[Cite as *State v. Reid*, 2010-Ohio-5339.]

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

STATE OF OHIO Appellee v. ANDRE LAMAR REID Appellant	C. A. No. 25139 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. CR 08 03 0953

DECISION AND JOURNAL ENTRY

Dated: November 3, 2010

MOORE, Judge.

{¶1} Appellant, Andre Lamar Reid, appeals from the judgment of the Summit County Court of Common Pleas. This Court affirms.

I.

{¶2} On January 1, 2008, the victim, I.B., and her mother, Wendy Barnes ("Mother"), resided in Akron, Ohio. At that time, Mother had been in a long-term relationship with Reid for approximately eight years. Reid had been residing with Mother and I.B. for three years. In March of 2008, I.B.'s school received a report that Reid had been engaging in sexual conduct with her. I.B. was younger than 13 at the time; she was born on March 6, 1996. The report sparked a police investigation, which culminated in charges against Reid.

{¶3} On April 2, 2008, the Summit County Grand Jury indicted Reid on one count of rape in violation of R.C. 2907.02(A)(1)(b), a felony of the first degree, and one count of grand theft in violation of R.C. 2913.02(A)(1), a felony of the fourth degree. On May 21, 2008, the

Summit County Grand Jury issued a supplemental indictment consisting of four additional counts of rape in violation of R.C. 2907.02(A)(1)(b), all felonies of the first degree.

{¶4} On March 11, 2009, the court held a bench trial. On March 13, 2009, the trial judge found Reid guilty of all five counts of rape but not guilty of the single charge of grand theft.

{¶5} On March 13, 2009, the trial court sentenced Reid to indefinite terms of 25 years to life imprisonment on each count of rape. The court ordered that the sentences on all counts were to run concurrently. The trial court also adjudicated Reid a Tier-III sex offender. On October 30, 2009, the trial court resentenced Reid to the same terms of incarceration and sex offender status, but added a term of post-release control to the journal entry.

{¶6} Reid timely filed a notice of appeal. He raises one assignment of error for our review.

II.

ASSIGNMENT OF ERROR

"APPELLANT REID'S CONVICTIONS WERE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶7} In his single assignment of error, Reid contends that his convictions were against the manifest weight of the evidence. More specifically, Reid contends that he is entitled to a new trial because the "credibility of the sole witness to the alleged crimes is seriously in doubt, in light of her alternate accusations and then denials, and the lack of any corroborating physical evidence to support these accusations." We do not agree.

{¶8} "[A] manifest weight challenge questions whether the state has met its burden of persuasion." *State v. Gulley* (Mar. 15, 2000), 9th Dist. No. CA19600, citing *State v. Thompkins* (1997), 78 Ohio St.3d 380, 390 (Cook, J., concurring). A determination of whether a conviction

is against the manifest weight of the evidence does not permit this court to view the evidence in the light most favorable to the State to determine whether the State has met its burden of persuasion. *State v. Love*, 9th Dist. No. 21654, 2004-Ohio-1422, at ¶11. Rather,

> "an 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* (1986), 33 Ohio App.3d 339, 340.

{¶9} This discretionary power should be invoked only in extraordinary circumstances when the evidence presented weighs heavily in favor of the defendant. Id.

{¶10} In support of his contention, Reid directs this Court to testimony that I.B. initially told a friend about Reid's actions "but later denied that anything happened." I.B. also initially told Mother and school counselors that nothing inappropriate happened. She later reversed course and told Mother that Reid had sexual contact with her. Reid also notes that a physical examination revealed no physical trauma to the vaginal area, and no tear of her hymen. He acknowledges that I.B. told a social worker and later a counselor that she saw on a long-term basis that Reid had sexually abused her. Reid points to the testimony of the counselor that she could never be one-hundred percent sure of the truth of I.B.'s allegations.

{¶11} R.C. 2907.02, which prohibits rape, provides, in pertinent part, that:

> "No person shall engage in sexual conduct with another who is not the spouse of the offender or who is the spouse of the offender but is living separate and apart from the offender, when any of the following applies:
>
> "***
>
> "The other person is less than thirteen years of age, whether or not the offender knows the age of the other person." R.C. 2907.01(A)(1)(b).

"Sexual conduct" is defined as

> "vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal opening of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse." R.C. 2907.01(A).

{¶12} Mother worked most nights from 3:00 p.m. until 11:00 p.m. During that time, Reid would frequently babysit I.B. after she returned home from school. One night, Reid discovered that she had been on "Soldier Boy," a social-network type website that she was forbidden from visiting because it allowed her to meet boys. Reid confronted her and said, "[s]ince you want to know so much about boys, go in your room and pull down your pants." I.B. resisted his command but eventually relented. Reid then digitally penetrated her vagina with his index finger. He told her that she could not tell anyone or else both of them would get in trouble.

{¶13} In early February, Reid again demanded that I.B. pull down her pants and threatened to tell Mother about the Soldier Boy website. I.B. complied and he told her to lie down. Reid then performed oral sex on I.B. for five to ten minutes, until she yelled and told him to stop.

{¶14} Approximately two or three weeks later, still in February, Reid falsely accused I.B. of engaging in phone sex. She was actually talking with a female friend about school. He again demanded that she pull down her pants and he threatened that he would tell Mother that she had engaged in phone sex. He again performed oral sex on her for five to ten minutes. She eventually demanded that he stop.

{¶15} Around March 2, 2008, Reid called I.B. down to the living room. He showed her an outfit that she had been looking at in a store. He told her he purchased it for her birthday. He then threatened to return the outfit if she did not allow him to perform oral sex again. I.B. acquiesced. She testified that she was scared of Reid.

{¶16} On March 6, 2008, Reid again called her downstairs and told her to pull down her pants. She said, "[t]his is my birthday. Don't do this to me." He asked her if she liked it, and she said she did not. Reid had been drinking and he began to cry, explaining that he forced I.B. into sex acts because Mother did not provide him with the physical attention he needed. He also threatened to cancel I.B.'s upcoming birthday party. She lay down and he performed oral sex on her. Reid then made her "pinky promise" not to tell anybody.

{¶17} I.B. had, however, informed two of her friends from school about what Reid had been doing to her. Eventually word got out at school. The school called Mother, who brought Reid to the school, and informed the Summit County Children Services Board ("CSB"). The school counselor spoke with I.B., and she initially denied that anything occurred. When Mother and Reid arrived, I.B. again denied that anything had occurred. She claimed that she had lied. I.B. testified that she was still scared. A woman from CSB questioned I.B. at home that night. I.B. testified that she did not tell the woman anything because she feared that CSB would take her from Mother. She testified that she did not tell Mother at that time because she did not know how to do so.

{¶18} I.B. finally told Mother the truth the next day when Mother picked her up from school. I.B. testified that Mother asked if Reid had touched her. I.B. testified that it had become too much to handle and she could not take it anymore. She started to cry. Mother cried, as well. When they returned home, Mother confronted Reid. Mother testified that Reid grabbed the keys to her car and said, "I'm going to jump off the bridge, I'm going to kill myself." He then left and did not return to the house. During the confrontation, Mother suffered a panic attack and collapsed. I.B. dialed 911 and emergency medical services and police officers were dispatched to Mother's home. At this time, I.B.'s allegations were relayed to the police.

{¶19} During the investigation, Donna Abbott, a nurse practitioner in the CARE Center at Akron Children's Hospital, physically examined I.B. As Reid noted, she did not observe any physical evidence of trauma in I.B.'s genital area. She also testified, however, that a lack of trauma was unsurprising based on the types of reported contact. Abbott testified that a finger was no more likely to cause damage than a tampon and that she would not expect to see any type of trauma resulting from oral sex.

{¶20} The trial judge clearly credited I.B.'s testimony regarding the sexual abuse she experienced at Reid's hands. Although I.B. did alternately admit and deny that Reid abused her, she explained the discrepancy. I.B. testified consistently that she was scared of Reid and confused by what had been happening. She also clearly stated that Reid manipulated her in different ways, claiming that if she told anyone then both of them would be in trouble. He also threatened to expose her time on the Soldier Boy website to Mother, cancel her birthday party and return to the store a new outfit that she had wanted. It was also reasonable for I.B. to be apprehensive about admitting the events to the woman from CSB, the school counselor and Mother while Reid was nearby. The trial court, as factfinder, believed I.B.'s testimony and credited her explanations for the previously conflicting stories, which it had the power to do. See *State v. McClure*, 9th Dist. No. 25070, 2010-Ohio-3002, at ¶19. Accordingly, after reviewing the record, weighing the inferences and considering the credibility of the witnesses, we cannot say that the trial court lost its way and created a manifest miscarriage of justice. *Otten*, 33 Ohio App.3d at 340. Reid's assignment of error is overruled.

III.

{¶21} Reid's 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.

CARLA MOORE
FOR THE COURT

WHITMORE, J.
BELFANCE, P. J.
CONCUR

APPEARANCES:

NICHOLAS SWYRYDENKO, Attorney at Law, for Appellant.

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