[Cite as *State v. Miller*, 2010-Ohio-3580.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

STATE OF OHIO	C. A. No. 25200
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
JENNIFER R. MILLER	COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO
Appellant	CASE No. CR 08 08 2577

DECISION AND JOURNAL ENTRY

Dated: August 4, 2010

WHITMORE, Judge.

{¶1} Defendant-Appellant, Jennifer Miller, appeals from the judgment of the Summit County Court of Common Pleas. This Court affirms.

I

{¶2} On July 28, 2008, Norton Police Department officers arrested Miller based on a report that she had sexually abused a fifteen-year-old male. The victim, B.L., claimed that Miller forced him to have intercourse with her. Miller, who was forty-three years old at the time of the incident, admitted that she had engaged in vaginal intercourse with B.L., but claimed that he had raped her. Both B.L. and Miller filed police reports against one another.

{¶3} On August 8, 2008, a grand jury indicted Miller on one count of unlawful sexual conduct with a minor, in violation of R.C. 2907.04. A jury heard the matter on February 25, 2009 and found Miller guilty. The court sentenced Miller to two years in prison, suspended on the condition that she successfully complete community control, and classified her as a Tier II

sexually-oriented offender. Miller appealed from the court's sentencing entry, but this Court dismissed her appeal due to a defective post-release control notification. *State v. Miller*, 9th Dist. No. 24692, 2009-Ohio-6281. Subsequently, the trial court resentenced Miller.

{¶4} Miller now appeals from the court's judgment and raises one assignment of error for our review.

II

<u>Assignment of Error</u>

> "THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT DENIED DEFENDANT-APPELLANT MILLER'S MOTION FIR (sic) JUDGMENT OF ACQUITTAL UNDER CRIMINAL RULE 29."

{¶5} In her sole assignment of error, Miller argues that her conviction is based on insufficient evidence. We disagree.

{¶6} In order to determine whether the evidence before the trial court was sufficient to sustain a conviction, this Court must review the evidence in a light most favorable to the prosecution. *State v. Jenks* (1991), 61 Ohio St.3d 259, 274. Furthermore:

> "An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The 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." Id. at paragraph two of the syllabus; see, also, *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386.

"In essence, sufficiency is a test of adequacy." *Thompkins*, 78 Ohio St.3d at 386.

> "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." R.C. 2907.04(A).

"'Sexual conduct' means vaginal intercourse between a male and female[.]" R.C. 2907.01(A). "A person acts knowingly, regardless of his purpose, when he is aware that his conduct will

probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist." R.C. 2901.22(B).

{¶7} Initially, we note that the body of Miller's brief contains both a manifest weight and a sufficiency challenge. Apart from the fact that Miller fails to support her manifest weight argument with a single citation to the record or to supporting case law, App.R. 16(A)(7), her captioned assignment of error only sets forth a sufficiency argument. An appellant's captioned assignment of error "provides this Court with a roadmap on appeal and directs this Court's analysis." *State v. Marzolf*, 9th Dist. No. 24459, 2009-Ohio-3001, at ¶16. This Court will not address underdeveloped arguments that an appellant fails to separately assign as error. *Ulrich v. Mercedes-Benz USA, L.L.C.*, 9th Dist. No. 24740, 2010-Ohio-348, at ¶24. Thus, we confine our analysis to Miller's sufficiency argument. Id.

{¶8} Miller argues that her conviction is based on insufficient evidence because she did not willingly engage in sexual conduct with the victim. Rather, she contends that the victim, B.L., raped her. Issues of credibility sound in manifest weight, not sufficiency. *State v. Jones*, 9th Dist. No. 24776, 2010-Ohio-351, at ¶11. B.L. testified that he was born on February 3, 1993 and that Miller knew him since birth. He and members of his family were living with Miller in the summer of 2008. B.L. testified that he had vaginal intercourse with Miller at her insistence because she told him that she would not allow his sister back into her house if he did not comply. Miller admitted that she had vaginal intercourse with B.L., but claimed it was rape. One of the arresting officers, Officer John Dalessandro, testified that Miller was forty-three years old when the incident with B.L. occurred. Based on the foregoing, a rational trier of fact could have concluded that Miller engaged in sexual conduct with B.L., whom she knew to be fifteen. The

record contains sufficient evidence that Miller had unlawful sexual conduct with a minor. Consequently, Miller's sole assignment of error is overruled.

III

{¶9} Miller's sole assignment of error is overruled. The judgment of the Summit 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 Summit, 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(E). 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.

BETH WHITMORE
FOR THE COURT

MOORE, J.
CONCURS

DICKINSON, P. J.
CONCURS, SAYING:

{¶10} I concur with the majority's judgment and opinion. I write separately for the sole purpose of noting that Ms. Miller's conviction is not against the manifest weight of the evidence.

APPEARANCES:

RHONDA L. KOTNIK, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and HEAVEN R. DIMARTINO, Assistant Prosecuting Attorney, for Appellee.