

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	
v.	:	No. 116082
BILLY JOE TETER,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: September 3, 2026

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-24-693540-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Jamielle Lamson-Buscho, Assistant Prosecuting Attorney, *for appellee*.

Chedid & Co., LLC, and Jed Chedid, *for appellant*.

EILEEN T. GALLAGHER, P.J.:

{¶ 1} Appellant Billy Joe Teter (“Teter”) appeals the judgment of the trial court denying his Crim.R. 29 motions for acquittal. He raises two assignments of error:

1. The trial court erred by denying Appellant's Crim.R. 29 motions for acquittal because Appellee did not meet its burden of production as to Count 2, gross sexual imposition pursuant to R.C. 2907.05(A)(1), and presented insufficient evidence of sexual contact as defined under R.C. 2907.01(B).

2. The trial court erred by denying Appellant's Crim.R. 29 motions for acquittal because Appellee did not meet its burden of production on Count 2, gross sexual imposition pursuant to R.C. 2907.05(A)(1), and presented insufficient evidence of the use of force or the threat of force.

{¶ 2} After a careful review of the record and applicable law, we find that the trial court did not err in denying Teter's Crim.R. 29 motions for acquittal. The State presented sufficient evidence demonstrating sexual contact and the use of force to support a conviction for gross sexual imposition. We overrule the assignments of error and affirm the judgment of the trial court.

I. Factual and Procedural History

{¶ 3} Teter and N.M. were in a romantic relationship for approximately nine months. (Tr. 254 and 472-473.) At some point in the relationship, Teter began accusing N.M. of cheating on him. (Tr. 288, 321, and 375.) N.M. eventually broke up with Teter, but the two reconciled a week later. (Tr. 290 and 313.)

{¶ 4} Teter then stayed at N.M.'s residence for approximately two weeks. (Tr. 290.) On the day of the incident, Teter again accused N.M. of cheating on him, and a physical altercation ensued. (Tr. 291-292 and 333.) Teter had taken N.M.'s cell phone, and they struggled over it. (Tr. 255, 277, and 335.) During the altercation, Teter grabbed N.M.'s breasts, causing bruising. (Tr. 294 and 380.)

{¶ 5} The tussle briefly stopped but then continued in another room. (Tr. 293.) Teter grabbed N.M.'s left wrist, leaving a bruise. He then used his other hand to insert two fingers into N.M.'s vagina and said, "I get what I want." (Tr. 256, 293-294, 337, and 375.) N.M. grabbed Teter's throat, and he eventually removed his fingers from her vagina. (Tr. 256, 293, and 338-339.)

{¶ 6} The altercation ceased, and the pair separated. (Tr. 294.) N.M. told Teter to get his belongings and leave. (Tr. 295.) When he did not, she placed a bag of his clothes outside of the back door of the residence. (*Id.*) Teter still did not leave, so she told him that she was going to call the police. (Tr. 296.) N.M. carried Teter's bag down the stairs outside of the back door, and Teter followed her. (*Id.*)

{¶ 7} N.M. then returned to her residence and called a friend to tell her what had happened. (Tr. 297.) N.M. stayed on the phone with her until her friend arrived at N.M.'s residence. (*Id.*) At this time, Teter was still outside in the back of the apartment. (*Id.*) N.M. then called the police. (Tr. 298.) Teter left the area; his daughter eventually came to get him and drove him home. (Tr. 441 and 484.)

{¶ 8} Officer Eric Torres ("Ofc. Torres") of the Lakewood Police Department responded to N.M.'s residence.¹ He had been advised by dispatchers that an assault had occurred and that the suspect was still in the area. (Tr. 253-254.) Upon arrival, Ofc. Torres looked for the suspect but was unable to locate him. (Tr. 254.) Ofc. Torres then spoke with N.M. in her apartment. (*Id.*)

¹ Another officer also responded with Ofc. Torres, but he or she did not testify and was not named during the trial.

{¶ 9} N.M. told Ofc. Torres that she and Teter had been in a relationship for nine months but that they were in the process of breaking up. (Tr. 255.) N.M. stated that Teter lived in Wellington, Ohio, but had been staying with her in Lakewood for a couple of weeks. (Tr. 255 and 276.)

{¶ 10} N.M. told Ofc. Torres that Teter had assaulted her that night. She stated that the two had struggled over her phone and that Teter had “penetrated two of his fingers into [N.M.]’s vagina for ten to fifteen seconds.” (Tr. 256.) Ofc. Torres learned that N.M. was able to move away from Teter, “smacked” him, and that Teter had “smacked” N.M. back. (Tr. 256.)

{¶ 11} Ofc. Torres observed a cut on the inside of N.M.’s upper lip and “red finger bruising marks on her left forearm.” (Tr. 256 and 278-279; State’s exhibit Nos. 4 and 6.) He took photographs of her injuries. N.M. was “calm, but also upset” during this time. (Tr. 257.)

{¶ 12} Ofc. Torres collected screenshots of text messages between N.M. and Teter. (Tr. 266-268.) Within one of the messages, N.M. stated that Teter had “physically assaulted [her]” and that it was “without [her] consent.” (Tr. 304 and 342-343; State’s exhibit No. 9.)

{¶ 13} Ofc. Torres’s body camera recorded his conversation with N.M. (Tr. 261; State’s exhibit No. 7.) At the end of their discussion, he asked N.M. if she wanted to prosecute Teter for the sexual assault. (Tr. 262-263.) He told her that “regardless of her decision, [he] was going to do a police report regarding the incident.” (Tr. 263.) N.M. stated that she did want to prosecute. (Tr. 262.) N.M.’s

friend then drove her to visit Fairview Hospital where she was examined by a Sexual Assault Nurse Examiner (“SANE”). (Tr. 310-311.)

{¶ 14} The examination began with N.M. providing a narrative as to what had occurred between her and Teter. (Tr. 374-376.) A physical examination was conducted that included photographing and documenting N.M.’s injuries, along with swabbing various parts of her body for DNA. (Tr. 376-379.)

{¶ 15} Ofc. Torres visited Teter’s residence to attempt to make contact with him. (Tr. 263.) He and another officer spent “ten to fifteen minutes” knocking on the door of the residence before Teter’s nephew answered the door. (*Id.*) Teter’s nephew stated that Teter was not home; he then tried to contact Teter several times via telephone but was unsuccessful. (*Id.*)

{¶ 16} Lakewood Police Detective Michael Perhacs (“Det. Perhacs”) was assigned the case. He reviewed the police report, photographs, body-camera video, and results of the sexual-assault kit. (Tr. 412.) He then contacted N.M. to verify parts of the report and later interviewed her. (Tr. 344-345 and 411-412.) Det. Perhacs attempted to contact Teter but was unsuccessful. (Tr. 413.)

{¶ 17} Det. Perhacs referred the case to the prosecutor’s office. Teter was indicted on one count of rape and one count of gross sexual imposition.

{¶ 18} The matter proceeded to a jury trial. The State presented the testimony of Ofc. Torres, N.M., N.M.’s friend who drove her to the hospital, the SANE nurse, a DNA analyst from the Cuyahoga County Medical Examiner’s Office, and Det. Perhacs. The State presented exhibits that included Ofc. Torres’s body-

camera video, the photographs taken by Ofc. Torres of N.M.'s injuries and the scene of the incident, text messages between Teter and N.M., a medical report, a DNA report, and the sexual-assault kit.

{¶ 19} At the conclusion of the State's case, Teter moved for judgment of acquittal pursuant to Crim.R. 29. He sought dismissal of both charges but only made specific arguments regarding Count 2, the gross-sexual-imposition charge. Teter asserted that there was no evidence in the record that Teter's contact with N.M.'s breasts was for purposes of sexual arousal or gratification and also no evidence that N.M. was compelled to submit by force or threat of force.

{¶ 20} In response, the State argued that the victim testified that, during the altercation, Teter cupped his hands and grabbed her breasts. The State further asserted that N.M. had bruising on her breasts that was consistent with her testimony.

{¶ 21} The trial court denied the motion. Teter then presented the testimony of his daughter, who picked him up on the day in question, and his son, who testified that he was present when officers came to Teter's house.²

{¶ 22} Teter also testified on his own behalf. During his testimony, Teter acknowledged the physical altercation but denied grabbing N.M.'s breasts or putting his fingers in her vagina. After the defense rested, Teter's counsel again moved for acquittal under Crim.R. 29, and the court denied the motion a second time.

² Teter's son's name does not appear in the police report. Teter's son testified that he was present at the house but refused to identify himself to the officers.

{¶ 23} The jury found Teter not guilty of rape but guilty of gross sexual imposition. He was sentenced to two years of community control, ordered to register as a Tier I sex offender, and ordered to have no contact with N.M.

{¶ 24} Teter then filed the instant appeal.

II. Law and Analysis

{¶ 25} Both of Teter’s assignments of error argue that the trial court erred in denying his Crim.R. 29 motions for acquittal of the gross-sexual-imposition charge. His first assignment of error contends that there was insufficient evidence of sexual contact to support a conviction, and his second assigned error argues that there was insufficient evidence of force or threat of force.

{¶ 26} Crim.R. 29(A) provides that a court “shall order the entry of the judgment of acquittal of one or more offenses . . . if the evidence is insufficient to sustain a conviction of such offense or offenses.” A Crim.R. 29 motion questions the sufficiency of the evidence, and we apply the same standard of review to a trial court’s ruling on a Crim.R. 29 motion as we do in reviewing challenges to the sufficiency of the evidence presented at trial. *Fairview Park v. Peah*, 2021-Ohio-2685, ¶ 37 (8th Dist.).

{¶ 27} “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.” *State v. Spencer*, 2024-Ohio-5809, ¶ 15 (8th Dist.), citing *State v. Murphy*, 91 Ohio St.3d 516 (2001). The

appellate court views the evidence “in a light most favorable to the prosecution” to determine whether “any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.” *Spencer* at ¶ 15, quoting *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus. The inquiry is whether the prosecution has met its “burden of production” at trial. *State v. Dyer*, 2007-Ohio-1704, ¶ 24 (8th Dist.), citing *State v. Thompkins*, 78 Ohio St.3d 380, 390 (1997). Appellate courts are not to assess “whether the State’s evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction.” *Id.*, citing *id.*

A. Sexual Contact

{¶ 28} Teter’s first assigned error argues that the State did not present sufficient evidence that he acted with the purpose of “sexually arousing or gratifying” himself or another. Teter contends that any touching occurred as part of a physical altercation and that N.M. testified that he had wanted to “humiliate” her and that she was his “property”; he maintains that these statements do not evidence a sexual motivation. In addition, he asserts that there was no evidence that he massaged or engaged in any prolonged contact with N.M.’s breasts.

{¶ 29} Teter further argues that the State presented “two distinct legal theories to the jury: (1) that [Teter]’s vaginal insertion substantiated the rape charge; and (2) that [Teter]’s alleged touching of N.M.’s breasts constituted the gross[-]sexual[-]imposition charge.” Teter contends that the State is therefore estopped from arguing that the vaginal insertion constituted gross sexual imposition because

the jury acquitted Teter on the rape charge and thus concluded that “the alleged insertion never happened.”

{¶ 30} The State argues that “prolonged” contact is not required under the statute. Further, the State contends that the jury could make the reasonable inference that Teter’s conduct was for sexual gratification based upon N.M.’s testimony that Teter stated, “I get what I want” while inserting his fingers into N.M.’s vagina and his touching of N.M.’s breast in a cupping fashion while the two were engaged in a struggle. Finally, the State asserts that it is not estopped from using the digital penetration of N.M.’s vagina as sexual contact for purposes of the gross-sexual-imposition charge.

{¶ 31} Teter was convicted under R.C. 2907.05(A)(1), which provides that “[n]o person shall have sexual contact with another . . . when . . . [t]he offender purposely compels the other person, or one of the other persons, to submit by force or threat of force.” “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.”

{¶ 32} In order for a defendant to be convicted of gross sexual imposition, the State must present sufficient evidence that the contact was for a sexual purpose. Consequently, having a sexual purpose is an essential element of the offense of gross sexual imposition.

{¶ 33} In determining whether sexual contact occurred, the trier of fact may infer from the evidence presented at trial whether the defendant’s contact with the areas of the body outlined in R.C. 2907.01 was for the purpose of sexual arousal or gratification. *State v. Tate*, 2013-Ohio-370, ¶ 19 (8th Dist.), citing *State v. Cobb*, 81 Ohio App.3d 179, 185 (9th Dist. 1991). “The Ohio Revised Code does not define ‘sexual arousal’ or sexual ‘gratification.’ However, R.C. 2907.01(B) “‘contemplate[s] any touching of the described areas which a reasonable person would perceive as sexually stimulating or gratifying.’” *In re D.W.*, 2022-Ohio-1407, ¶ 22 (8th Dist.), quoting *Tate* at ¶ 18, quoting *State v. Astley*, 36 Ohio App.3d 247, 250 (10th Dist. 1987).

{¶ 34} The purpose of the contact may be inferred from the type, nature, and circumstances of the contact. *Tate* at ¶ 20, citing *State v. Meredith*, 2005-Ohio-2664 (12th Dist.); *see also State v. Coleman*, 2015-Ohio-4491, ¶ 7 (8th Dist.) (finding that purpose may also be inferred from the defendant’s conduct as well as his or her personality). Accordingly, “[i]f the trier of fact determines, that the defendant was motivated by desires of sexual arousal or gratification, and that the contact occurred, then the trier of fact may conclude that the object of the defendant’s motivation was achieved.” *Cobb* at 185. “[T]here is no requirement that there be direct testimony regarding sexual arousal or gratification.” *Tate* at ¶ 19, quoting *Meredith* at ¶ 13.

{¶ 35} After reviewing the record and viewing the evidence in a light most favorable to the prosecution, we conclude that Teter engaged in “sexual contact” when he grabbed and cupped N.M.’s breasts and when he digitally penetrated N.M.’s

vagina. The breasts and vagina both constitute “erogenous zones” under R.C. 2907.01(B). With regard to N.M.’s breasts, the touching occurred during the parties’ physical altercation, and the manner of Teter’s contact — “cupping” or “grabbing” both of N.M.’s breasts — was sufficient to allow the jury to infer that Teter’s touching of N.M. was motivated by desires of sexual gratification. There was no evidence that the touching was accidental or for some other legitimate purpose.

{¶ 36} Further, N.M. testified that Teter inserted two fingers into her vagina and said, “I get what I want.” Again, there was no evidence that this contact was accidental or for another purpose. A rational trier of fact could find that Teter’s statement, coupled with his actions, was sufficient evidence that his purpose in touching N.M.’s vagina was sexual arousal or gratification.

{¶ 37} We find no merit to Teter’s argument that because he was acquitted of the rape charge, the jury must have found that the digital penetration of N.M.’s vagina did not occur. “Gross sexual imposition is a lesser included offense of rape when based on the same conduct: its elements are identical to rape except that the type of sexual activity involved in gross sexual imposition is ‘sexual contact,’ while ‘sexual conduct’ is necessary for a rape conviction.” *State v. Gale*, 2006-Ohio-1523, ¶ 14 (10th Dist.), citing *State v. Johnson*, 36 Ohio St.3d 224 (1988); see also R.C. 2907.01(A) and (B).

{¶ 38} The record does not reflect that the State limited Count 2 to only the touching of N.M.’s breasts and utilized “two distinct legal theories,” as Teter argues. In its closing argument, the State first addressed the rape charge in Count 1 and

discussed the “sexual conduct” that was alleged. The State then said, “Now to Count 2, Billy Teter did *also* have sexual contact with [N.M.] when he grabbed her breasts with both of his hands in a cup-like fashion.” (Emphasis added.) (Tr. 523.) Regardless, as noted by the State in its brief, the statements made in closing arguments are not evidence and cannot be considered by the jury.

{¶ 39} There is nowhere in the record, including in the indictment, where the State limited the gross-sexual-imposition charge to the grabbing of N.M.’s breasts. Even the jury instructions simply referred to “sexual contact” without any specification as to whether it related to N.M.’s breasts or vagina.

{¶ 40} The Ohio Supreme Court has stated that

“each count of an indictment charges a complete offense; that the separate counts of an indictment are not interdependent, but are, and necessarily must be, each complete in itself, and that in determining the effect of a verdict that responds by designation to a given count the other counts of the indictment will be ignored, and the response of the jury to such other counts likewise ignored; that an inconsistency does not arise, unless it arises out of inconsistent responses to the same count.”

State v. Benson, 2025-Ohio-1541, ¶ 37 (8th Dist.), quoting *Browning v. State*, 120 Ohio St. 62, 71 (1929). The jury was instructed the same:

The charges set forth in each count in the indictment, they constitute a separate and distinct matter. You must consider each count and the evidence applicable to each count separately, and you must state your findings as to each count uninfluenced by your verdict as to the other count. Mr. Teter may be found guilty or not guilty of either or both of the offenses charged.

(Tr. 507.) This court has recognized that “[c]onsistency between verdicts on several counts of a criminal indictment is unnecessary” *State v. Callahan*, 2018-Ohio-

3590, ¶ 28 (8th Dist.), quoting *State v. Eason*, 2016-Ohio-5516, ¶ 67 (8th Dist.). A conviction will generally be upheld when a defendant is convicted on one charge and acquitted on another, irrespective of any rational incompatibility with the acquittal. *Id.*

{¶ 41} As noted above, neither the indictment nor the jury instructions specified what contact pertained to the gross-sexual-imposition charge. Accordingly, the jury was permitted to consider all of the evidence before it when determining if sexual contact occurred. And in considering the charges separately, the jury was free to find Teter guilty of gross sexual imposition but not guilty of rape. *See, e.g., State v. Carson*, 2018-Ohio-5305, ¶ 47 (5th Dist.) (recognizing the validity of inconsistent verdicts and declining to vacate the appellant’s conviction for gross sexual imposition solely because the jury had acquitted him of rape).

{¶ 42} We therefore find that sufficient evidence was presented that, if believed, would support a conviction for gross sexual imposition based upon Teter’s sexual contact with N.M.

{¶ 43} Teter’s first assignment of error is overruled.

B. Force or Threat of Force

{¶ 44} In his second assignment of error, Teter argues that the State did not present sufficient evidence of force or threat of force. “Force” is defined in R.C. 2901.01(A)(1) as “any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing.” This court has noted that “the use of

the word ‘any’ in the definition recognizes there are different degrees of force.” *State v. Clark*, 2008-Ohio-3358, ¶ 17 (8th Dist.).

{¶ 45} “[T]he essential issue is whether the perpetrator’s exertion of *any* amount of ‘force or threat of force’ was sufficient to overcome the will of the victim.” (Emphasis in original.) *State v. Heiney*, 2018-Ohio-3408, ¶ 102 (6th Dist.), citing *State v. Wine*, 2012-Ohio-2837, ¶ 49 (3d Dist.), quoting *State v. Eskridge*, 38 Ohio St.3d 56, 58-59 (1988) (“R.C. 2907.05(A)(1) requires more than ‘force necessary to facilitate the act’ — i.e., the sexual contact itself — and, instead requires ‘force or threat of force sufficient to overcome the will of the victim.’”).

{¶ 46} Teter likens this matter to *In re J.W.*, 2020-Ohio-4065 (8th Dist.), where this court determined that the State had not presented sufficient evidence to show that the defendant had used force when he touched the victim’s thigh and vagina. However, *J.W.* is distinguishable because the facts are entirely different:

There was no testimony that any violence, compulsion, or physical constraint was exerted with the touching of the victim’s thigh or with the touching of her vagina, over her clothing. Moreover, a threat of force cannot be inferred from the circumstances surrounding the sexual contact. Although there was testimony that J.W. was much bigger than the victim, there was no testimony that the victim was restrained or that she was overcome by fear or duress. The conduct occurred in a classroom with others present. The victim, who was J.W.’s high-school classmate and was close to J.W.’s age, testified that she told J.W. to stop and asked him if he had a girlfriend. Even after viewing the evidence in a light most favorable to the prosecution, we cannot say that any rational trier of fact could conclude that J.W. committed these acts with force or threat of force.

Id. at ¶ 15.

{¶ 47} Here, both instances of sexual contact, as outlined above, occurred during a physical altercation between N.M. and Teter. N.M. testified that they were struggling over her phone when he grabbed her breasts. (Tr. 294.) She stated that she felt he wanted to humiliate her or let her know that she was his property. (*Id.*)

{¶ 48} N.M. further testified that Teter grabbed her left wrist and then used his other hand to insert two fingers into her vagina while he was holding her down. (Tr. 293, 336-339, and 352; State's exhibit No. 4.) One of the responding officers noticed that N.M. had bruising on her arm and wrist. (Tr. 256, 259, and 298; State's exhibit No. 4.)

{¶ 49} N.M. stated that at the time Teter inserted his fingers into her vagina, he had said, "I get what I want." (Tr. 293.) She reached up to grab his throat and told him to get off of her. (Tr. 293.) N.M. later sent Teter a text message stating that he had "assaulted [her] without [her] consent, physically assaulted her." (Tr. 304; State's exhibit No. 9.)

{¶ 50} Based on the foregoing and continuing to construe the evidence in a light most favorable to the State, we find that the record contains sufficient evidence that, if believed, could convince a rational trier of fact beyond a reasonable doubt of the essential element of force.

{¶ 51} Teter's second assignment of error is overruled. There was sufficient evidence to support his conviction for gross sexual imposition, and the trial court did not err in denying his Crim.R. 29 motions for acquittal.

{¶ 52} 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. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

EILEEN T. GALLAGHER, PRESIDING JUDGE

MICHAEL JOHN RYAN, J., and
TIMOTHY W. CLARY, J., CONCUR