys, *for appellee*.

Cullen Sweeney, Cuyahoga County Public Defender, and Francis Cavallo, Assistant Public Defender, *for appellee*.

EMANUELLA D. GROVES, J.:

{¶ 1} Defendant-appellant, David Goodykoontz ("Goodykoontz") appeals his convictions from two separate jury trials, Case No. CR-19-641800-A, gross sexual imposition and Cuyahoga C.P. No. CR-20-647818-A, multiple counts of pandering

sexually oriented matter involving a minor, illegal use of a minor in nudity-oriented material or performance, and possession of criminal tools. For the reasons that follow we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

{¶ 2} Goodykoontz was indicted on July 15, 2019, in Case No. CR-19-641800-A, and charged with Count 1; gross sexual imposition under R.C. 2907.05 (A)(4), a third-degree felony. He was indicted in a second case, Cuyahoga C.P. No. CR-20-647818-A, on January 16, 2020, and charged with the following:

> Eleven counts of pandering sexually oriented matter involving a minor, in contravention of R.C. 2907.322(A)(2), felonies of the second degree.
>
> Twelve counts of illegal use of a minor in nudity-oriented material or performance, as outlined in R.C. 2907.323(A)(2), also constituting second-degree felonies.
>
> Nine additional counts of pandering sexually oriented matter involving a minor, pursuant to R.C. 2907.322(A)(1), classified as second-degree felonies.
>
> One count of possession of criminal tools, in violation of R.C. 2923.24(A), classified as a felony of the fifth degree.
>
> A forfeiture of property, pursuant to R.C. 2941.1417(A).

{¶ 3} Although Goodykoontz was initially indicted on Case No. CR-19-641800-A, the first case set for trial was Cuyahoga C.P. No. CR-20-647818-A. For ease of discussion Cuyahoga C.P. No. CR-20-647818-A will be referred to as the "first case."

{¶ 4} In the first case, the Internet Crimes Against Children unit executed a search warrant on Goodykoontz's Parma home on March 22, 2019. The warrant was

based on an investigation of an IP address belonging to Goodykoontz. Undercover investigators connected his IP address to a peer-to-peer program used to bypass typical search engines for the purpose of disseminating and distributing child exploitation material. Peer-to-peer programs are often used by individuals who view child exploitation materials because they allow individuals to access the prohibited files on other users' computers anonymously.

{¶ 5} A search of Goodykoontz's home resulted in securing three cell phones, a laptop, and a desktop computer. Goodykoontz's devices contained search terms indicative of child exploitation and illegal files, including images of naked preadolescent boys. As a result of the search, Goodykoontz was indicted on January 16, 2020, in Cuyahoga C.P. No. CR-20-647818-A.

{¶ 6} A jury trial commenced on February 23, 2022. Before the jury received instructions, Goodykoontz motioned for the court to adopt the following jury instruction that is at issue in this appeal:

> Defense Counsel: I'm also asking for an affirmative defense that reads: The defendant claims that at the time of the alleged offense the material or performance involved was sold, disseminated, displayed, possessed, controlled, bought, caused to be brought into the state, presented for a bona fide governmental or judicial — I believe "purpose" was supposed to be there, and I left it out in my copy — by or to prosecutor, judge, or person having a proper interest in the material or performance.
>
> Trial Court: Do you have any law to support that defense?
>
> Defense Counsel: Judge, I do not. I'm going from the plain language of the jury instruction that I believe my client had a bona fide belief that he was doing the correct thing in this case.

(Tr. 437-438.)

{¶ 7} The trial court denied Goodykoontz's motion for proposed jury instructions for R.C. 2907.322 and 2907.323. Goodykoontz was ultimately convicted of an amended indictment of 17 counts of pandering sexually oriented matter involving a minor, felonies of the second degree, in violation of R.C. 2907.322(A)(2); 11 counts of illegal use of minor in nudity-oriented material or performance, felonies of the second degree, in violation of R.C. 2907.323(A)(1); and one count of possessing criminal tools, a felony of the fifth degree, in violation of R.C. 2923.24(A), and a forfeiture of property pursuant to R.C. 2941.1417(A).

{¶ 8} The second case, Cuyahoga C.P. No. CR-19-641800-A, stemmed from an incident at Dollar General on June 18, 2019. Goodykoontz watched a child ("C.F.") browse the aisles of the store. Once C.F. bent to pick up an item, Goodykoontz caressed the child's buttocks. After reviewing the video surveillance of the incident, police charged Goodykoontz, and he was indicted of one count of gross sexual imposition under R.C. 2907.05(A)(4), a felony of the third degree.

{¶ 9} The case proceeded to a jury trial on May 11, 2022. The jury found Goodykoontz guilty of gross sexual imposition, in violation of R.C. 2907.05(A)(4). Goodykoontz was sentenced in both cases on July 14, 2022. The trial court imposed an aggregate prison term of thirty-seven years and found him to be a Tier III Sex Offender.

{¶ 10} Goodykoontz raises four assignments of error on appeal.

First Assignment of Error

The trial court abused its discretion when it failed to adopt appellant's proposed jury instruction.

Second Assignment of Error

Appellant's convictions are not supported by sufficient evidence.

Third Assignment of Error

Appellant's convictions are against the manifest weight of the evidence.

Fourth Assignment of Erros

The trial court erred when it imposed consecutive sentences.

Law and Analysis

Jury Instructions

{¶ 11} Goodykoontz argues, in his first assignment of error, the trial court erred when it rejected his proposed jury instruction in Cuyahoga C.P. No. CR-20-647818-A. The giving of jury instructions is within the sound discretion of the trial court, and our review is governed by an abuse-of-discretion standard. *State v. Davis*, 8th Dist. Cuyahoga No. 109890, 2021-Ohio-2311, ¶ 29. An abuse of discretion describes conduct that is "unreasonable, arbitrary or unconscionable." *State v. Hill*, Slip Opinion No. 2022-Ohio-4544, ¶ 9, citing, *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 12} Goodykoontz argues that the jury should have been instructed to consider his affirmative defense because he presented evidence that he had a bona fide belief that he possessed files depicting child pornography for a proper purpose.

A defendant has the right to have the jury hear instructions on every element of each offense the prosecution must prove to convict him. *See State v. Franks*, 8th Dist. Cuyahoga No. 103682, 2016-Ohio-5241, ¶ 17. Goodykoontz argues that his intention to turn over all of the child pornography materials to law enforcement is an essential issue the trial court was required to submit to the jury. On appeal, we must examine the specific charge at issue in the context of the entire charge, not in isolation. *State v. VanVoorhis*, 3d Dist. Logan No. 8-07-23, 2008-Ohio-3224, ¶ 87.

{¶ 13} In order to convict a defendant of pandering sexually oriented matter involving a minor, the state must prove beyond a reasonable doubt, that the defendant 1) with knowledge of the character of the material or performance involved, 2) advertised for sale or dissemination, sold, distributed, transported, disseminated, exhibited, or displayed 3) any material that shows a minor or impaired person 4) participating or engaging in sexual activity, masturbation, or bestiality. R.C. 2907.322(A)(2). Additionally, a conviction for illegal use of a minor in nudity-oriented material or performance requires the state to prove the defendant photographed any minor or impaired person who is not the person's child or ward in a state of nudity or created, directed, produced, or transferred any material or performance that shows the minor or impaired person in a state of nudity. R.C. 2907.323(A)(1).

{¶ 14} Both R.C. 2907.322 and 2907.323 provide protections for those who have a proper purpose for certain materials depicting nude minors, by codifying exceptions. The exceptions for the proper use of materials, that would otherwise

depict sexually oriented matter involving a minor, are codified in R.C. 2907.322(B)(1):

> This section does not apply to any material or performance that is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, or other person having a proper interest in the material or performance.

{¶ 15} Goodykoontz asked the court to instruct the jury to consider his intentions for the prohibited materials at issue in Counts 1 through 8, and 20 through 28. Goodykoontz asserted his reliance on the plain language of the jury instruction and his testimony. The court questioned whether the "Tipsters," referred to as exhibits 10 through 20, which identified Goodykoontz's history of reports to law enforcement, were part of the indictment. After confirming that none of the materials previously reported were included in the indictment, the court considered the proposed instruction, emphasizing that only specific parties would fit within the scope of a proper governmental or judicial purpose, because they were the ones subject to the "Tipster." Further, the court questioned the timing of the indictment and Goodykoontz's failure to send tips to the government, from September 2018 to February 2019.

{¶ 16} In support of his argument, Goodykoontz cites *Bostic v. Connor*, 37 Ohio St.3d 144, 147, 524 N.E.2d 881 (1998). In *Bostic*, the appellate court held, "It's the duty of a trial court to submit an essential issue to the jury when there is

sufficient evidence relating to that issue to permit reasonable minds to reach different conclusions on that issue." It is within the sound discretion of a trial court to refuse to admit proposed jury instructions that are either redundant or irrelevant to the case. *Id.*

{¶ 17} So, the issue is whether Goodykoontz provided sufficient evidence to support his affirmative defense to render his requested jury instruction relevant. The state alleges that Goodykoontz disseminated and distributed prohibited materials when he downloaded peer-to-peer programs onto his computer and allowed anonymous users, looking for child pornography, to access his files. While Goodykoontz points to his prior history of reporting prohibited material to law enforcement as evidence of his intentions for the material, none of the files at issue in the indictment were presented by Goodykoontz to law enforcement. He testified that he was unable to report the materials to law enforcement because his computer broke. Goodykoontz argues that his intention to turn the materials over to law enforcement entitles the materials to an exemption from prosecution under R.C. 2907.322. We find Goodykoontz's argument unpersuasive.

{¶ 18} Goodykoontz's proposed jury instruction language is almost identical to the proper purpose exception language in R.C. 2907.322(B)(1). However, the record reveals that Goodykoontz failed to demonstrate that he had a proper interest in the prohibited materials and was entitled to protection pursuant to R.C. 2907.322(B)(1). Goodykoontz obtained the prohibited files by searching terms commonly used by pedophiles to find exploitative material on peer-to-peer

networks. Goodykoontz's search terms included "pedo boy," "boys in action-029-preteen boy," "boy plus man," and "uncle baby-sit 10-year old and 8-year old boys." Furthermore, Goodykoontz saved files to his computer using titles such as "8 and 10-year-old brother and sister have pthc sex," "Lolita ptch," "r@ygold," "hussyfan," and "underage preteen.mpg." Individuals looking for child pornography could anonymously access Goodykoontz's files using the same well-known search terms.

{¶ 19} Goodykoontz presented no evidence that he disseminated or distributed the materials to "proper persons." This failure to present such evidence precludes an introduction of the requested jury instruction. Accordingly, the trial court did not abuse its discretion in denying Goodykoontz's request to submit his proposed charge to the jury in relation to violations of R.C. 2907.322.

{¶ 20} A similar analysis is needed for an affirmative defense to the charges alleging violations of R.C. 2907.323. The proper use exception applicable to the use of minors in nudity-oriented materials or performances is stated in R.C. 2907.323(A)(1)(a) and (b). A person who possesses otherwise prohibited material may avoid conviction when both of the following apply:

> (a) The material or performance is, or is to be, sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, or other person having a proper interest in the material or performance;
>
> (b) The minor's or impaired person's parents, guardian, or custodian consents in writing to the photographing of the minor or impaired

> person, to the use of the minor or impaired person in the material or performance, or to the transfer of the material and to the specific manner in which the material or performance is to be used.

R.C. 2907.323(A)(1)(a) and (b).

{¶ 21} The "proper-purpose" exceptions are affirmative defenses pursuant to R.C. 2901.05(C)(2). *State v. Pritt*, 3d Dist. Seneca No. 13-14-39, 2015-Ohio-2209, ¶ 11. Goodykoontz's argument that the jury should have been instructed to consider his intentions regarding the charges stemming from the illegal use of a minor in nudity-oriented material or performance fails. The affirmative defense is applicable only to defendants who offer evidence for a jury to determine whether they have a proper purpose for the materials in question, pursuant to R.C. 2907.323(A)(1)(a) and they are a proper party as outlined in R.C. 2907.323(A)(1)(b).

{¶ 22} The proper purpose exception cannot be met without evidence that a defendant obtained written consent from the minor's parent or guardian. The record before us contains no evidence that Goodykoontz obtained written consent from the parents, custodians, or guardians of the minors depicted in the files he possessed; therefore, the proposed jury charge is irrelevant as it relates to the charges stemming from violations of R.C. 2907.323. The trial court did not abuse its discretion in denying Goodykoontz's request to instruct the jury to consider his affirmative defense to the charges of illegal use of a minor in nudity-oriented material or performance in Counts 9 through 19. Accordingly, Goodykoontz's first assignment of error is overruled. The trial court, in this case, declined to instruct the jury on the affirmative defense of "proper purpose" because the evidence

presented at trial did not reasonably support the defense. *Telecom Acquisition Corp. I v. Lucic Ents.*, 2016-Ohio-1466, 62 N.E.3d 1034, ¶ 11 (8th Dist.).

Sufficiency of the Evidence

{¶ 23} In his second assignment of error, Goodykoontz argues that his convictions for pandering sexually oriented material were not supported by sufficient evidence because the state failed to offer evidence of why he possessed prohibited materials. As it relates to his conviction for gross sexual imposition, Goodykoontz argues the state failed to offer sufficient evidence that he touched C.F. for the purpose of sexual gratification. For reasons below, Goodykoontz's argument fails.

{¶ 24} Goodykoontz argues that in Cuyahoga C.P. No. CR-20-647818-A the state failed to offer sufficient evidence on amended Counts 1 through 8 and 20 through 28 because it introduced no evidence to explain why Goodykontz was handling and possessing prohibited materials. Goodykontz argues that the burden of his affirmative defense lies with the state. We disagree with Goodykoontz's assertion that the state was required to offer evidence suggesting why he possessed prohibited materials.

{¶ 25} "The test for sufficiency requires a determination of whether the state has met its burden of production at trial[.]" *State v. Gulley*, 9th Dist. Summit No. 19600, 2000 Ohio App. LEXIS 969 (Mar. 15, 2000) ¶ 4, citing *State v. Thompkins*, 78 Ohio St.3d 380, 390, 678 N.E.2d 541 (1997) (Cook, J., concurring).

{¶ 26} In order to determine whether the evidence before the trial court was sufficient to sustain a conviction, this court must review the evidence in a light most favorable to the prosecution. *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), at paragraph two of the syllabus.

> Furthermore, "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 the 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."

Id.

{¶ 27} The state had no burden to prove Goodykoontz's intended purpose for the illegal content. *See State v. Rubin*, 8th Dist. Cuyahoga No. 106333, 2018-Ohio-3052 ¶ 25. It need only prove that Goodykoontz knew the character of the material or performance involved. *Id.* at ¶ 27-29.

{¶ 28} Sufficient evidence was produced to prove that Goodykoontz knew the character of the sexually oriented material involving a minor. The state offered evidence of the appearance of the images; Goodykoontz's age-specific searches on peer-to-peer programs for prepubescent children involved in sex acts; his failure to turn the files over and continued sharing the files on peer-to-peer networks that allowed others to access his files; his admissions; and the files saved on Goodykoontz's computer had titles that are commonly used by individuals seeking child pornography, like, "8 and 10-year old brother and sister have pthc sex," "Lolita

ptch," "r@ygold," "hussyfan," and "underage preteen.mpg." There is sufficient evidence in the record to support the essential elements of R.C. 2907.322(A)(2). The state established that Goodykoontz knew the character of the prohibited material and shared similar titles on peer-to-peer networks. We find the state met its burden of production.

{¶ 29} In Case No. CR-19-641800-A, Goodykoontz argues that the state failed to offer sufficient evidence that he touched C.F. for the purpose of sexual gratification. "A sexual purpose can be inferred from the nature of the act itself if a reasonable person would find that act sexually stimulating to either the offender or the victim." *State v. Hake*, 11th Dist. Trumbull No. 2007-T-0091, 2008-Ohio-1332, ¶ 26.

{¶ 30} C.F. testified that he noticed, upon entering the store, that Goodykoontz kept making eye contact and staring at him as C.F. browsed the aisles. C.F. said the staring made him uncomfortable. At one point, Goodykoontz ended up in the chip aisle alone with C.F. When C.F. bent over to grab a bag of chips, Goodykoontz slid his hand along C.F.'s buttocks. In addition to C.F.'s testimony, the state presented a videotape of the incident. Goodykoontz does not claim he did not touch C.F.; rather, he claims the mere fact that he touched C.F. is not sufficient evidence that Goodykoontz's purpose was sexual gratification. We agree that the mere fact of touching is not sufficient evidence of a sexual purpose; however, the act of touching could constitute strong evidence of intent. *State v. Chute*, 3d Dist. Union No. 14-22-02, 2022-Ohio-2722, ¶ 14.

{¶ 31} The touching must be viewed in light of all the other circumstances in this case. For instance, Goodykoontz repeatedly stared at C.F., a 12-year-old boy; made eye contact with him; walked past C.F. when there was no one else in the aisle; and slid a hand across C.F.'s buttocks. Collectively, a reasonable juror could infer that Goodykoontz's actions constituted strong evidence of intent of sexual gratification. Accordingly, the state presented sufficient evidence for the trier of fact to find proof beyond a reasonable doubt that Goodykoontz acted with a sexual purpose. Goodykoontz's second assignment of error is overruled.

Manifest Weight

{¶ 32} While the test for sufficiency requires a determination of whether the state has met its burden of production at trial, a manifest weight challenge questions whether the state has presented evidence that has the effect of persuasion. *State v. Bowden*, 8th Dist. Cuyahoga No. 92266, 2009-Ohio-3598; *State v. O'Malley*, 8th Dist. Cuyahoga No. 109454, 2021-Ohio-2038, ¶ 20. A reviewing court will reverse the trial court only if, after resolving all conflicts and weighing all the evidence, the evidence does not support the conviction and the jury clearly lost its way. *State v. Martin*, 20 Ohio App.3d 172, 172, 485 N.E.2d 717 (1st Dist.1983). A reversal on the basis that a verdict is against the manifest weight of the evidence is granted only in the exceptional case in which the evidence weighs heavily against the conviction. *State v. Taylor*, 8th Dist. Cuyahoga No. 111694, 2023-Ohio-928, ¶ 53.

{¶ 33} Goodykoontz alleges that his convictions are against the manifest weight of the evidence because the jury did not consider his affirmative defenses for

R.C. 2907.322 and 2907.323. Specifically, Goodykoontz testified that his sole purpose in searching for, obtaining, and collecting child exploitive materials was to turn them over to the proper authorities. As the trier of fact, the jury was in the best position to determine the credibility of the witnesses. The appellate court extends substantial deference to the jury's determinations on the credibility of witnesses. *State v. Wilson*, 2d Dist. Montgomery No. 22581, 2009-Ohio-525, ¶ 16. We will not substitute our judgment for that of the trier of fact unless they clearly lost their way. *Id.* at ¶ 17.

{¶ 34} In the first case, Goodykoontz testified that he often finds child pornography material on the internet while just searching around for things, and he tries to turn those over to the FBI. He stated that he began running a human trafficking investigation on behalf of the president of the United States when he was 13 years old but could not give details because the information was "classified." Goodykoontz admitted that he had a peer-to-peer file-sharing program on his computer and that he had child exploitation materials on his device. Goodykoontz explained that his computer broke and was inaccessible in January 2019; however, he later admitted that files had been saved to his computer in February 2019. Goodykoontz failed to demonstrate that he had a proper purpose for possessing the materials.

{¶ 35} Given Goodykoontz's failure to demonstrate a proper purpose, the weight of the evidence was not heavily against the conviction. A jury could reasonably conclude from the totality of the evidence that Goodykoontz knowingly

obtained, possessed, transferred, and disseminated child exploitation materials without a proper purpose. After a careful review of the record, we cannot say that the jury lost its way in finding Goodykoontz's testimony lacked credibility or that the verdict was a manifest miscarriage of justice. Goodykoontz's convictions for violations of R.C. 2907.322 and 2907.323 are not against the manifest weight of the evidence.

{¶ 36} Goodykoontz argues that his conviction for gross sexual imposition is against the manifest weight of the evidence. He claims that the state relied primarily on the testimony of one witness. The jury may accept all, some, or none of a witness's testimony. *State v. Ellis,* 8th Dist. Cuyahoga No. 98538, 2013-Ohio-1184, ¶ 18, citing *McKay Machine Co. v. Rodman*, 11 Ohio St.2d 77, 228 N.E.2d 304 (1967). In making the determination, the court should contemplate the witnesses' demeanor while testifying, any connections or relationships with the parties involved, and any personal stake the witness might have in the case's outcome. *Id.*

{¶ 37} The trier of fact heard testimony from C.F. and viewed surveillance video of the incident. The jury also heard testimony from the store clerk who described her observations right after the incident. The Ohio Revised Code does not specifically define sexual arousal or sexual gratification; however, R.C. 2907.01(B) is understood to mean any touching of the described areas that a reasonable person would interpret as being sexually stimulating or gratifying. *State v. Fears*, 8th Dist. Cuyahoga No. 104868, 2017-Ohio-6978, ¶ 63. A reasonable person could interpret the victim's testimony that Goodykoontz stared at him, made repeated eye contact,

walked very close to him in an aisle with no other people around, reached his hand out, and caressed his buttocks, was sexually gratifying for Goodykoontz. The state offered corroborating witness testimony and surveillance video of the incident. After reviewing the record in its entirety, we cannot say the jury lost its way. Accordingly, Goodykoontz's conviction of gross sexual imposition is not against the manifest weight of the evidence. Goodykoontz's third assignment of error is overruled.

Consecutive Sentences

{¶ 38} Appellate review of felony sentences is governed by R.C. 2953.08(G)(2). *State v. Watkins*, 8th Dist. Cuyahoga No. 110355, 2022-Ohio-1231, ¶ 21, citing *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 16. R.C. 2953.08(G)(2) prescribes a de novo review of the record. *State v. Gwynne*, Slip Opinion No. 2022-Ohio-4607, ¶ 1. We will not disturb a consecutive sentence unless the record clearly and convincingly does not support the trial court's consecutive-sentence findings. *Id.* R.C. 2929.41(A) contemplates that the trial court will impose concurrent prison sentences for a defendant convicted of multiple offenses unless specific exceptions apply. *See State v. Polus*, 145 Ohio St.3d 266, 2016-Ohio-655, 48 N.E.3d 553, ¶ 10; *State v. Hitchcock*, 157 Ohio St.3d 215, 2019-Ohio-3246, 134 N.E.3d 164, ¶ 21. The exceptions are outlined in R.C. 2929.14(C)(4).

{¶ 39} For this exception to apply, and prior to imposing consecutive sentences, the trial court must find that "the consecutive service is necessary to protect the public from future crime or to punish the offender." *State v. Gwynne*,

2022-Ohio-4607, ¶ 10. Secondly, the court must find that "consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public." *Id.* Finally, the trial court must find at least one of the following:

> (a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under post-release control for a prior offense.
>
> (b) At least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the offender's conduct.
>
> (c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crimes by the offender.

{¶ 40} Defendants may challenge consecutive sentences on appeal. R.C. 2953.08(G)(2)(a) allows appellate courts to modify or vacate a sentence if it clearly finds the record does not support the trial court's findings under R.C. 2929.14(C)(4) or the sentence is contrary to law. *State v. Anderson*, 8th Dist. Cuyahoga No. 104977, 2017-Ohio-4186, ¶ 6.

{¶ 41} Goodykoontz concedes the trial court made the necessary findings on the record. The trial court stated, "[A]nd your history of these cases panning over almost a year dictates that consecutive sentences are necessary to protect the public." The record reflects that the court considered Goodykoontz's crimes were not isolated but spanned from September 2018 until February 2019. The court

found that the harm caused by Goodykoontz's conduct was so great that one sentence would not serve the crime.

{¶ 42} Goodykoontz was convicted of twenty-eight felonies of the second-degree, one third-degree felony, and one fifth-degree felony. He faced an aggregate sentence of 230 years. After making the requisite findings on the record, the trial court sentenced Goodykoontz to 12 months on Count 29, the fifth-degree felony; and eight years on each of the second-degree felony convictions in Cuyahoga C.P. No. CR-20-647818-A. The record reveals that the victims in Counts 6, 8, 15, and 21 were depicted in especially violent videos or were children as young as five or six. The trial court imposed consecutive sentences on those four counts. The trial court considered the total number of consecutive sentences as well as the aggregate sentence when it determined that consecutive sentences were necessary on these four counts. On Case No. CR-19-641800-A, the trial court imposed a definite prison term of 60 months for Count 1, gross sexual imposition, a third-degree felony, to run consecutive to Cuyahoga C.P. No. CR-20-647818-A.

{¶ 43} After a careful review of the record, we cannot clearly find that the record does not support the prison sentence imposed by the trial court. The aggregate sentence of 37 years is not contrary to law. Accordingly, Goodykoontz's fourth assignment of error is overruled.

{¶ 44} The judgment of the trial court is 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. The defendant's conviction having been affirmed, any bail pending is terminated.

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

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EMANUELLA D. GROVES, JUDGE

EILEEN A. GALLAGHER, P.J., and
SEAN C. GALLAGHER, J., CONCUR