[Cite as *State v. Satterwhite*, 2009-Ohio-5815.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 91994

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DEMETRIOUS SATTERWHITE

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-499838

BEFORE: Celebrezze, J., Gallagher, P.J., and Sweeney, J.

RELEASED: November 5, 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 court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Defendant-appellant, Demetrious Satterwhite, appeals his conviction for unlawful sexual conduct with a minor. Finding no merit to this appeal, we affirm.

{¶ 2} During the summer of 2007, appellant, then age 27, was employed at the Michael J. Zone Recreation Center as a recreation instructor. As such, appellant was responsible for carrying out children's programs for the center. It was at the center that appellant met the victim, who was only 15 at the time of the incident, and became involved with her. According to appellant, the two were "boyfriend/girlfriend," and they engaged in sexual intercourse on one occasion. This relationship was disclosed to supervisors at the recreation center by a teenage employee, who was acquainted with both appellant and the victim. According to this witness, appellant told her he had engaged in sexual intercourse with the victim. Appellant also showed the witness pictures of naked women that he had on his cell phone and a video of a man and women engaged in sexual intercourse, whom appellant identified as himself and the victim.

{¶ 3} Appellant was subsequently arrested and charged in a six-count indictment with unlawful sexual conduct with a minor in violation of R.C. 2907.04(A); two counts of pandering sexually oriented matter involving a minor in violation of R.C. 2907.322(A)(1) and (A)(5); two counts of use of a minor in nude material or performance in violation of R.C. 2907.323(A)(1); and one count of

disseminating matter harmful to juveniles in violation of R.C. 2907.31(A)(1). The state dismissed the counts related to pandering sexually oriented matter involving a minor and use of a minor in nude material or performance.

{¶ 4} Appellant waived his right to a jury trial, and a bench trial commenced. At the close of the state's case-in-chief, appellant made a Crim.R. 29 motion for acquittal. At that point, the trial court dismissed the charge of disseminating matter harmful to juveniles. At the conclusion of appellant's evidence, the trial court found appellant guilty of unlawful sexual conduct with a minor, a third degree felony, sentenced him to a five-year term of community control sanctions, and classified him as a tier two sex offender. This appeal followed.

Law and Analysis

{¶ 5} In his sole assignment of error, appellant claims his conviction was against the manifest weight of the evidence. Article IV, Section 3(B)(3) of the Ohio Constitution authorizes appellate courts to assess the weight of the evidence independently of the fact finder. Thus, when a claim is assigned concerning the manifest weight of the evidence, an appellate court "has the authority and the duty to weigh the evidence and determine whether the findings of * * * the trier of fact were so against the weight of the evidence as to require a reversal and a remanding of the case for retrial." *State ex rel. Squire v. City of Cleveland* (1948), 150 Ohio St. 303, 345, 82 N.E.2d 709.

{¶ 6} The standard employed when reviewing a claim based upon the weight of the evidence is not the same standard to be used when considering a claim based upon the sufficiency of the evidence. The United States Supreme Court recognized this distinction in *Tibbs v. Florida* (1982), 457 U.S. 31, 102 S.Ct. 2211, 72 L.Ed.2d 652, where the court held that unlike a reversal based upon the insufficiency of the evidence, an appellate court's disagreement with the jurors' weighing of the evidence does not require special deference accorded verdicts of acquittal, i.e., invocation of the double jeopardy clause as a bar to relitigation. Id. at 43.

{¶ 7} Upon application of the standards enunciated in *Tibbs*, the court in *State v. Martin* (1983), 20 Ohio App.3d 172, 485 N.E.2d 717, has set forth the proper test to be utilized when addressing the issue of manifest weight of the evidence. The *Martin* court stated: "There being sufficient evidence to support the conviction as a matter of law, we next consider the claim that the judgment was against the manifest weight of the evidence. Here, the test is much broader. The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of the witnesses and determines whether 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."

{¶ 8} Utilizing the standard enunciated in *Martin*, supra, we now consider appellant's sole assignment of error. Appellant was convicted of unlawful sexual conduct with a minor in violation of R.C. 2907.04(A), which states: "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."

{¶ 9} The crux of appellant's argument is that he did not know the victim was only 15 years old when he engaged in a sexual relationship with her, nor was he reckless in that regard. In support of this argument, appellant claims the victim indicated that she was 17 and produced identification in order to gain admission to an R-rated movie the two attended together.[1]

{¶ 10} Ohio expressly defines recklessness: "A person acts recklessly when, with heedless indifference to the consequences, he perversely disregards a known risk that his conduct is likely to cause a certain result or is likely to be of a certain nature. A person is reckless with respect to circumstances when, with heedless indifference to the consequences, he

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[1]Appellant contends that he assumed the victim was at least 17 or she would not have possessed the requisite identification to gain admission to an R-rated movie. In fact, the victim was using a fake I.D.

perversely disregards a known risk that such circumstances are likely to exist." R.C. 2901.22(C).

{¶ 11} The staff notes to R.C. 2901.22(C) specifically state that "[b]asing the definition of knowledge on probability and the definition of recklessness on likelihood is intentional. Something is 'probable' when there is more reason for expectation or belief than not, whereas something is 'likely' when there is merely good reason for expectation or belief."

{¶ 12} In *State v. Young*, Cuyahoga App. No. 85224, 2005-Ohio-3584, at ¶19, this court found that the defendant's conviction for unlawful sexual conduct with a minor was not against the manifest weight of the evidence due to the defendant's ongoing socialization with high school students and her failure to ask the victim's age. In *Young*, the defendant also argued she was not reckless with regard to the victim's age claiming she assumed he was older based on his appearance and demeanor. Id. at ¶5.

{¶ 13} The case before us is not dissimilar from *Young*. Here, appellant was in a position of trust and confidence with high-school-age individuals due to his position as a recreation instructor at the Michael J. Zone Recreation Center.[2] Appellant was aware that the victim was in high school because he had spoken with another teenage employee at the recreation center who

[2]At some point during the summer of 2007, appellant was transferred to the Cleveland water department, but he maintained a coaching position with the recreation center.

indicated such. Further, although appellant claims the victim lied about her age, the victim testified that she never told appellant how old she was.

{¶ 14} Appellant puts emphasis on the fact that the victim produced identification in order to gain admission to an R-rated film. The trial judge took this evidence into account and found as follows: "But the point is that Mr. Satterwhite should not have pursued this relationship, should have had a heightened awareness of his responsibilities to terminate it, and should have had a super-heightened sensitivity to the age of this young lady. That she pulled out a piece of identification to go to a movie that was rated R in order to get in I don't think is sufficient under these circumstances." The judge went on to say that "[i]t's not reasonable to rely on that event to establish, well she couldn't have been 16 or younger."

{¶ 15} Appellant also argues that he believed the victim to be at least 17 years old based on her mature appearance. This is not dissimilar from *Young* where the court stated that a "[d]efendant's mere assumptions are not enough to overcome a finding of recklessness[.]" *Young*, supra, at ¶18, citing *State v. Hahn*, Washington App. No. 02CA22, 2003-Ohio-788.

{¶ 16} There was ample evidence produced at trial to show appellant was reckless with regard to the victim's age. Appellant knew the victim was still in high school because he was informed of this by a teenage coworker at the recreation center. Appellant was also aware that the victim was a

member of the YEOP,[3] which is only open to individuals ages 14 to 17. Further, evidence was presented at trial that appellant was warned by a fellow recreation instructor that he should avoid becoming involved with the young females at the recreation center.

{¶ 17} Appellant clearly disregarded the known risk that the victim was under the age of 16. Good reason existed for appellant to question the victim's age, yet, according to the victim, appellant never even bothered to ask her age. Appellant's actions in this regard were reckless. After reviewing the evidence and trial testimony, it is abundantly clear that the trial judge did not lose his way in convicting appellant of unlawful sexual conduct with a minor. There was no manifest miscarriage of justice, nor was appellant's conviction against the manifest weight of the evidence. As such, we affirm the decision of the trial court.

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.

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[3] Youth Employment Opportunities Program.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FRANK D. CELEBREZZE, JR., JUDGE

SEAN C. GALLAGHER, P.J., and
JAMES J. SWEENEY, J., CONCUR