

[Cite as *State v. Young*, 2015-Ohio-1998.]

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

Appellee

v.

BUDDY A. YOUNG

Appellant

C.A. No. 13CA010460

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 12CR085670

DECISION AND JOURNAL ENTRY

Dated: May 26, 2015

HENSAL, Presiding Judge.

{¶1} Buddy Young appeals his conviction for sexual battery in the Lorain County Court of Common Pleas. For the following reasons, this Court affirms.

I.

{¶2} D.H. testified that, on July 27, 2012, when he was 17, he attended a party at a townhouse that was across the street from where he lived. During the party he drank alcohol and smoked marijuana. When it got too loud and crowded downstairs, he suggested to some of his friends that they go up to a bedroom to continue talking. While upstairs, he smoked more marijuana and ended up falling asleep in a recliner. When he woke sometime later, he saw that Mr. Young had pulled down his shorts and underwear and was performing oral sex on him. D.H. testified that he immediately stood up, went downstairs, and returned to his home, where he told his parents and girlfriend what had happened. D.H. said that, at the time he woke up, there was

only one other person in the bedroom besides him and Mr. Young, and that person was asleep on the floor.

{¶3} The Grand Jury indicted Mr. Young for sexual battery. Mr. Young waived his right to a jury trial and proceeded to a bench trial. At trial, he admitted performing oral sex on D.H. but said it was consensual. The court found that his testimony was not credible, however, and found him guilty of the offense. It sentenced him to four years imprisonment. Mr. Young has appealed, assigning as error that his conviction is against the manifest weight of the evidence.

II.

ASSIGNMENT OF ERROR

THE GUILTY VERDICT IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE IN VIOLATION OF APPELLANT'S RIGHTS UNDER THE FIFTH, SIXTH, AND FOURTEENTH, AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND ARTICLE I, SECTION 10 OF THE OHIO STATE CONSTITUTION.

{¶4} Mr. Young argues that D.H.'s description of the incident was not credible. He argues that he could not have pulled D.H.'s shorts and underwear down without D.H. knowing what was happening. He also argues that D.H. changed his story about whether he knew Mr. Young was at the party. He also argues that the only reason D.H. became upset after the encounter was because he thought others may have seen them, felt ashamed about his sexual behavior, and needed to save face in front of his girlfriend, with whom he had a child. He further argues that the trial court judge improperly used the judge's personal feelings and experiences to evaluate his credibility.

{¶5} If a defendant argues that his convictions are against the manifest weight of the evidence,

[a]n appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine whether, in resolving conflicts in the evidence, the trier of fact 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. Otten, 33 Ohio App.3d 339, 340 (9th Dist.1986). Weight of the evidence pertains to the greater amount of credible evidence produced in a trial to support one side over the other side.

State v. Thompkins, 78 Ohio St.3d 380, 387 (1997). An appellate court should only exercise its power to reverse a judgment as against the manifest weight of the evidence in exceptional cases.

State v. Carson, 9th Dist. Summit No. 26900, 2013–Ohio–5785, ¶ 32, citing *Otten* at 340.

{¶6} Mr. Young testified that he had been friends with D.H. for three or four years before this incident. About a year earlier, he was drinking alcohol at D.H.’s house and began holding hands and “making out” with D.H. According to Mr. Young, at one point he and D.H. went upstairs together, and D.H. performed oral sex on him. Another time, D.H. and he were “horse-playing,” and he began to kiss and suck on D.H.’s neck. D.H. got angry, however, when the sucking left a mark. Mr. Young testified that, on July 27, 2012, he was at the townhouse the entire day. At some point during the party, he went upstairs to see what was happening and saw D.H. sitting in a recliner. After D.H. looked at him, Mr. Young noticed that D.H. had an erection, so he went over to the chair and began to touch D.H.’s erect penis, which then led to oral sex. Mr. Young testified that D.H. was awake the entire time and put his hands on Mr. Young’s head during the sex.

{¶7} The trial court found that Mr. Young’s description of his alleged sexual relationship with D.H. unbelievable. The court opined that, if D.H. and Mr. Young had had a previous consensual sexual encounter, it did not make sense for them to wait close to a year to repeat it. The court also found that D.H.’s rage after the incident was not consistent with

consensual conduct. D.H.'s testimony that he fell asleep in the recliner was also corroborated by D.H.'s former girlfriend, who testified that she went to the townhouse at one point during the evening to check on D.H. and saw him asleep on a chair upstairs. She also saw one of D.H.'s friends sleeping on the floor.

{¶8} “It is well settled that the trier of facts is in the best position to make findings of fact because it hears the testimony, observes each witness’s appearance and manner of testifying and reasonableness of the testimony as well as the accuracy of the witness’s memory, his frankness and interest or bias, if any.” *Quality Climate Controls, Inc. v. Homewood Corp.*, 10th Dist. Franklin No. 81AP-455, 1981 WL 3615, *2 (Nov. 24, 1981). Upon careful review of the record, we cannot say that the trial court lost its way when it chose to believe D.H.’s version of the facts over Mr. Young’s. Mr. Young’s assignment of error is overruled.

III.

{¶9} Mr. Young’s conviction for sexual battery is not against the manifest weight of the evidence. The judgment of the Lorain County Court of Common Pleas is affirmed.

Judgment affirmed.

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 Appellant.

JENNIFER HENSAL
FOR THE COURT

MOORE, J.
CONCURS.

CARR, J.
CONCURS IN JUDGMENT ONLY.

APPEARANCES:

ROBERT CABRERA, Attorney at Law, for Appellant.

DENNIS P. WILL, Prosecuting Attorney, and MARY R. SLANCZKA, Assistant Prosecuting Attorney, for Appellee.