[Cite as *State v. Buk-Shul*, 2010-Ohio-3902.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO :

Plaintiff-Appellee : C.A. CASE NO. 23603

v. : T.C. NO. 09CR424

JIEL Z. BUK-SHUL : (Criminal appeal from Common Pleas Court)

Defendant-Appellant :

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OPINION

Rendered on the 20th day of August, 2010.

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FROELICH, J.

{¶ 1} Buk-Shul was found guilty by a jury in the Montgomery County Court of Common Pleas of one count of unlawful sexual conduct with a minor, and he was sentenced to community control sanctions. He appeals from his conviction. For the following reasons, Buk-Shul's conviction will be affirmed.

I

{¶ 2} On March 19, 2009, Jiel Zubier Buk-Shul, a.k.a. Jason Buk-Shul, age 21, was indicted on one count of unlawful sexual conduct with a minor based on allegations made by a fourteen-year-old female acquaintance. He pled not guilty.

{¶ 3} Buk-Shul had previously been interviewed by and made a statement to the police, and he filed a motion to suppress the statement he had made. The trial court conducted a hearing on the motion to suppress at which several witnesses testified. The trial court overruled the motion.

{¶ 4} On July 21 and 22, 2009, Buk-Shul was tried by a jury and was found guilty. He was sentenced to community control sanctions for a period not to exceed five years. Buk-Shul appeals from his conviction, raising four assignments of error.

II

{¶ 5} Buk-Shul's first assignment of error states:

{¶ 6} "THE TRIAL COURT ERRED WHEN IT OVERRULED APPELLANT'S MOTION TO SUPPRESS STATEMENTS TO POLICE."

{¶ 7} Buk-Shul argues that his statements to the police should have been suppressed because he was questioned in custody without being told of his rights pursuant to *Miranda v. Arizona* (1966), 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694, and because his statements were not voluntary.

{¶ 8} In *Miranda,* the United States Supreme Court held that the prosecution may not use statements stemming from a defendant's custodial interrogation unless it demonstrates the use of procedural safeguards to secure the defendant's privilege

against self-incrimination. Id. at 444. Police are not required to give *Miranda* warnings to every person that they question, even if the person being questioned is a suspect. *State v. Biros* (1997), 78 Ohio St.3d 426, 440. Instead, *Miranda* warnings are only required for custodial interrogations. Id. "Custodial interrogation" means questioning initiated by the police after the person has been taken into custody or otherwise deprived of his freedom in any significant way. *State v. Wilson,* Montgomery App. No. 22665, 2009-Ohio-1279, ¶18, citing *State v. Steers* (May 14, 1991), Greene App. No. 89-CA-38. In order for a defendant's statements made during a custodial interrogation to be admissible, the prosecution must establish that the accused knowingly, voluntarily, and intelligently waived his Fifth Amendment right against self-incrimination. *State v. Edwards* (1976), 49 Ohio St.2d 31, 38, overruled on other grounds, (1978), 438 U.S. 911, 98 S.Ct. 3147, 57 L.Ed.2d 1155; *Miranda,* supra.

{¶ 9} Even when an individual is not in custody and *Miranda* warnings are not required, a defendant's statement may be involuntary and subject to exclusion. *State v. Porter,* 178 Ohio App.3d 304, 2008-Ohio-4627, ¶14, citing *Dickerson v. United States* (2000), 530 U.S. 428, 120 S.Ct. 2326, 147 L.Ed.2d 405. "In deciding whether a defendant's confession is involuntarily induced, the court should consider the totality of the circumstances, including the age, mentality, and prior criminal experience of the accused; the length, intensity, and frequency of interrogation; the existence of physical deprivation or mistreatment; and the existence of threat or inducement." *Edwards,* 49 Ohio St.3d at paragraph two of the syllabus. See, also, *State v. Brewer* (1990), 48 Ohio St.3d 50, 58; *State v. Marks,* Montgomery App. No.

19629, 2003-Ohio-4205. A defendant's statement to police is voluntary absent evidence that his will was overborne and his capacity for self-determination was critically impaired due to coercive police conduct. *Colorado v. Spring* (1987), 479 U.S. 564, 574, 107 S.Ct. 851, 93 L.Ed.2d 954; *State v. Otte,* 74 Ohio St.3d 555, 562, 1996-Ohio-108.

{¶ 10} "[I]n reviewing decisions on motions to suppress, an appellate court reviews the record to see if substantial evidence exists to support the trial court's ruling, bearing in mind that the trial court has the function of assessing credibility and weighing evidence. See, e.g., *State v. Brown* (1993), 91 Ohio App.3d 427, 429-430, ***. However, in the particular area of custodial interrogations, the United States Supreme Court has said that whether a suspect is in custody is a mixed question of fact and law entitled to independent review. *State v. Smith* (June 3, 1997), Franklin App. No. 96AP10-1281, ***, citing *Thompson v. Keohane* (1995), 516 U.S. 99, 116 S.Ct. 457, 460, 133 L.Ed.2d 383. ***" *State v. Estepp* (Nov. 26, 1997), Montgomery App. No. 16279.

{¶ 11} In Buk-Shul's case, conflicting evidence was presented about the circumstances surrounding his interrogation by the police. Whether the motion to suppress was properly denied turns largely on the resolution of the factual disputes. In ruling on a motion to suppress, the trial court "assumes the role of the trier of fact, and, as such, is in the best position to resolve questions of fact and evaluate the credibility of the witnesses." *State v. Retherford* (1994), 93 Ohio App.3d 586, 592 (citation omitted). Accordingly, when we review suppression decisions, we must accept the trial court's findings of fact if they are supported by competent,

credible evidence. Id. "Accepting those facts as true, we must independently determine as a matter of law, without deference to the trial court's conclusion, whether they meet the applicable legal standard." Id.

{¶ 12} At the suppression hearing, Detectives Paul Markowski and Scott Drerup testified about their interviews with Buk-Shul. Drerup was the lead investigator on the case and sought to question Buk-Shul about the fourteen-year-old victim's allegations that Buk-Shul had had sexual intercourse with her several times. Drerup talked with Buk-Shul on the phone to set up a time when they could talk.

{¶ 13} According to Drerup, Buk-Shul suggested that they meet at Buk-Shul's workplace, an Arby's/Lee's restaurant on Far Hills Avenue, around 3:30 p.m. on January 9, 2009, when Buk-Shul was finishing a shift. Buk-Shul was smoking outside the restaurant when Drerup and Markowski arrived. The car was an unmarked vehicle, and the detectives were not in uniform.

{¶ 14} The detectives asked Buk-Shul if he would like to talk outside or in the car, and Buk-Shul chose to sit in the car; it was a cold and windy day, and the car was running to provide heat. There was no cage in the car, and the rear doors were not equipped with the locking mechanisms normally found on police cruisers; on this car, the rear doors locked only when the car was in gear. Buk-Shul was not handcuffed, and Drerup told Buk-Shul "that he was not going to be arrested as a result of anything that happened [that day]." The detectives told Buk-Shul that they wanted his side of the story and that he was free to get out of the car at anytime. Detective Markowski sat in the driver's seat while they talked, and Detective Drerup

sat the back seat with Buk-Shul. According to the detectives, Buk-Shul was willing to talk, was "very civil," and provided appropriate responses to their questions; they had no trouble understanding him, although he spoke with a "slight accent." The detectives interviewed Buk-Shul for about half an hour, during which he seemed surprised by the allegations and urged the detectives to talk with the victim again. He voluntarily provided a DNA sample using an oral swab and, at the end of the interview, Buk-Shul opened his own door to get out of the car.

{¶ 15} At first, Buk-Shul "flat out denied" the victim's allegations. Later in the conversation, he admitted that he had had sexual intercourse with the victim one time, but he characterized it as consensual.

{¶ 16} Near the end of the interview, the detectives asked Buk-Shul to make a written statement and provided him with a form for doing so. Buk-Shul did not want to provide a written statement, saying he did not read or write well. Drerup offered to "dictate" what Buk-Shul said, and Buk-Shul stated, "I never raped [the victim]." Apparently wanting a more detailed statement, Drerup then offered to write a series of questions to which Buk-Shul could provide a response. Buk-Shul agreed, "that would help." Drerup proceeded to write down a series of questions, read them "verbatim" to Buk-Shul, and had Buk-Shul write down an answer.

{¶ 17} The detectives testified that Buk-Shul seemed relaxed, and he never asked for a lawyer or to end the interview. They also testified that they did not threaten Buk-Shul or use any other coercive tactics, and that they had no physical contact with Buk-Shul other than a handshake. Neither detective showed Buk-Shul his gun. The detectives testified that Markowski had worn a long coat, and there

would have been no way for Buk-Shul to see his gun; Detective Drerup wore a shorter coat, so it was possible that Buk-Shul could have seen his gun, but Drerup had not intentionally shown it to him. The detectives did not advise Buk-Shul of his *Miranda* rights.

{¶ 18} The detectives spoke with Buk-Shul again on February 19, 2009. This interview took place in the dining room of the restaurant where Buk-Shul worked and lasted about five minutes. According to the detectives, they "updated" Buk-Shul on an additional conversation that they had had with the victim, but they did not gather additional evidence from Buk-Shul. They did not advise him of his rights or arrest him that day.

{¶ 19} Buk-Shul recounted the January 9 interview differently. At the suppression hearing, Buk-Shul testified that his native language was Danka. He stated that he came to the United States seven years earlier, at the age of 14 or 15, had learned English by going to school, and had graduated from Fairmont High School. However, he claimed that he had not understood what the detectives were talking about during their interview. He also testified that he had not thought that he could say no to talking to the detectives and had been scared when the detectives called him "cause where I'm from *** you got to like talk to them, and they like overpower." Buk-Shul stated that he was ordered into the back seat of the detectives' car, that he thought he was going to jail, and that he did not feel free to leave. He didn't understand the questions the detectives were asking him, but he was told that if he answered the questions, the detectives would not come back. He also acknowledged that he had not been handcuffed, had not been told that he

was under arrest, and could open the door of the car from the inside. He denied telling the detectives that he wanted to sit in the car.

{¶ 20} Buk-Shul was indicted one month after the second conversation with the detectives and was arrested a few days later.

{¶ 21} In its ruling on the motion to suppress, the trial court concluded that the detectives' interrogation of Buk-Shul was not a custodial interrogation for which *Miranda* warning were required. The court noted the following factors in reaching this conclusion: Buk-Shul was not arrested or handcuffed, the detectives were in plain clothes and were in an unmarked car, the interviews were of a relatively short duration and occurred in public places, Buk-Shul was released at the end of each interview, he was physically able to open the car door without assistance at the end of the first interview, and no coercion or physical deprivation was employed by the detectives. Based on these factors, the trial court concluded that it was not reasonable to conclude that there had been "such a restriction of Buk-Shul's freedom that he was rendered in custody" or could have believed that he was under arrest. The trial court acknowledged that Buk-Shul's experiences in Sudan may have given him "different assumptions" about his dealings with the police, but it noted that objective, not subjective, criteria must be used to determine whether a person is in custody, and that objective factors did not support the conclusion that Buk-Shul had been in custody. Accordingly, the trial court concluded that *Miranda* warnings had not been required.

{¶ 22} On the question of voluntariness, the trial court observed that it was a "pretty close call" but concluded that the totality of the circumstances supported the

conclusion that Buk-Shul's statements had been voluntary. In the trial court's view, the facts that Buk-Shul was young (age 21), an immigrant, and apparently had no criminal record gave some support to his claim that he had been confused during the interview. However, those factors were outweighed by the short length of the interviews, the "laid back atmosphere," the absence of physical mistreatment or deprivation, and the fact that, even by Buk-Shul's account, the interviews had not been particularly intense. The court concluded that Buk-Shul's will had not been overborn and that his statements were voluntary.

{¶ 23} The trial court carefully and thoroughly considered the evidence that was presented at the suppression hearing, and substantial evidence existed to support its conclusions. We have independently reviewed this evidence and agree with the trial court's conclusions that Buk-Shul was not in custody and his statements were not involuntary.

{¶ 24} The first assignment of error is overruled.

III

{¶ 25} Buk-Shul's second assignments of error states:

{¶ 26} "THE TRIAL COURT ERRED TO THE PREJUDICE OF THE DEFENDANT WHEN IT FAILED TO REMOVE JUROR NO. 6 FROM THE PANEL FOR CAUSE FORCING THE APPELLANT TO USE HIS PEREMPTORY CHALLENGE TO REMOVE THE JUROR."

{¶ 27} Buk-Shul contends that prospective juror number six should have been removed for cause and that the trial court's failure to remove him for cause was prejudicial because he "was forced to exhaust all of his peremptory challenges."

{¶ 28} R.C. 2945.25 governs challenges for cause and allows for challenges of those who would favor one side over the other because of enmity or bias, and those who are otherwise unsuitable for any reason to be a juror. *State v. Reid*, Montgomery App. No. 19729, 2003-Ohio-6079, ¶51. A decision on a challenge to a prospective juror regarding his or her fairness, impartiality, or suitability constitutes reversible error only when the trial court is shown to have abused its discretion; the court's ruling must be manifestly arbitrary and unsupported by substantial testimony. *State v. Wilson* (1972), 29 Ohio St.2d 203, 211. During voir dire, prospective juror number six stated that he knew the judge in the following exchange:

{¶ 29} Juror No. 6: "I know Judge O'Connell."

{¶ 30} Defense Counsel: "Oh, you do. Okay. How do you know him?"

{¶ 31} Juror No. 6:"Through our children and through church."

{¶ 32} Defense Counsel: "Okay. All right. And would that change anything in this case because you know him?"

{¶ 33} Juror No. 6: "No."

{¶ 34} Defense Counsel: "Have you ever talked to him about cases?"

{¶ 35} Juror No. 6: "No."

{¶ 36} Defense Counsel: "Okay. Do you feel comfortable sitting in this case?"

{¶ 37} Juror No. 6: "Yes."

{¶ 38} Defense Counsel: "With this judge?"

{¶ 39} Juror No. 6 : "Yes."

{¶ 40} When discussing the jury selection in chambers after voir dire, Buk-Shul challenged

{¶ 41} juror number six for cause because he "seems to be good friends with the judge." Judge O'Connell responded:

{¶ 42} "Let me just indicate for the record *** – [Juror No. 6] and I are friends in the sense that we have children the same age. He has four children, and I have two. I think two of his children are older than my oldest, and I think they're all four older than my youngest. I think he has two daughters and – he has two boys who are older and two daughters who are younger. They went to Immaculate Conception. I don't think any of his children were in my son's exact grade. They were like one grade older or one grade lower. You know, they're going through – in essence, they went through Immaculate Conception in the '80s, maybe in the early '90s when my sons went through. I think his boys then went to C.J., and mine went to Carol (phonetic). His daughters might have gone to Carol. I think they did. But I don't think any of them are in the exact grade as my sons. We did things like coached athletics together. He was the athletic director at Immaculate. I was a coach for some sports. And we did things like were at fish fries together. We never talked about – he's a fire fighter, long time fire fighter for the City of Dayton. We haven't really talked law."

{¶ 43} Defense counsel argued that, because juror number six had represented that he was friends with the judge – and the other prospective jurors had heard this claim – he had an "unfair advantage" that "puts him in a position that he's not equal anymore with the other jurors. *** It's an impropriety of the

appearance, [sic] basically." The trial judge responded by questioning whether defense counsel had sufficiently followed-up on the potential juror's comment by asking whether he would be unable to deliberate in this case or would do something to please the judge because of their relationship. The judge also noted that the acquaintance or friendship did not constitute good cause for removal under Crim.R. 24 or R.C. 2313.42, and he overruled the motion. Buk-Shul subsequently used a peremptory challenge to excuse the prospective juror in question, and he exhausted all of his peremptory challenges.

{¶ 44} The trial court did not abuse its discretion in refusing to remove prospective juror number six for cause. Juror number six's statements concerning a relationship with the judge through their parish and their children's school, standing alone, did not suggest that the prospective juror could not be fair and impartial. Moreover, because the acquaintance was with the judge, rather than with a witness or one of the parties in the case, and because we presume that the judge acts impartially, there was no basis to conclude that the acquaintance would sway the juror toward one party or the other. The trial court did not abuse its discretion in finding no justfication to excuse prospective juror number six for cause.

{¶ 45} Ohio law recognizes, and Buk-Shul argues, that "where the defense exhausts its peremptory challenges before the full jury is seated, the erroneous denial of a challenge for cause in a criminal case *may be* prejudicial." (Emphasis added.) See *State v. Group*, 98 Ohio St.3d 248, 2002-Ohio- 7247, ¶31, citing *State v. Cornwell* (1999), 86 Ohio St.3d 560, 564. However, having concluded that the denial of the challenge for cause was not erroneous, Buk-Shul has demonstrated no

prejudice.

{¶ 46} The second assignment of error is overruled.

IV

{¶ 47} We will address Buk-Shul's third and fourth assignments of error together. They state:

{¶ 48} "THERE WAS INSUFFICIENT EVIDENCE TO CONVICT APPELLANT OF THE CHARGE AND THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S CRIM.R. 29 MOTIONS.

{¶ 49} "THE CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶ 50} Buk-Shul claims that his conviction was supported by insufficient evidence, that his Crim.R. 29 motion should have been granted, and that his conviction was against the manifest weight of the evidence.

{¶ 51} "A sufficiency of the evidence argument disputes whether the State has presented adequate evidence on each element of the offense to allow the case to go to the jury or sustain the verdict as a matter of law." *State v. Wilson,* Montgomery App. No. 22581, 2009-Ohio-525, ¶10, citing *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. When reviewing whether the State has presented sufficient evidence to support a conviction, the relevant inquiry is whether any rational finder of fact, after viewing the evidence in a light most favorable to the State, could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Dennis,* 79 Ohio St.3d 421, 430, 1997-Ohio-372, citing *Jackson v. Virginia* (1979), 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560. A

guilty verdict will not be disturbed on appeal unless "reasonable minds could not reach the conclusion reached by the trier-of-fact." Id. We review the denial of a Crim.R. 29(A) motion under the same standard as is used to review a sufficiency of the evidence claim. *State v. Thaler*, Montgomery App. No. 22578, 2008-Ohio-5525, at ¶14, citation omitted.

{¶ 52} In contrast, "a weight of the evidence argument challenges the believability of the evidence and asks which of the competing inferences suggested by the evidence is more believable or persuasive." *Wilson* at ¶12. When evaluating whether a conviction is contrary to the manifest weight of the evidence, the appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider witness credibility, 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." *Thompkins,* 78 Ohio St.3d at 387, citing *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

{¶ 53} Because the trier of fact sees and hears the witnesses at trial, we must defer to the factfinder's decisions whether, and to what extent, to credit the testimony of particular witnesses. *State v. Lawson* (Aug. 22, 1997), Montgomery App. No. 16288. However, we may determine which of several competing inferences suggested by the evidence should be preferred. Id.

{¶ 54} In support of his arguments about the sufficiency and weight of the evidence, Buk-Shul contends that the "only evidence adduced at trial was the testimony of the alleged minor child (and admitted liar) and [his] coerced statement

***, which he submits should not have been introduced at trial." We have already addressed the admissibility of the statement.

{¶ 55} At trial, the State called several witnesses, including the victim and her mother. Both women testified that Buk-Shul had been a steady presence in their home, often spending time and sleeping there, including a stretch during which he actually lived with them. Buk-Shul had been very good friends with the victim's older brother, Nick, for many years. The victim's mother testified that Buk-Shul was "like an adopted son" to her. She also testified that Nick and his sister, the victim, were very close, that Nick, Buk-Shul, and the victim spent a lot of time "hanging out" together, and that Buk-Shul was like a big brother to the victim. Similarly, the victim claimed that she had spent a lot of time with Buk-Shul and Nick and that Buk-Shul was "like [her] brother."

{¶ 56} According to the victim, Nick moved out of his family's home in the summer of 2008, and the relationship between Buk-Shul and the victim changed. Buk-Shul and the victim partied, drank, and smoked "weed" together when her mom was not home. (The victim's mom was often away from home because she worked several jobs.) The victim had sexual intercourse with Buk-Shul for the first time in June or July 2008 at her mom's house. After they had been partying together, the victim and Buk-Shul started flirting with each other when the victim was "pretty intoxicated," but she went to bed alone around 2:00 or 3:00 a.m. Ten to fifteen minutes later, Buk-Shul came into her room and lay down with her. She took off her clothes and "willingly" had intercourse with him, but she testified that she did not enjoy it and it hurt. She also testified that she asked him to stop a couple of times

but he assured her that it would feel better if he slowed down. They went to sleep in separate rooms afterward.

{¶ 57} The victim testified that she continued to have sexual intercourse with Buk-Shul until December 2008 and that the encounters occurred up to twelve times during this period. Each time, Buk-Shul talked with the victim about keeping quiet concerning the nature of their relationship because he would get in trouble if anyone found out. The victim testified that she did not want Buk-Shul to get in trouble. Although they usually had sex at the victim's house, she testified that they had also done so in a cemetery, in an empty apartment, and in a van. The victim testified that she was never forced to have intercourse with Buk-Shul, but that she was usually intoxicated on alcohol or marijuana or had taken Vicodin, which she took by prescription, when these incidents occurred.

{¶ 58} The victim's relationship with Buk-Shul came to light after she went missing in December 2008. She turned up at a friend's house after three days, but her mother, her guardian, and the police responded to the Kettering house at which she was found. Apparently the victim's mother told the police of her belief that the victim was in a sexual relationship with Buk-Shul, which led to the investigation discussed under the first assignment of error. This investigation and police interviews with Buk-Shul led to his admission that he had had sexual intercourse with the victim one time and the charges against him.

{¶ 59} According to the victim and her mother, there was no question that Buk-Shul knew the victim's age. He had celebrated family birthdays with her, and he had picked her up from her middle school. The victim also testified that she was

not married to Buk-Shul.

{¶ 60} It was undisputed that the victim gave several inconsistent statements to the police and to her mother about the nature of her relationship with Buk-Shul. For example, in December 2008, the victim initially denied to the police that she had been "raped" by Buk-Shul because she had been "willing" and did not want him to get in trouble. Later, she admitted having sexual intercourse with him. The victim never characterized the incidents as rape or as non-consensual. The victim testified at trial that she had had oral sex with Buk-Shul prior to their vaginal intercourse, but she admitted that she had never told the police of this fact. The victim also admitted that she had told her mother about her sexual relationship with Buk-Shul before school started in the fall of 2008, but when her mother became angry about the statement, the victim recanted and said that it had just been a joke.

{¶ 61} Buk-Shul testified at trial that he never had a sexual relationship with the victim and hardly saw her between June and December 2008, when the sex acts allegedly occurred. He testified that his friendship had been with Nick and that the victim was merely a sister of a friend. He stated that his admission to the police of one sexual encounter was induced by the detectives' assertion that they would leave him alone if he admitted having sex with the victim.

{¶ 62} Buk-Shul further testified that he had been afraid of the police in his native Sudan and that his family had been terrorized by the police there. He testified that he saw the gun of one of the detectives and was scared. He also claimed that the detectives never explained to him what "rape" or "unlawful sexual conduct" was when they interviewed him about the alleged offenses, and that he

could barely read or write in English. He testified that he was "pressured" into making the statement to the police.

{¶ 63} Buk-Shul was indicted under R.C. 2907.04(A), which defines unlawful sexual conduct with a minor. This statute provides that "[n]o 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."

{¶ 64} By his own testimony, Buk-Shul was 21 years old at the time of trial and 20 or 21 at the time of the alleged offenses. The victim testified that she had had sexual intercourse with Buk-Shul on numerous occasions and that she had been fourteen years old at the time. A detective testified that Buk-Shul had admitted to sexual intercourse with the minor victim. Further, the victim and her mother provided evidence that, through birthday celebrations and familiarity with the victim's school, Buk-Shul knew that the victim was under sixteen years of age. Considering this evidence in a light most favorable to the State, a rational trier of fact could have found that there was sufficient evidence of each of the essential elements of unlawful sexual conduct with the minor to warrant submitting the case to the jury.

{¶ 65} There was also ample evidence from which the jury could have reasonably concluded that Buk-Shul engaged in unlawful sexual conduct with a minor. The victim testified, with some specificity, about a series of sexual encounters with Buk-Shul. Although she had initially denied the sexual relationship

when she talked with the police, it was for the jury to determine the truth of her assertions at trial, and the victim explained her reasons for denying the relationship, including Buk-Shul's insistence that the relationship be kept quiet so he would not get into trouble. Moreover, the detective testified that Buk-Shul had admitted to one sexual encounter with the victim. The jury was not required to credit Buk-Shul's testimony that his admission had been obtained through pressure from the police and a history of negative experiences with the police in Sudan.

{¶ 66} The jurors saw and heard the witnesses at trial, and we defer to their judgment as to the credibility of the testimony. We cannot conclude that the jury "clearly lost its way and created such a manifest miscarriage of justice" that Buk-Shul's conviction must be reversed.

{¶ 67} The third and fourth assignments of error are overruled.

V

{¶ 68} The judgment of the trial court will be affirmed.

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DONOVAN, P.J. and GRADY, J., concur.

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