

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2008-03-042
- vs -	:	<u>OPINION</u> 12/14/2009
WILLIAM B. MEADOR,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL ON REMAND FROM THE OHIO SUPREME COURT
Case No. 07 CR 24364

Rachel A. Hutzal, Warren County Prosecuting Attorney, Mary K. Martin, 500 Justice Drive, Lebanon, Ohio 45036, for plaintiff-appellee

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RINGLAND, J.

{¶1} On remand from the Supreme Court of Ohio, defendant-appellant, William Brooks Meador, appeals the sufficiency of his convictions in the Warren County Court of Common Pleas for two counts of rape.

{¶2} In 2003, defendant-appellant, William Brooks Meador, began dating the victim's mother and, shortly thereafter, the couple began cohabitating together. The mother had two minor daughters from her previous marriage who also moved into the

residence. The couple became engaged and had a child of their own. The victim, J.R., testified that, beginning when she was six years of age, appellant would enter her room at night and touch her vagina with his fingers. He would sometimes use his fingernails to rub it, causing pain. In fact, J.R. claimed that the touching would occasionally cause her genitals to hurt the following day when she went to the bathroom. When asked at trial whether appellant's fingers were inside her vagina, J.R. responded, "No, I couldn't tell, but it kind of felt like it." J.R. stated that the touching occurred more times than she could count from the time she was in the first grade until she was in the third grade, when appellant moved out of the house. J.R.'s cousin, O.T., also alleged that appellant improperly touched her.¹

{¶13} Children services was contacted by a friend of the mother. Following an inquiry into the allegations, appellant was charged with three counts of rape based upon the alleged sexual touching of J.R. Appellant was also indicted for one count of sexual imposition and one count of gross sexual imposition based upon the alleged improper conduct with the O.T.

{¶14} Upon motion by appellant's trial counsel, the lower court severed the rape charges from the sexual imposition charges into separate trials due to the potential prejudice that may result from the testimony of two sex offense victims. However, the trial court held that O.T. could testify at the trial on the rape charges for the limited purpose of establishing a time frame of when the incident was reported. Following a jury trial, appellant was found guilty of two counts of rape and sentenced to two consecutive terms of life in prison.

{¶15} Appellant appealed to this court. In *State v. Meador*, Warren App. No. CA2008-03-042, 2009-Ohio-2195, this court reversed appellant's convictions and

1. The details of the alleged improper sexual contact by appellant with O.T. are unclear from the record.

remanded the case to the trial court. This court found that the trial court erred by allowing testimony during trial related to the second victim and that appellant was prejudiced from the evidence. The state appealed to the Ohio Supreme Court. Appellant filed a cross-appeal, arguing that this court erred by failing to address his sufficiency argument. The Ohio Supreme Court denied the state's appeal, but accepted appellant's cross-appeal. The supreme court reversed this court's judgment holding appellant's sufficiency argument moot and remanded the case for consideration of that assignment of error. *State v. Meador*, Slip Opinion No. 2009-Ohio-5861.

{¶16} "THERE WAS INSUFFICIENT EVIDENCE TO CONVICT DEFENDANT-APPELLANT OF TWO COUNTS OF RAPE."

{¶17} In reviewing the sufficiency of the evidence underlying a criminal conviction, an appellate court examines the evidence in order to determine whether such evidence, if believed, would support a conviction. *State v. Lucas*, Tuscarawas App. No. 05AP090063, 2006-Ohio-1675, ¶8; *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. "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. Haney*, Clermont App. No. CA2005-07-068, 2006-Ohio-3899, ¶14, quoting *State v. Tenace*, 109 Ohio St.3d 255, 2006-Ohio-2417, ¶37.

{¶18} Appellant was charged with two counts of rape in violation of R.C. 2907.02(A)(1)(b) which provides, "[n]o 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 * * * [t]he other person is less than thirteen years of age, whether or not the offender knows the age of the other person."

{¶19} "Sexual conduct" is defined as "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 or anal intercourse." R.C. 2907.01(A).

{¶10} The only element at issue is penetration. Appellant argues that the state failed to present sufficient evidence of penetration or insertion of a body part into the vaginal opening of the victim. Appellant urges that the victim in this case never definitively testified that he put his finger inside her vagina.

{¶11} In support, appellant cites the analysis of the Second District Court of Appeals in *State v. Grant*, Montgomery App. No. 19824, 2003-Ohio-7240. "The vagina is the hollow passage leading from the uterus of the female body outward to the exterior genitalia, or vulva, which is comprised of lip-like folds of skin called the labia majora. The term 'vaginal cavity' refers to that entire anatomical process and any part of it." *Id.* at ¶29.

{¶12} "Penetration of the vaginal cavity requires introduction of an object from without, which necessary implies some forceful spreading of the labia majora. The penetration need only be 'slight.' R.C. 2907.01(A). Therefore, if the object is introduced with sufficient force to cause the labia majora to spread, penetration has occurred." *Id.* at ¶30.

{¶13} "T.K. testified that Defendant put his hand underneath her bathing suit three times. The first time Defendant's finger was near her vagina, which is not a form of sexual conduct defined by R.C. 2907.01(A), and is therefore insufficient for Rape. The second time Defendant's finger was on T.K.'s vagina, which is likewise insufficient to show penetration. The third time, according to T.K., Defendant put his finger 'in it.'

T.K. explained that Defendant's index finger was one-half inch inside the lips of her vagina." Id. at ¶31.

{¶14} "T.K.'s testimony, if believed, is sufficient to permit the jury reasonably to infer that Defendant's conduct in inserting his finger one-half inch between T.K.'s external labia necessarily caused the labia major to spread. That evidence is legally sufficient to establish vaginal penetration and sexual conduct sufficient to support Defendant's conviction for Rape." Id. at ¶32, citing *State v. Lucas*, Montgomery App. No. 18644, 2001-Ohio-1350.

{¶15} Appellant urges that, as in *Grant*, the victim in this case testified only that appellant touched, rubbed and pushed on her vagina, which caused it to "hurt real bad." Appellant argues that this testimony was insufficient to establish penetration.

{¶16} Yet, the victim's testimony was not confined to claiming that appellant merely touched or rubbed the outside of her vagina. Specifically, when asked during the trial whether appellant inserted his fingers inside her vagina, J.R. responded, "No, I couldn't tell, but it kind of felt like it." Despite some preceding ambiguity in the response, the child victim testified that it "kind of felt like" appellant's fingers were inside her vagina. When construed in a light most favorable to the prosecution, J.R.'s response was sufficient to establish that penetration occurred. Like T.K.'s statement in *Grant* that the defendant's finger was "in it," J.R.'s response that it "felt like it" similarly demonstrated the penetration element of rape. *State v. Tillman*, Butler App. No. CA2003-09-243, 2004-Ohio-6240, ¶42.

{¶17} Appellant's assignment of error is overruled. Accordingly, this case is remanded to the trial court for proceedings consistent with our prior decision in *State v. Meador*, Warren App. No. CA2008-03-042, 2009-Ohio-2195.

POWELL, P.J., and HENDRICKSON, J., concur.