[Cite as *State v. Gleisinger*, 2009-Ohio-5997.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO Plaintiff-Appellee -vs- RALPH D. GLEISINGER Defendant-Appellant	JUDGES: Hon. William B. Hoffman, P. J. Hon. John W. Wise, J. Hon. Patricia A. Delaney, J. Case No. 09 CA 57 O P I N I O N

CHARACTER OF PROCEEDING:	Criminal Appeal from the Court of Common Pleas, Case No. 07 CR 512H
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	November 12, 2009

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
JAMES J. MAYER, JR. PROSECUTING ATTORNEY KIRSTEN L. PSCHOLKA-GARTNER ASSISTANT PROSECUTOR 38 South Park Street Mansfield, Ohio 44902	RANDALL E. FRY 10 West Newlon Place Mansfield, Ohio 44902

Wise, J.

{¶1} Appellant Ralph D. Gleisinger appeals his conviction, in the Richland County Court of Common Pleas, on two rape counts and two gross sexual imposition counts. The relevant procedural facts leading to this appeal are as follows.

{¶2} On June 7, 2007, appellant was indicted by the Richland County Grand Jury on two counts of rape and two counts of gross sexual imposition. The victim on all counts was a ten-year-old female (hereinafter "K.F.") who lived in appellant's trailer park. K.F. has been diagnosed with ADHD.

{¶3} Appellant pled not guilty to all four charges, and the matter proceeded to a jury trial on September 30, 2008. On the eve of said trial, the prosecutor offered appellant a plea deal, but appellant rejected it, against the advice of defense counsel. After hearing the evidence, the jury found appellant guilty on all four counts as charged in the indictment.

{¶4} Via an amended entry filed on March 16, 2009, appellant was sentenced to life in prison on Count 1, life in prison on Count 2, and five years in prison each as to Counts 3 and 4, all to be served concurrently.

{¶5} Appellant timely appealed, and herein raises the following sole Assignment of Error:

{¶6} "I. THE JURY'S VERDICT IN FINDING THE DEFENDANT-APPELLANT GUILTY OF TWO COUNTS OF RAPE AND TWO COUNTS OF GROSS SEXUAL IMPOSITION, WAS CONTRARY TO THE MANIFEST WEIGHT OF EVIDENCE, THUS THE CONVICTION WAS IN VIOLATION ARTICLE I, [SECTION] 10 OF THE OHIO

CONSTITUTION AND THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION."

I.

{¶7} In his sole Assignment of Error, appellant maintains his four-count conviction was against the manifest weight of the evidence. We disagree.

{¶8} Our standard of review on a manifest weight challenge to a criminal conviction is stated as follows: "The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of 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." *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717. See also, *State v. Thompkins* (1997), 78 Ohio St.3d 380, 678 N.E.2d 541. The granting of a new trial "should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction." *Martin* at 175, 485 N.E.2d 717.

{¶9} Appellant was convicted of two counts of rape under R.C. 2907.02(A)(1)(b), which reads in pertinent part as follows:

{¶10} "No person shall engage in sexual conduct with another who is not the spouse of the offender *** when *** [t]he other person is less than thirteen years of age, whether or not the offender knows the age of the other person."

{¶11} Appellant was also convicted of two counts of gross sexual imposition under R.C. 2907.05(A)(4), which reads as follows:

{¶12} "No person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the

offender; or cause two or more other persons to have sexual contact when *** [t]he other person, or one of the other persons, is less than thirteen years of age, whether or not the offender knows the age of that person."

{¶13} The jury in the case sub judice heard the following prosecution witnesses: K.F.'s mother, K.F. herself, K.F.'s older sister, Richland County Children's Services investigator Mark Keck, Richland County Sheriff's Detective Jeff McBride, and S.A.N.E. Nurse Jodie Flynn. The State also called K.F.'s therapist, Diane Jackson. In the defense case, the jury heard testimony from Dean Davidson, the manager of the trailer park where K.F.'s family and appellant lived. Appellant also took the stand in his own defense.

{¶14} The first witness at trial, K.F.'s mother, Lisa, first portrayed the family's situation when the events at issue took place. Lisa and her husband have four adopted minor children, including K.F., but were forced to live in a three-bedroom trailer following a bankruptcy. Lisa's husband, at the time relevant to this case, was a stay-at-home father, in part necessitated by K.F.'s brother's cerebral palsy condition. Another sibling of K.F. has spent time in a juvenile detention center. Due to the cramped and stressful conditions, K.F. spent a great deal of time outside the trailer, including visiting with appellant to play with his video game system or to see his pet cat.

{¶15} Lisa recalled that on one occasion in 2005, when K.F. was eight years old, she saw blood in the child's underwear. Although she did not investigate the situation further at that time, she later began noticing that K.F. was wetting her bed, having nightmares, and masturbating excessively. Lisa also noticed that K.F. would rub toothpaste on the face of her doll. Lisa was also informed by her son that appellant was

K.F.'s "boyfriend" and that he had seen the two of them kissing. Lisa then forbade K.F. from visiting with appellant, although the child frequently did not heed her mother in this regard.

{¶16} K.F. testified that appellant began engaging in sexual acts with her when she was about seven years old. K.F. estimated that this occurred about two to five times during the period from July 2004 to January 2006. Some of the incidents took place in appellant's trailer; others took place in a nearby cornfield. Some of K.F.'s testimony utilized anatomical drawings. K.F. described incidents where appellant had her take off her clothes, following which he touched her breasts, buttocks and genital area. K.F. also recounted incidents of cunnilingus, fellatio, and slight vaginal penetration with appellant's fingers and a dildo, which the child described as a "fake wiener." Tr. at 211. She specifically recalled appellant making her put her mouth on his "private" and that she spit out "white stuff" from his "private." Tr. at 215. She also described appellant "humping" her in the cornfield. Tr. at 218. K.F. also indicated that appellant told her that he wanted to marry her.

{¶17} Mark Keck, an investigator for RCCS, described some of the events after K.F. reported the abuse to a school counselor in January 2006. Keck and Detective McBride interviewed the child, and then spoke with appellant at his residence. Appellant at first told the investigators that K.F. had visited inside the trailer, but he then denied that she had ever been past the front door. He likewise changed his story concerning whether he had recently used marihuana, which K.F. had described seeing in the trailer. Keck also stated that he was surprised by the child's knowledge of sexual terminology at her age.

{¶18} The jury also heard from Diane Jackson, a licensed clinical counselor who began seeing K.F. in May 2006. Jackson testified that K.F. exhibits psychological traits indicative of sexual abuse and that she continues to have manifestations of trauma in the form of physical symptoms.

{¶19} The S.A.N.E. nurse, Jodi Flynn, conducted a sexual assault examination of K.F. and testified as to what she observed and what the child described to her as part of the examination. Flynn noted genital trauma, finding the evidence of injury consistent with vaginal and anal penetration. She opined, to a reasonable degree of medical certainty, that there had been penetration of the child's vaginal cavity. Flynn further found it unlikely that the injuries were self-inflicted.

{¶20} In the defense case, the trailer park manager, Dean Davidson, recalled that he had seen a pink dildo in the trailer eventually occupied by K.F.'s family, prior to their move-in. He left the item where he found it, but he was not sure if it was still there when the family moved in. Tr. at 407. Appellant also took the stand. He admitted having K.F. and her siblings over to play video games on several occasions, and he recalled fixing up a used bike for K.F., but he denied any sexual activity with her. Tr. at 423.

{¶21} Upon our review of the record in this matter as summarized above, we find the jury did not clearly lose its way and create a manifest miscarriage of justice requiring that appellant's convictions be reversed and a new trial ordered.

{¶22} Appellant's sole Assignment of Error is therefore overruled.

{¶23} For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas, Richland County, Ohio, is hereby affirmed.

By: Wise, J.

Hoffman, P. J., and

Delaney, J., concur.

/S/ JOHN W. WISE_____

/S/ WILLIAM B. HOFFMAN_____

/S/ PATRICIA A. DELANEY_____

JUDGES

JWW/d 1015

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
RALPH D. GLEISINGER	:	
Defendant-Appellant	:	Case No. 09 CA 57

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Richland County, Ohio, is affirmed.

Costs assessed to appellant.

/S/ JOHN W. WISE

/S/ WILLIAM B. HOFFMAN

/S/ PATRICIA A. DELANEY

JUDGES