

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 93235**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**RONALD M. JACKSON**

DEFENDANT-APPELLANT

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**JUDGMENT:  
AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-467833

**BEFORE:** Blackmon, P.J., Boyle J., and Cooney, J.

**RELEASED AND JOURNALIZED:** August 12, 2010

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PATRICIA ANN BLACKMON, P.J.:

{¶ 1} Appellant Ronald M. Jackson appeals his convictions for gross sexual imposition and assigns the following three errors for our review:

**“I. The state failed to present sufficient evidence to sustain a conviction against appellant.”**

**“II. Appellant’s convictions are against the manifest weight of the evidence.”**

**“III. The appellant was not provided effective assistance of counsel.”**

{¶ 2} Having reviewed the record and pertinent law, we affirm Jackson’s convictions. The apposite facts follow.

**Facts**

{¶ 3} Jackson was indicted on twenty-six counts involving his rape and sexual assault of his two young granddaughters. Prior to the trial that is the subject of this appeal, Jackson was tried for the indicted offenses and found guilty of all charges and sentenced to life in prison. Jackson appealed, and this court reversed and remanded the case due to prosecutorial misconduct. *State v. Jackson*, Cuyahoga App. No. 88074, 2007-Ohio-2494. Thus, this appeal concerns the second trial.

{¶ 4} T. and M.<sup>1</sup> were transported from foster care to live with Jackson and their great-grandparents when they were four and two years old, respectively. According to T. and M., Jackson did not start molesting them until they reached puberty.

{¶ 5} M. testified that Jackson sexually assaulted her several times. However, because Jackson was not convicted on any of the counts involving M., we will recite the facts only pertaining to T.

{¶ 6} T. testified that Jackson began abusing her when she was ten years old. She recalled the first time he molested her, he called her down into the basement and made her sit in a green chair. He then touched her chest and private areas over her clothes. The next time, she recalled she was in the basement helping Jackson with the laundry. She was wearing a blue

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<sup>1</sup>Pursuant to this court's policy of protecting the victim's identities, the victims are referred to only by their initials.

halter dress. Jackson made her untie her dress so he could fondle her breasts. He then ordered her to lay down on the basement floor and penetrated her with his penis. She did not tell anyone because she was embarrassed.

{¶ 7} The next time he molested her in the bathroom. She was using the toilet, and he came in and shut the door. He ordered her to turn and face the cabinet and massaged her buttocks. He then turned her around, and while she half sat on the cabinet, he penetrated her with his penis. The next time she was in her room asleep in her underwear. She was awakened by Jackson touching her breasts. When he discovered she had wet the bed, he left.

{¶ 8} She also recalled a time when the cabinet from the bathroom was moved to the basement. He ordered her to bend over the cabinet, and he inserted his penis into her vagina.

{¶ 9} Cleveland police detective Pamela Berg was assigned to investigate the case. She testified that Jackson provided a written statement in which he denied molesting the girls. He conceded that T. once bumped him with her breasts, and that he saw M.'s breasts once when she deliberately lifted her shirt in his presence, and that he sometimes checked on them while they were bathing. Jackson claimed that teachers had

complained that the girls smelled and that “they” told him to check on the girls’ bathing habits.

{¶ 10} The trial court granted Jackson’s motion to acquit him of four counts of rape as to T., one count of kidnapping as to T., and five counts of gross sexual imposition. The jury found Jackson guilty of three counts of gross sexual imposition against T.; found him not guilty of one count of rape as to M.; and was hung on the remaining counts, which the state dismissed. Jackson was sentenced to ten years in prison.

### **Sufficiency and Manifest Weight of the Evidence**

{¶ 11} We address Jackson’s first and second assigned errors together as they both concern the credibility of the victims’ testimony. While Jackson argues in his first assigned error that the evidence was insufficient to support his convictions, the assigned error concerns the victims’ credibility, which is an argument that goes to the manifest weight of the evidence. Because Jackson was only convicted on the gross sexual imposition counts involving T., we will not examine M.’s credibility as she did not testify as to T.’s abuse.

{¶ 12} In *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, the Ohio Supreme Court addressed the standard of review for a criminal manifest weight challenge, as follows:

**“The criminal manifest-weight-of-the-evidence standard was explained in *State v. Thompkins* (1997), 78 Ohio St.3d**

**380, 678 N.E.2d 541. In *Thompkins*, the court distinguished between sufficiency of the evidence and manifest weight of the evidence, finding that these concepts differ both qualitatively and quantitatively. Id. at 386, 678 N.E.2d 541. The court held that sufficiency of the evidence is a test of adequacy as to whether the evidence is legally sufficient to support a verdict as a matter of law, but weight of the evidence addresses the evidence's effect of inducing belief. Id. at 386-387, 678 N.E.2d 541. In other words, a reviewing court asks whose evidence is more persuasive --- the state's or the defendant's? We went on to hold that although there may be sufficient evidence to support a judgment, it could nevertheless be against the manifest weight of the evidence. Id. at 387, 678 N.E.2d 541. 'When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a "thirteenth juror" and disagrees with the factfinder's resolution of the conflicting testimony.' Id. at 387, 678 N.E.2d 541, citing *Tibbs v. Florida* (1982), 457 U.S. 31, 42, 102 S.Ct. 2211, 72 L.Ed.2d 652."**

{¶ 13} However, an appellate court may not merely substitute its view for that of the jury, but must find that “in resolving conflicts in the 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.” *Thompkins* at 387. Accordingly, reversal on manifest weight grounds is reserved for “the exceptional case in which the evidence weighs heavily against the conviction.” *Id.*

{¶ 14} Jackson contends T. was not credible because her testimony was inconsistent and incoherent. He also argues that the house was so small that it would be impossible for him to molest T. without someone being aware of it. He claims that both victims were troubled girls who made the allegations to exact revenge on him for his returning them to foster care.

{¶ 15} While Jackson contends T.’s testimony was inconsistent and incoherent, the record indicates otherwise. She related the facts regarding the abuse in a clear, concise manner. Additionally, while there were some differences between her testimony at the first trial, which was conducted three years prior to the second trial, none of the differences were significant. Furthermore, the jury was apprised of these inconsistencies. The jury was also aware of the defense’s contention that the girls made up the stories to exact revenge on their grandfather.

{¶ 16} The jury heard T.'s testimony, including her inconsistent statements and chose to believe her testimony that her grandfather had committed gross sexual imposition against her three times. Resolving the inconsistencies was within the province of the jury. *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212. A jury, as finder of fact, may believe all, part, or none of a witness's testimony. *State v. Caldwell* (1992), 79 Ohio App.3d 667, 607 N.E.2d 1096; *State v. Hairston* (1989), 63 Ohio App.3d 58, 577 N.E.2d 1144; *State v. Antill* (1964), 176 Ohio St. 61, 67, 197 N.E.2d 548. The rationale is that the trier of fact is in the best position to take into account inconsistencies, along with the witnesses' manner and demeanor, and determine whether the witnesses' testimonies are credible. See *Seasons Coal Co. v. Cleveland* (1994), 10 Ohio St.3d 77, 80, 461 N.E.2d 1273; *DeHass* at 231. Thus, the jury could choose to believe the victims' testimony in whole or in part in arriving at their verdict, as the jury obviously did in the instant case. Accordingly, Jackson's first and second assigned errors are overruled.

### **Ineffective Assistance of Counsel**

{¶ 17} In his third assigned error, Jackson argues his counsel was ineffective. We review a claim of ineffective assistance of counsel under the two-part test set forth in *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674. Under *Strickland*, a reviewing court will not deem counsel's performance ineffective unless a defendant can show his



lawyer's performance fell below an objective standard of reasonable representation and that prejudice arose from the deficient performance. *State v. Bradley* (1989), 42 Ohio St.3d 136, 538 N.E.2d 373, paragraph one of the syllabus. To show prejudice, a defendant must prove that, but for his lawyer's errors, a reasonable probability exists that the result of the proceedings would have been different. *Id.* at paragraph two of the syllabus. Judicial scrutiny of a lawyer's performance must be highly deferential. *State v. Sallie*, 81 Ohio St.3d 673, 1998-Ohio-343, 693 N.E.2d 267.

{¶ 18} Jackson contends his counsel was ineffective for failing to object to T.'s outburst at trial sooner. During cross-examination, T. became frustrated by defense counsel's comparison of her testimony from the prior trial with her current testimony. She became upset about having to explain the intricate details of the abuse again. When defense counsel asked "are you angry with me about something?" T. responded with a lengthy tirade. Defense counsel moved for a mistrial, which the court denied after noting the difficulty encountered in obtaining T. as a witness. Thus, defense counsel preserved the issue for appellate review by moving for a mistrial.

{¶ 19} We also do not conclude prejudice resulted because of counsel's failure to object sooner. While Jackson contends the tirade was prejudicial, the fact the jury found Jackson not guilty of several counts and could not come to a consensus on many of the counts, indicates the tirade did not

garner any sympathy from the jury. In fact, it could have harmed the state's case as T.'s outburst was laced with profanity, and she revealed that she was employed as a stripper. Accordingly, Jackson's third assigned error is overruled.

Judgment affirmed.

It is ordered that appellee recover of appellant its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said 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.

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PATRICIA ANN BLACKMON, PRESIDING JUDGE

MARY J. BOYLE, J., and  
COLLEEN CONWAY COONEY, J., CONCUR