

[Cite as *State v. Wolff*, 2009-Ohio-5369.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 92434**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**SAMUEL WOLFF**

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-508484

**BEFORE:** Sweeney, J., Rocco, P.J., and Jones, J.  
**RELEASED:** October 8, 2009

**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), is filed within ten (10) 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 courts announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

JAMES J. SWEENEY, J.:

{¶ 1} Defendant-appellant, Samuel Wolff, appeals his convictions for

two counts of unlawful sexual conduct with a minor in violation of R.C. 2907.04(A). For the reasons that follow, we affirm.

{¶ 2} Defendant was charged with a number of offenses alleged to have occurred on February 2, 2008. The matter proceeded to a bench trial where defendant was found guilty of the counts stated above.

{¶ 3} At trial, the State first presented the testimony of the victim, A.S.<sup>1</sup> whose testimony including the following: A.S. met defendant through online social computer networks. At that time, A.S. was 13 years old. The two communicated through text messages for about one year. Defendant attended a show at the theater on one occasion when A.S. was working.

{¶ 4} On February 2, 2008, A.S., who was then 14 years old, planned to meet with defendant and defendant's then boyfriend. However, A.S. told his parents he was going to a show with a female friend. A.S. admitted that he intentionally lied to his parents because he did not think his parents would have approved of his actual plans. Defendant picked A.S. up at his home in Parma and drove back to defendant's house in Cleveland. Defendant lived with his mother. The drive took about 15 minutes.

{¶ 5} According to A.S., the three began watching a movie in defendant's bedroom. At some point, A.S. joined the other two men on the

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<sup>1</sup>The victim is referred to herein by initials in accordance with this Court's established policy regarding non-disclosure of identities of juveniles.

bed. A.S. felt defendant was being flirtatious. Defendant's boyfriend became angry and left the room. A.S. and defendant began kissing. A.S. said they engaged in reciprocal oral sex and claimed that defendant performed anal sex on A.S. against A.S.'s will. A.S. stated that he was on top of defendant. During this encounter, A.S. said defendant's boyfriend re-entered the room, obtained his cell phone and left again. When defendant's boyfriend re-entered the room both A.S. and defendant were naked.

{¶ 6} Eventually, A.S. and defendant went downstairs where they saw defendant's mother and boyfriend watching television. Defendant drove A.S. home. According to A.S., he was gone from his home for approximately forty-five minutes.

{¶ 7} A.S. told his friend about the incident that night. A few days later, A.S. told another friend at school and they reported it to the authorities.

Defendant then underwent a rape examination that was conducted by a sexual assault nurse examiner ("SANE") at Fairview Hospital.

{¶ 8} Defendant's boyfriend, R.C., testified next. He recalled picking up A.S. and returning to defendant's house. They did not know how old he was. They began watching a movie but R.C. left because he felt weird "vibes" between defendant and A.S. They were flirting. R.C. left but briefly returned to the room. R.C. did not see much but thought he might have seen A.S. naked on top of defendant but was not sure. Defendant took A.S. home.

Later, R.C. discussed the incident with defendant. R.C. said he was disgusted by defendant's behavior. R.C. testified that neither of them knew A.S. was fourteen and they believed he was 18 years old "like his MySpace" page indicated.

{¶ 9} Detective Butler testified next, including his interview of defendant. Defendant reported that A.S. began groping him and R.C. Defendant told A.S. to stop because A.S. was a minor and because R.C. and defendant were dating. Defendant denied any sexual contact with A.S. According to defendant, A.S. became upset and defendant drove him home. Det. Butler also testified that the results of A.S.'s examination indicated nothing forensically viable for rape.

{¶ 10} The SANE nurse also testified. She indicated that A.S.'s explanation of how the anal penetration occurred did "not perfectly" make sense to her.

{¶ 11} Defendant was acquitted on a number of counts and convicted of unlawful sexual conduct with a minor, two counts. This appeal presents two assignments of error for our review:

{¶ 12} "Assignment of Error I

{¶ 13} "The trial court erred to the prejudice of the defendant-appellant in denying his motion for acquittal made pursuant to Crim.R. 29(a)."

{¶ 14} When reviewing sufficiency of the evidence, an appellate court

must determine “[w]hether, 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. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus.

{¶ 15} R.C. 2907.04(A) provides:

{¶ 16} “No 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.”

{¶ 17} Construing the evidence in a light most favorable to the State, the victim’s testimony alone would support the counts of unlawful sexual conduct with a minor. Additionally, the testimony of R.C. would also support convictions for these charges. Accordingly, this assignment of error is overruled.

{¶ 18} “Assignment of Error II

{¶ 19} “The trial court erred to the prejudice of the defendant-appellant when it returned a verdict of guilty against the manifest weight of the evidence.”

{¶ 20} To warrant reversal from a verdict under a manifest weight of the evidence claim, this 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 evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541, 1997-Ohio-52.

{¶ 21} Defendant maintains that A.S.'s account of the events was unbelievable and his testimony lacked credibility due to the fact he admitted to having lied to his parents about where he was going that night. However, many aspects of A.S.'s version of events were corroborated by the testimony of R.C. For instance, both testified that defendant was being flirtatious with A.S. Both indicated that R.C. left the room upset and returned briefly. R.C. also believed he saw the defendant and A.S. unclothed with A.S. on top of defendant. This is consistent with A.S.'s account. Further, defendant's statement to police was not corroborated by R.C.'s testimony. For example, defendant reported that A.S. was groping both R.C. and him. This was not consistent with what R.C. recalled. R.C. did not mention being groped by A.S. Having reviewed the record, we cannot say that the trial court clearly lost its way in resolving the conflicts in the testimony. Defendant's convictions for unlawful sexual conduct with a minor were not against the manifest weight of the evidence. This assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from 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.

JAMES J. SWEENEY, JUDGE

KENNETH A. ROCCO, P.J., and  
LARRY A. JONES, J., CONCUR