

[Cite as *State v. Walker*, 2010-Ohio-907.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. **92987**

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DONNELL WALKER

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-489559

BEFORE: Jones, J., Dyke, P.J., and Celebrezze, J.

RELEASED: March 11, 2010

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

LARRY A. JONES, J.:

{¶ 1} Defendant-appellant, Donnell Walker (“Walker”), appeals his conviction. He argues that there was insufficient evidence to support his conviction for unlawful sexual conduct with a minor and that his conviction was against the manifest weight of the evidence. For the reasons that follow, we disagree and affirm the judgment of the trial court.

{¶ 2} In 2006, Walker was charged with unlawful sexual conduct with a minor. The case proceeded to a bench trial at which the following evidence was presented.

{¶ 3} T.R.,¹ age 14, met Walker, age 19, through one of her friends. T.R. and Walker began communicating on the computer through the social networking website MySpace. In November 2006, T.R. called Walker and he asked her if she wanted to meet him. She agreed and they met at a game store near her house. He invited her to his apartment and they went back to his place to watch a movie in his bedroom. While sitting on the floor watching the movie, Walker asked T.R. if he could kiss her. She replied “yes,” and the two teens began to kiss. Walker pulled T.R. on top of him and they began to “dry hump.”

¹ We refer to the victim by her initials, following this court’s policy to identify both minors and victims of sex crimes by their initials.

{¶ 4} Both Walker and T.R. pulled their pants down, Walker put on a condom, and they started to have sex. T.R. stopped Walker almost immediately, telling him she was out past her curfew.

{¶ 5} When T.R. returned home, T.R.'s mother confronted her, and T.R. admitted that she had been with Walker and had sex with him. T.R.'s mother took T.R. to the police station and the hospital, where a nurse examined T.R. The nurse testified that she noted some unusual redness on T.R.'s external genitalia in three areas that was consistent with consensual sex, but conceded the redness could have been caused by something other than sexual intercourse.

{¶ 6} A couple of weeks later, T.R. sent an instant message to Walker on MySpace, asking him why he was saying bad things about her. Walker responded that he never had sex with her and asked her why she was trying to put him in jail.

{¶ 7} T.R. testified that she did not want to press charges against Walker because it was partially her fault and she felt guilty. T.R.'s mom testified that a few weeks before the incident she found Walker's phone number on her daughter's cell phone and called him. T.R.'s mother stated that she confirmed with Walker that he was 19 and told him that because her daughter was only 14, there was no reason for him to call her or for T.R. to have his phone number.

{¶ 8} The investigating detective testified that when he went to Walker's house to execute the arrest warrant, he asked Walker where the condom was. Walker told the detective that he had already thrown the condom out, but admitted

that he had sex with T.R. and knew that she was only 14 years old. Walker refused to give a written statement.

{¶ 9} Walker testified at trial that he knew T.R., chatted with her on MySpace, and met with her on the day in question. Walker admitted to kissing T.R., “grinding” with her, and getting a partial erection, but claimed that he did not have sex with her. He conceded that he had told the detective that he did have sex with T.R.

{¶ 10} The court found Walker guilty of unlawful sexual conduct with a minor, sentenced him to two years of community control sanctions, and labeled him a Tier II sex offender/child victim offender.

{¶ 11} Walker appeals his conviction, raising two assignments of error for our review. In the first assignment of error, Walker argues that the evidence was insufficient to convict him of unlawful sexual conduct with a minor. In the second assignment of error, Walker argues that his conviction was against the manifest weight of the evidence. We will combine the assignments of error because, even though they involve different standards of review, they both involve the same evidence.

{¶ 12} When an appellate court reviews a claim of insufficient evidence, “[t]he 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.*

Leonard, 104 Ohio St.3d 54, 2004-Ohio-6235, 818 N.E.2d 229, quoting *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus.

{¶ 13} In reviewing a claim challenging the manifest weight of the evidence, the question to be answered is whether “there is *substantial* evidence upon which a jury could reasonably conclude that all the elements have been proved beyond a reasonable doubt. In conducting this review, we must examine the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether 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.” (Internal citations and quotations omitted.) *Leonard* at 68.

{¶ 14} R.C. 2907.04 states that “[n]o person who is eighteen years of age or older shall engage in sexual conduct with another, who is not the spouse of the offender, when the offender knows the other person is thirteen years of age or older but less than sixteen years of age, or the offender is reckless in that regard.”

{¶ 15} Walker claims that T.R. concocted the entire story about having sex with him to get out of trouble with her mother because T.R. was out later than curfew. He questions T.R.’s credibility and states that he is only guilty of “bad judgment.” Walker does not argue that he did not know T.R.’s age. He merely claims that there is no evidence he had sexual intercourse with T.R. We disagree.

{¶ 16} T.R. testified that she met Walker on MySpace and that her age was listed at the top of her MySpace page. T.R.’s mother testified that she spoke with

Walker weeks before the incident and informed him that her daughter was only 14 years old. T.R. admitted that she had sex with Walker and told her mother the same. The nurse testified that she found redness on T.R.'s genitalia that could be consistent with consensual sex. The detective testified that Walker admitted both that he knew T.R. was underage and that he had sex with her.

{¶ 17} Therefore, we find that there was sufficient evidence to support the conviction for unlawful sexual conduct with a minor and that the conviction was not against the manifest weight of the evidence.

{¶ 18} The first and second assignments of error are overruled.

{¶ 19} Accordingly, judgment is affirmed.

It is ordered that appellee recover of 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.

LARRY A. JONES, JUDGE

ANN DYKE, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR