

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 25CA012313

Appellee

v.

RYAN NEVIN

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 23CR109895

Appellant

DECISION AND JOURNAL ENTRY

Dated: September 8, 2026

MANNING, Judge.

{¶1} Defendant-Appellant, Ryan Nevin, appeals from the judgment of the Lorain County Court of Common Pleas. This Court reverses.

I.

{¶2} Mr. Nevin’s teenage daughter told a family friend that Mr. Nevin had sexually assaulted her. She later spoke with a caseworker from children’s services. The daughter said Mr. Nevin had placed his hand on her buttock. She also said he had reached under her sweatshirt, t-shirt, and bra to touch her breast. The daughter reported that, once he began touching her, Mr. Nevin frequently placed his hand on her buttock when they were alone together.

{¶3} Mr. Nevin was charged with three counts of gross sexual imposition, in violation of R.C. 2907.05(A)(1). He opted for a bench trial. At the close of the State’s case, the trial court dismissed one of the counts for insufficient evidence. Because Mr. Nevin did not call any witnesses, the court issued its judgment after the parties gave their closing arguments.

{¶4} The trial court found Mr. Nevin guilty of two counts of sexual imposition. It determined that both counts were first-degree misdemeanors based on his criminal history. At sentencing, the court permitted the State to introduce certified copies of Mr. Nevin’s prior convictions. The court sentenced him to a total of 180 days in jail and classified him as a tier III sexual offender.

{¶5} Mr. Nevin now appeals from the trial court’s judgment. He raises one assignment of error for review.

II.

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED WHEN IT FOUND [MR.] NEVIN GUILTY OF A MISDEMEANOR 1 GROSS SEXUAL IMPOSITION WITHOUT EVIDENCE OF THE ELEMENT BEING PRESENTED OF A PRIOR CONVICTION.

{¶6} Mr. Nevin argues the trial court erred when it found him guilty of first-degree misdemeanors because the State failed to prove beyond a reasonable doubt that he had a prior conviction. Because the existence of a qualifying prior conviction is an essential element of first-degree misdemeanor sexual imposition, Mr. Nevin argues that his convictions are based on insufficient evidence. For the following reasons, we sustain his argument.

{¶7} Whether a conviction is supported by sufficient evidence is a question of law, which this Court reviews de novo. *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997). This Court must

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.

State v. Jenks, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus. “In essence, sufficiency is a test of adequacy.” *Thompkins* at 386.

{¶8} A person is guilty of gross sexual imposition if he purposely compels another to submit to sexual contact “by force or threat of force.” R.C. 2907.05(A)(1). Sexual imposition is generally considered “a lesser-included offense of gross sexual imposition because it does not require proof of the additional element of force.” *State v. Roy*, 2014-Ohio-5186, ¶ 42 (9th Dist.). Sexual imposition occurs when a person has sexual contact with another and “knows that the sexual contact is offensive to the other person . . . or is reckless in that regard.” R.C. 2907.06(A).

{¶9} Sexual imposition is ordinarily a third-degree misdemeanor. R.C. 2907.06(C). If a person previously has been convicted of certain sexual offenses, however, sexual imposition is a first-degree misdemeanor. *Id.* Because a prior conviction elevates the degree of the offense, it is an essential element that must be proven by the State beyond a reasonable doubt. *Matter of D.M.*, 2021-Ohio-354, ¶ 24-28 (5th Dist.), citing *State v. Allen*, 29 Ohio St.3d 53 (1987), syllabus.

{¶10} Mr. Nevin went to trial strictly on charges of gross sexual imposition. While several witnesses alluded to his criminal history during the bench trial, the State did not seek to admit his prior convictions as part of its case-in-chief. Indeed, the State specifically informed the trial court that, had a jury been present, it would have instructed its witnesses not to mention Mr. Nevin’s prior convictions. The court informed the parties that it would not consider propensity evidence.

{¶11} At the close of trial, the trial court found as a matter of law that the State had proven the offense of sexual imposition rather than gross sexual imposition. The following discussion ensued:

[PROSECUTOR]: Thank you, Your Honor. I was just looking at sexual imposition. It looks like it’s typically a misdemeanor of the third degree unless they have prior convictions, which he does.

THE COURT: Yes. It’s a misdemeanor of the first degree.

....

[DEFENSE COUNSEL]: Can I say something, Your Honor?

THE COURT: Sure.

[DEFENSE COUNSEL]: I think that that's an element of the offense and I think it has to be alleged in the indictment as charged.

THE COURT: What's that?

[DEFENSE COUNSEL]: The priors. I don't think it's just a sentencing factor. I think it's an actual element of the offense.

THE COURT: Okay. You can argue that in the Court of Appeals. That's my finding. That's all I can tell you. Okay.

After a brief recess, the matter proceeded to sentencing.

{¶12} At sentencing, the State produced certified copies of Mr. Nevin's prior convictions. The copies showed that he had been convicted of two counts of attempted rape and one count of gross sexual imposition with respect to a child under the age of 13. The State noted that it had provided defense counsel with copies of the convictions during discovery. Defense counsel responded:

Just for the record, it's our position that [Mr. Nevin] is convicted of sexual imposition, which is a misdemeanor of the third degree, unless it is pled and proven that he had these prior convictions. And while we are not disputing he has prior convictions, [] there's a way to do this in an indictment or, at least, in evidence. And I don't think that was done.

The trial court did not respond to defense counsel's argument. After orally imposing Mr. Nevin's sentence, the court accepted the State's copies of his prior convictions as exhibits for the record.

{¶13} Mr. Nevin argues the trial court erred when it convicted him of first-degree misdemeanors. Because he could not be convicted of first-degree sexual imposition without qualifying prior convictions, he argues that his prior convictions were an essential element the

State would have had to prove beyond a reasonable doubt. He argues that the State failed to meet its burden of production on that point.

{¶14} The State’s response to Mr. Nevin’s argument is three-fold. First, it argues that, when the trial court accepted certified copies of Mr. Nevin’s prior convictions at sentencing, its acceptance operated “as a *de facto* reopening of the State’s case.” Second, it argues that any error resulting from the late submission of the certified copies was harmless because this was a bench trial and everyone knew Mr. Nevin had prior convictions. Finally, the State argues that a ruling in Mr. Nevin’s favor “would lead to absurd results.” The State notes that Mr. Nevin’s prior convictions were not an element the State had to prove to secure a conviction for gross sexual imposition. The State argues that his prior convictions only became an element of his offense after the trial court reduced his charge to sexual imposition. We would note that the State has not appealed in this matter.

{¶15} Upon review, we must conclude that the trial court erred when it convicted Mr. Nevin of first-degree misdemeanors. The court essentially found that first-degree misdemeanor sexual imposition is a lesser-included offense of gross sexual imposition. For the following reasons, we conclude that it is not.

{¶16} When comparing two offenses to conduct a lesser-included offense analysis, courts must “consider whether one offense carries a greater penalty than the other, whether some element of the greater offense is not required to prove commission of the lesser offense, and whether the greater offense as statutorily defined cannot be committed without the lesser offense as statutorily defined also being committed.” *State v. Evans*, 2009-Ohio-2974, paragraph two of the syllabus. “In doing so, courts must compare the elements of each crime” *State v. Brown*, 2021-Ohio-

2540, ¶ 53 (9th Dist.). “An offense that includes an element that another offense lacks cannot be a lesser included offense of that other offense.” *State v. Owens*, 2020-Ohio-4616, ¶ 8.

{¶17} Gross sexual imposition is a fourth-degree felony regardless of any additional circumstances. *See* R.C. 2907.05(C)(1). A prior conviction is not an element of that offense. *See id.* Conversely, sexual imposition requires proof of a qualifying prior conviction when charged as a first-degree misdemeanor. R.C. 2907.06(C). The prior conviction elevates the degree of the offense, and thus, is an essential element. *See Matter of D.M.*, 2021-Ohio-354, at ¶ 24-28 (5th Dist.), citing *Allen*, 29 Ohio St.3d 53 at syllabus. Because first-degree misdemeanor sexual imposition includes an element that gross-sexual imposition does not, it cannot be a lesser-included offense of gross sexual imposition. *See Owens* at ¶ 8.

{¶18} The record reflects that the trial court found Mr. Nevin guilty of an offense with which he was not charged. While a lesser-included offense need not separately be charged in an indictment, *Evans* at ¶ 8, we have already determined that first-degree misdemeanor sexual imposition is not a lesser-included offense of gross sexual imposition. A defendant cannot be found guilty of an offense for which he was not indicted. *See State v. Kuchmak*, 159 Ohio St. 363, 370-371 (1953) (conviction for assault with intent to maim reversed where that crime was not indicted and was not a lesser-included offense of assault with intent to kill). Accordingly, Mr. Nevin’s convictions must be vacated.

{¶19} Mr. Nevin does not dispute the fact that the State set forth sufficient evidence to convict him of third-degree misdemeanor sexual imposition. *See* R.C. 2907.06(A), (C). Unlike first-degree misdemeanor sexual imposition, third-degree misdemeanor sexual imposition is a lesser-included offense of gross sexual imposition. *See Roy*, 2014-Ohio-5186, at ¶ 42 (9th Dist.). On remand, the trial court is instructed to enter findings of guilt on two counts of sexual imposition,

both misdemeanors of the third-degree, and to resentence Mr. Nevin accordingly. His sole assignment of error is sustained.

III.

{¶20} Mr. Nevin's assignment of error is sustained, and his convictions are vacated. On remand, the trial court is instructed to enter findings of guilt on two counts of sexual imposition, both misdemeanors of the third-degree, and to resentence Mr. Nevin accordingly. The judgment of the Lorain County Court of Common Pleas is reversed, and the cause is remanded for further proceedings consistent with the foregoing opinion.

Judgment reversed,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

NATHAN MANNING
FOR THE COURT

FLAGG LANZINGER, P. J.
STEVENSON, J.
CONCUR.

APPEARANCES:

JOHN KOPASAKIS, Attorney at Law, for Appellant.

ANTHONY CILLO, Prosecuting Attorney, and SPENCER J. LUCKWITZ, Assistant Prosecuting Attorney, for Appellee.