[Cite as *State v. Hostottle*, 2024-Ohio-4876.]

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO Plaintiff-Appellee -vs- KEITH D. HOSTOTTLE, JR. Defendant-Appellant	JUDGES: Hon. John W. Wise, J. Hon. William B. Hoffman, P.J. Hon. Craig R. Baldwin, J. Case No. CT2024-0045 O P I N I O N

CHARACTER OF PROCEEDING:	Criminal Appeal from the Court of Common Pleas, Case No. CR2023-0587
JUDGMENT:	AFFIRMED
DATE OF JUDGMENT ENTRY:	October 8, 2024

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
RONALD WELCH PROSECUTING ATTORNEY JOSEPH A. PALMER ASSISTANT PROSECUTOR 27 North Fifth Street, P. O. Box 189 Zanesville, Ohio 43701	CHRIS BRIGDON 3128 Somerset Road Thornville, Ohio 43076

Wise, J.

{¶1} Defendant-Appellant Keith D. Hostottle, Jr. appeals his conviction on three counts of Rape, one count of Kidnapping with a Sexual Motivation Specification, and two counts of Gross Sexual Imposition, entered in the Muskingum County Court of Common Pleas, following a jury trial.

{¶2} Plaintiff-Appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶3} The relevant facts and procedural history are as follows:

{¶4} Appellant Keith D. Hostottle, Jr. was indicted on 2 counts of Gross Sexual Imposition, in violation of R.C. §2907.05(A)(4), felonies of the third-degree, 1 count of Kidnapping, in violation of R.C. §2905.01(A), a felony of the first-degree, and 3 counts of Rape, in violation of R.C. §2907.02(A)(1)(b), felonies of the first-degree.

{¶5} The prosecution claimed that Appellant engaged in sexual contact with B.M., a child under the age of 13, for the purpose of sexual gratification. These alleged incidents were said to have taken place when B.M. was between the ages of 6 and 8, covering the period from September 30, 2017, to September 2, 2020. (T. at 161).

{¶6} On February 27-28, 2024, the matter proceeded to jury trial in the Muskingum County Court of Common Pleas.

{¶7} At trial, the jury heard testimony from Shannon Walters, Lori S. (B.M.'s maternal grandmother), Madison Collier and Rhonda Wells.

{¶8} Appellant and Jemma H., mother of the victim B.M., lived together in an apartment on Venus Place and later moved to 1055 Adams Lane in Zanesville, Muskingum County, where they lived with B.M. and her younger brother. (T. at 159).

{¶9} Shannon Walters stated that she is a Certified Prevention Specialist Assistant employed by Muskingum Behavioral Health. (T. at 171-172). She explained that she works with at-risk youth in the local Zanesville City Schools, helping them build life and coping skills. (T. at 172). She testified that in November, 2021, B.M. was one of the students she had in both individual and group sessions. (T. at 177). She testified that she normally saw her in a group with approximately four other students and that the group met once day per week. (T. at 178). She stated that it was during one of these group sessions where they were discussing feelings and B.M. expressed that she was sad but that she did not want to say out loud what was causing her sadness. (T. at 182). B.M. then wrote down on a piece of paper that Appellant raped her when she was 6, on her birthday, and gave the paper to Ms. Walters. (T. at 183). After the group session, Ms. Walters gave the note to the assistant principal, Erin Owens, and then made a telephone call to Children's Services and also faxed a copy of the note to Children's Services. (T. at 186).

{¶10} Ms. Shannon testified that she had worked with B.M. for two years prior to her disclosure and that on the day she gave her the note she "seemed a little down, not quite like herself that day." (T. at 188).

{¶11} Lori S., the maternal grandmother of B.M., stated that B.M. had been living with her since September, 2020, because B.M.'s mother was having difficulty caring for her due to health problems and psychological problems. (T. at 207, 218). She stated that B.M.'s mother is legally not allowed to drive due to suffering from epilepsy and that she was not allowed to cook either. (T. at 218). She testified that on November 30, 2021, when she went to pick B.M. up from school, she was informed by a teacher about the

content of the note B.M. wrote and gave to Ms. Shannon. (T. 220). She stated that B.M. had never disclosed the abuse to her. (T. at 219).

{¶12} Lori testified that she sought and was awarded legal custody of B.M.in April, 2021, after B.M. first filed for divorce from Appellant and obtained a Civil Protection Order but then later dismissed the divorce action. (T. at 221).

{¶13} Lori testified that it was her decision to have B.M. start seeing a counselor on October, 2020, because B.M. did not "look like the same B.M. that she did when she was younger. She just had a different air about her." (T. at 222). She recalled that B.M. had stopped being her happy-go-lucky self, did not smile as much as she had before, and no longer liked to go to school. (T. at 224).

{¶14} She wrote down on a sheet of paper that Appellant had raped her when she was 6-years old. (T. at 162). This disclosure led to the involvement of the police and Children's Services, and B.M. was taken to Harcum House in Lancaster for an interview and treatment. During her interview, B.M. described the Appellant held her down by her hands and neck, using his arms to restrain her for a sexual purpose. (T. at 163). B.M. indicated the abuse happened more than once, leading to multiple counts of rape.

{¶15} Madison Collier testified next. She testified that she works at Harcum House Child Advocacy Center as a forensic interviewer. (T. at 244). She explained that she interviews children in response to an allegation of child abuse or neglect. *Id*. She detailed her training and experience and explained that her role in interviews is neutral and the purpose is fact-finding. (T. at 247). She further explained the methodology of the questioning. (T. at 250-251). Ms. Collier explained that the primary purpose of the forensic interview was for medical and mental health purposes. (T. at 259). She stated that her

interview with B.M. was videotaped and that she also prepared a typed Patient Services Report and an Interview Session Log, which included everything that happened during B.M.'s visit. (T. at 256). The video was played for the jury. (T. at 260). In reviewing part of the medical record she created at the time of B.M.'s interview, Ms. Collier stated that Appellant was listed as B.M.'s step-father and the offender. (T. at 261). On cross-examination she explained that she tells her patients that they wouldn't be in trouble for her statements. (T. at 266-267). She further testified that B.M. disclosed to her that she was raped by her step-father and repeated that numerous times. (T. at 26-2687). She explained that B.M. then opened up with more details after she was asked what the word "rape" meant to her. (T. at 268). She also explained on cross-examination that it is standard procedure to take a break from the interview and consult with her team outside of the interview room. (T. at 268-270).

{¶16} She explained that the records she created from the record were made available for treatment or diagnosis to both Harcum House and other future medical providers. (T. at 262). She also explained that after a child speaks with her, they then meet with a nurse at Harcum House, in this case Rhonda Wells. (T. at 263, 270).

{¶17} Rhonda Wells testified next, explaining that she was an adult, adolescent and pediatric Sexual Assault Nurse Examiner (SANE), employed by Harcum House Child Advocacy Center. (T. at 275-276). She explained that her main role as a SANE nurse there is to be present and listen during the interviews, and then make medical recommendations based on the disclosures. (T. at 278). She testified that for "delayed disclosure" cases where the assault happened more than 96 hours prior, a Rape Kit, or Sexual Assault Evidence Collection Kit is not performed. (T. at 279). She explained that

the purpose of her examination and questioning of B.M. was for learning the patient's medical history, assessing the types of injury and pain, and determining of the patient was exposed to ejaculate which would put them at risk for a sexually-transmitted diseases. (T. at 281). Nurse Wells testified as to the records she prepared from her interview and exam with B.M. (T. at 284-286). She explained that B.M.'s medical history, including the fact that B.M. was prescribed Zoloft to treat anxiety, was provided by B.M.'s grandmother Lori. (T. at 287-288, 300). She went on to explain that based on the information from the earlier forensic interview, she asks more specific medical questions about the patient's body, including specific body parts and the types of physical contact B.M. had with Appellant. (T. at 290-291). She stated that B.M. told her that Appellant had oral-to-genital contact with her as well as digital-to-vaginal contact, both on the outside and the inside of her vagina, and genital-to-genital contact. (T. at 291-293). She stated that B.M. told her "it went inside and . . . she bled a lot." (T. at 293). Finally, she explained that she did not conduct a physical examination because B.M. declined the exam and because it was outside of the 96-hour window. (T. at 295, 301).

{¶18} On cross-examination, Nurse Wells reiterated that the purpose of her inquiries to B.M. were for medical purposes. (T. at 299).

{¶19} On February 28, 2024, following deliberations, the jury returned guilty verdicts as to all counts.

{¶20} On April 8, 2024, the trial court sentenced Appellant as follows: Count One: a stated prison term of thirty-six (36) months; Count Two: a stated prison term of thirty-six (36) months; Count Three: a stated mandatory prison term of eleven (11) years; Count Four: a prison term of life with parole eligibility after fifteen (15) years; Count Five: a prison

term of life with parole eligibility after fifteen (15) years. The trial court then ordered the terms of incarceration imposed on Counts One, Two, Four, and Five to be served concurrently with one another and consecutive to Count Three, for an aggregate prison sentence of life with parole eligibility after twenty-six (26) years.

{¶21} Appellant now appeals, raising the following assignments of error for review:

ASSIGNMENTS OF ERROR

{¶22} "I. WAS THERE INSUFFICENT EVIDENCE PRESENTED TO CONVICT APPELLANT OF GROSS SEXUAL IMPOSITION, RAPE, KIDNAPPING?

{¶23} "II. AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE"

I., II.

{¶24} In his two assignments of error, Appellant argues his convictions are against the manifest weight and sufficiency of the evidence. We disagree.

{¶25} Sufficiency of the evidence and manifest weight of the evidence are separate and distinct legal standards. *State v. Thompkins*, 78 Ohio St.3d 380 (1997). Again, sufficiency of the evidence is a test of adequacy. *Id.* A sufficiency of the evidence standard requires the appellate court to examine the evidence admitted at trial, in the light most favorable to the prosecution, to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St.3d 259 (1991).

{¶26} In contrast to the sufficiency of evidence analysis, when reviewing a weight of the evidence argument, the appellate court reviews the entire record, weighing the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts of evidence, 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. Thompkins*, 78 Ohio St.3d 380.

{¶27} Under a weight of the evidence argument, the appellate court will consider the same evidence as when analyzing Appellant's sufficiency of evidence argument. Reversing a conviction as being against the manifest weight of the evidence and ordering a new trial should be reserved for only the "exceptional case in which the evidence weighs heavily against the convictions." *Id.*

{¶28} It is well settled that the State may rely on circumstantial evidence to prove an essential element of an offense, because "circumstantial evidence and direct evidence inherently possess the same probative value[.]" *Jenks*, 61 Ohio St.3d 259, at paragraph one of the syllabus. " 'Circumstantial evidence' is the proof of certain facts and circumstances in a given case, from which the jury may infer other connected facts which usually and reasonably flow according to the common experience of mankind." *State v. Duganitz* (1991), 76 Ohio App.3d 363, quoting Black's Law Dictionary (5 Ed.1979) 221. "Since circumstantial evidence and direct evidence are indistinguishable so far as the jury's fact-finding function is concerned, all that is required of the jury [fact finder] is that it weigh all of the evidence, direct and circumstantial, against the standard of proof beyond a reasonable doubt." *Jenks*, at 272.

{¶29} Appellant herein was charged and convicted of Rape, Kidnapping and Gross Sexual Imposition:

{¶30} R.C. § 2907.02(A)(1), **Rape**, in pertinent part, states:

> No person shall engage in sexual conduct with another who is not the spouse of the offender or who is the spouse of the offender but is living separate and apart from the offender, when any of the following apply:
>
> * * *
>
> (b) The other person is less than thirteen years of age, whether or not the offender knows the age of the other person.

{¶31} R.C. § 2907.01(A) states:

> "Sexual Conduct" means vaginal intercourse between a male and female, anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal opening of another. Penetration, however slight, is sufficient to complete vaginal intercourse.

{¶32} R.C. §2905.01(A)(4), **Kidnapping**, which states:

{¶33} "No person, by force, threat, or deception, * * * shall remove another from the place where the other person is found or restrain the liberty of the other person * * * [t]o engage in sexual activity, as defined in section 2907.01 of the Revised Code, with the victim against the victim's will."

{¶34} R.C. §2907.01(C) defines "sexual activity" as "sexual conduct or sexual contact, or both".

{¶35} R.C. §2907.01(B) defines "sexual contact" 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."

{¶36} R.C. § 2907.05, **Gross Sexual Imposition**, states, in pertinent 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:
>
> * * *
>
> (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 that person.

{¶37} Appellant argues his convictions are not supported by sufficient evidence and are against the manifest weight of the evidence. Appellant does not indicate which elements the State failed to prove as to each of the charges but rather argues the State's witnesses either had no direct knowledge of the alleged abuse or were not credible in their testimony.

{¶38} Appellant argues that B.M.'s teacher, Ms. Walters, admitted that she had no direct knowledge of the abuse and further had expressed doubt as to whether B.M.'s claims were genuine or fabricated.

{¶39} Upon review of the record, we do not find any inconsistencies in Ms. Walters' testimony. Ms. Walters explained on cross-examination that she never expressed doubt as to B.M.'s note stating that Appellant raped her, but rather as to statements B.M. made about being around Appellant after the Civil Protection Order was in place. (T. at 197-199). Ms. Walters testified that she gave B.M.'s note about being

raped to the Vice-Principal immediately after her session with B.M. that day and that she also called Children's Services and faxed them a copy of the note. She further testified that on that day, B.M. seemed down and not like herself.

{¶40} Appellant further argues that B.M.'s grandmother's credibility was undermined by inconsistencies in her affidavits and because she had been terminated from her job due to allegations of filing false reports and lying.

{¶41} Upon review of B.M.'s grandmother's testimony, we find she testified that B.M. never disclosed the abuse to her and that she found out from a teacher at B.M.'s school. During cross-examination, she also addressed the disciplinary action concerning the termination of her employment. (T. at 235-238).

{¶42} Appellant also challenges the testimony of Ms. Collier, the forensic interviewer. However, no specific concerns are raised, arguing only that her techniques lacked objectivity. Upon review, we find nothing in Ms. Collier's testimony regarding her interview with B.M. to raise concerns about objectivity or professionalism.

{¶43} Finally, Appellant argues that Nurse Wells' testimony regarding her interview with B.M. possibly exceeded the Evid.R. 803(4) exception concerning medical information.

{¶44} Specifically, Appellant argues that because "the only issue B.M. was experiencing was anxiety", Nurse Wells' questions exceeded the scope of Evid.R. 803(4). (Appellant's brief at 12).

{¶45} We have thoroughly reviewed the testimony offered by Nurse Wells and do not find any instance where the testimony offered was solely for prosecutorial or investigative purposes. She detailed what questions she asked of B.M. and B.M.'s

responses. She explained that as a P-SANE nurse, her role is to perform a head-to-toe assessment. (T. at 295). She explained that no physical exam was performed in this case because B.M. declined to go through the process of a detailed genital exam and because the reporting occurred outside the 96-hour window, (T. at 295-296).

{¶46} The description of how the sexual assault took place and over how long of a period of time are relevant to medical treatment. Such details are part of the medical history and are the reason for the symptoms. Such answers and details allow an examiner to know where to examine and what types of injuries could be latent. *State v. Bowleg,* 2014–Ohio–1433, ¶ 19 (8th Dist.), quoting *State v. Wallace,* 2011–Ohio–1728, ¶ 18 (3rd Dist.).

{¶47} We have held that the testimony of one witness, if believed by the factfinder, is enough to support a conviction. *See*, *State v. Dunn*, 2009-Ohio-1688, ¶ 133 (5th Dist.). The weight to be given the evidence introduced at trial and the credibility of the witnesses are primarily for the trier of fact to determine. *State v. Thomas*, 70 Ohio St.2d 79 (1982), syllabus. It is not the function of an appellate court to substitute its judgment for that of the factfinder. *State v. Jenks*, 61 Ohio St.3d 259, 279 (1991). Any inconsistencies in the witnesses' accounts were for the trial court to resolve. *State v. Dotson*, 2017-Ohio-5565, ¶ 49 (5th Dist.). "The weight of the evidence concerns the inclination of the greater amount of credible evidence offered in a trial to support one side of the issue rather than the other." *State v. Brindley*, 2002–Ohio–2425, ¶ 16 (10th Dist.). We defer to the trier of fact as to the weight to be given the evidence and the credibility of the witnesses. *State v. DeHass*, 10 Ohio St.2d 230 (1967), at paragraph one of the syllabus.

{¶48} When assessing witness credibility, "[t]he 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. Awan*, 22 Ohio St.3d 120 (1986). "Indeed, the factfinder is free to believe all, part, or none of the testimony of each witness appearing before it." *State v. Pizzulo*, 2010-Ohio-2048, ¶ 11 (11th Dist.). Furthermore, if the evidence is susceptible to more than one interpretation, a reviewing court must interpret it in a manner consistent with the verdict. *Id.* The finder of fact may take note of the inconsistencies and resolve or discount them accordingly, but such inconsistencies do not render defendant's conviction against the manifest weight of the evidence. *State v. Nivens*, 10th Dist. Franklin No. 95APA09-1236 (1996).

{¶49} Upon our review of the entire record, we conclude Appellant's Rape, Kidnapping, and Gross Sexual Imposition convictions are supported by sufficient evidence and are not against the manifest weight of the evidence.

{¶50} Appellant's assignments of error are overruled.

{¶51} Accordingly, the judgment of the Muskingum Common Pleas Court is affirmed.

By: Wise, J.

Hoffman, P.J., and

Baldwin, J., concur.

JWW/kw 1001