[Cite as *State v. Dade*, 2020-Ohio-4545.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio — Court of Appeals No. L-19-1024

Appellee — Trial Court No. CR0201801793

v.

Arthur Charles Dade, Jr. — **DECISION AND JUDGMENT**

Appellant — Decided: September 11, 2020

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Evy M. Jarrett, Assistant Prosecuting Attorney, for appellee.

Lawrence A. Gold, for appellant.

* * * * *

MAYLE, J.

{¶ 1} Following a jury trial, defendant-appellant, Arthur Charles Dade, Jr., appeals the January 14, 2019 judgment of the Lucas County Court of Common Pleas, convicting him of rape and sentencing him to a prison term of ten years to life. For the following reasons, we affirm the trial court judgment.

I. Background

{¶ 2} On May 2, 2018, Arthur Dade was charged with one count of rape of a child under the age of 13, a violation of R.C. 2907.02(A)(1)(b) and (B), an unspecified felony. The case was tried to a jury on January 7 to 9, 2019. Four witnesses testified on behalf of the state: (1) the victim's mother, S.N.; (2) the then 10-year-old victim, D.N.; (3) Toledo Police Detective Mark Nelson; and (4) Bureau of Criminal Investigation ("BCI") polygraph examiner, Steven Stechschulte.

{¶ 3} S.N. testified that she is a pastor who, along with her husband, R.N., founded and leads a small local church. S.N. and R.N. have five children together—two biological and three adopted. D.N. is their adopted son. Before adopting D.N., S.N. and R.N. fostered him, beginning when he was three and one-half years old.

{¶ 4} S.N. became acquainted with Dade through her connection with a church located in Columbus, Ohio, where Dade previously lived. Dade sometimes preached at S.N.'s church. In May of 2017, Dade came to live in Toledo. He told S.N. that "the Lord sent him to help [S.N. and R.N.] in ministry." Once in Toledo, Dade mainly lived in his car, but sometimes slept in the church or in a hotel.

{¶ 5} On Sunday, June 18, 2017, S.N. and R.N. hosted a Father's Day cookout and pool party at their home after church. During that cookout, D.N. disappeared. His sister told S.N. that she thought D.N. may have gone somewhere with Dade. Upon hearing this, S.N. described that her "gut instincts hit the floor."

{¶ 6} About 40 to 45 minutes later, Dade returned with D.N. They had apparently been to the church, the grocery store, and an alley near the grocery store. D.N. came back with a bag full of junk food that his mother does not normally allow him to have. S.N. asked D.N. if anything had happened to him or if anybody had touched him. D.N. said nothing had happened and he was fine.

{¶ 7} S.N. noticed that D.N.'s demeanor seemed different after the Father's Day cookout. He became angry, aggressive, and irritated; he started wetting the bed and "playing in poop." S.N. engaged D.N. in therapy with a therapist who has treated him since S.N. began fostering him.

{¶ 8} After the Father's Day cookout, S.N. saw Dade a couple more times, but Dade stopped coming to the church and ultimately moved out of Toledo. About a month after Dade left, D.N. disclosed to S.N. that Dade had put his hand on D.N.'s lap, and D.N. moved it away. Two or three months after that, D.N. further disclosed to S.N. that Dade had put him in the back seat of his car, touched his penis, watched pornography on his cell phone, used some sort of grease or oil out of a tube, and anally raped him. S.N. contacted the children's services agency.

{¶ 9} D.N. testified that he called Dade "Apostle Dade." On the day of the Father's Day cookout, Dade took him to the church in his red Hyundai to grab towels and to Erie Foods to buy pop, candy, and chips. Dade then drove to a green and beige building near the grocery store and pulled into the parking lot. He parked the car between two cars and told D.N. to get in the back seat. Dade pulled up a video on his

phone of people touching each other's private areas, and he pulled out a white bottle with a yellow top and squeezed cream from the bottle that he then rubbed on his own penis. Dade moved to the back seat of the car, took off his pants and underwear, and told D.N. to do the same. He told D.N. to lie on his stomach, then used his penis to "hurt" D.N.'s "butt."

{¶ 10} As the state began questioning D.N. about whether Dade had put his penis *inside* D.N.'s butt, D.N. became uncomfortable. The court took a lunch recess. When court resumed, the state informed the court and the defense that D.N. went to lunch with his parents, his sisters, and his therapist, then met alone with his therapist.

{¶ 11} The state continued its direct examination of D.N. and asked him what happened after Dade told him to lie on his stomach. D.N. testified that Dade "raped" him. Upon further questioning by the state, D.N. clarified that this meant that Dade put his "front part" inside D.N.'s "back part." He said that it was painful. D.N. did not know if anything came out of Dade's penis. Afterwards, Dade pulled up his pants and D.N. pulled up his pants, and Dade took D.N. back to the cookout. When they arrived home, Dade told D.N. not to tell anyone what had happened or he would hurt D.N.'s family.

{¶ 12} D.N. testified that "[a] little while after," he told his mother that Dade hurt him, but he did not tell her everything until sometime later. When he finally told his mother everything, she called the police and D.N. told Detective Nelson what happened. On cross-examination, D.N. denied that his therapist told him what to say during the lunch recess.

{¶ 13} Detective Nelson testified that he received the report of D.N.'s rape on October 30, 2017, via a referral from children's services. He interviewed D.N. on November 7, 2017, at the Children's Advocacy Center. The details D.N. provided to him were mainly consistent with what S.N. and D.N. conveyed during their testimony, except D.N. did not tell Detective Nelson about Dade taking him to the church to get towels or watching pornography on his cell phone. During the interview, Detective Nelson verified that D.N. understood the anatomical parts he was identifying.

{¶ 14} Detective Nelson explained that rape kits are usually performed within 72 hours of an assault; because several months had passed, no rape kit was performed here. He also explained that delayed reporting of sexual assault is not uncommon, especially in cases involving sexual assault of a boy by a man or where an assailant has threatened harm to the victim. Detective Nelson testified that it is not uncommon for a victim to neglect to provide all details of an assault.

{¶ 15} In investigating D.N.'s accusations, Detective Nelson went to Erie Food Mart and located the nearby building and parking lot where D.N. said the assault occurred. He interviewed Dade, who voluntarily came to the Northwest police station on November 16, 2017. The interview was recorded and the recording was played for the jury and admitted into evidence.

{¶ 16} Dade told Detective Nelson that he preached at the church on Father's Day and lived in Toledo from July to August. He said that he and D.N.'s family got along well. He initially denied taking D.N. to the store, but eventually admitted that he did and

said that it was with his parents' permission. He denied taking him to the parking lot and he denied assaulting him. He offered to take a polygraph test and encouraged the detective to find camera footage showing that his vehicle was in that parking lot.

{¶ 17} Detective Nelson did not interview any other people who attended the cookout because Dade admitted taking D.N. to the store. He found it unnecessary to take fingerprints and conceded that no DNA evidence had been collected. He did not canvass the area near Erie Food. He checked to see if there was a Skycop camera in the area that may have recorded any of the events, but there was none. Detective Nelson did not try to get a warrant for Dade's cell phone because (1) D.N. did not tell him about the pornography on the cell phone, and (2) Dade admitted that he was in the area, so there was no need to track the location of the phone.

{¶ 18} In the video recording of the interview with Dade, Dade said that the police had been called to the victim's home "thousands of times." Detective Nelson testified that he had found no reports of police having been called to that home. On cross-examination, defense counsel brought to Detective Nelson's attention that there were approximately 20 reports of police contact with the home.

{¶ 19} The BCI polygraph examiner, Steve Stechschulte, was the last to testify. He explained that polygraph tests are only admissible in court if there is a stipulation from the state, defense counsel, and the defendant. Stechschulte performed a stipulated polygraph examination of Dade.

{¶ 20} Stechschulte described the procedure for performing a polygraph test. He identified the relevant questions based on the allegations in the case: (1) "did you ever have sexual intercourse with [D.N.]"; (2) "did you ever put your penis into [D.N.'s] butt"; and (3) "did you ever put anything into [D.N.'s] butt"? Stechschulte explained that a score above plus two is considered passing, a score between plus two and minus four is considered inconclusive, and a score under minus 4 is considered failing. He testified that the data produced from Dade's responses indicated deception. An average deceptive score is minus eight to minus 12. Dade's responses produced a score of minus 14. Stechschulte's work was peer reviewed at BCI headquarters in London, Ohio. The peer reviewing officer agreed with Stechschulte's conclusions.

{¶ 21} At the close of the state's case, Dade moved for acquittal. The trial court denied the motion. The defense rested without offering any evidence. The jury returned a verdict of guilty on the sole count of the indictment. The trial court sentenced Dade to ten years to life in prison and found Dade to be a Tier III child victim offender. Dade's conviction and sentence were memorialized in a judgment entry journalized on January 14, 2019.

{¶ 22} Dade appealed and assigns the following two errors for our review:

FIRST ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN DENYING APPELLANT'S RULE 29 MOTION.

SECOND ASSIGNMENT OF ERROR

THE JURY'S VERDICT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE PRESENTED AT TRIAL.

II. Law and Analysis

{¶ 23} Dade challenges the denial of his Crim.R. 29 motion for acquittal—a challenge to the sufficiency of the evidence—in his first assignment of error, and he challenges the weight of the evidence in his second assignment of error. We address each of these assignments in turn.

A. Crim.R. 29

{¶ 24} In his first assignment of error, Dade argues that aside from the testimony of D.N., there was no evidence that he committed a rape. He insists that there was no physical evidence, no medical or scientific evidence, no rape kit, no DNA, no fingerprint evidence, and no cell phone evidence to support the allegations of rape. He maintains that the other witnesses who testified offered no direct evidence, and D.N.'s statements to S.N. did not occur until well after the alleged incident occurred. Dade contends that Detective Nelson's testimony makes clear that "the police investigation started and stopped with the allegation made by D.N."—police never even examined Dade's cell phone or searched his vehicle.

{¶ 25} A motion for acquittal under Crim.R. 29(A) challenges the sufficiency of the evidence. *State v. Brinkley*, 105 Ohio St.3d 231, 2005-Ohio-1507, 824 N.E.2d 959, ¶ 39. The denial of a motion for acquittal under Crim.R. 29(A) "is governed by the same

standard as the one for determining whether a verdict is supported by sufficient evidence." *State v. Tenace*, 109 Ohio St.3d 255, 2006-Ohio-2417, 847 N.E.2d 386, ¶ 37.

{¶ 26} Whether there is sufficient evidence to support a conviction is a question of law. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). In reviewing a challenge to the sufficiency of evidence, "[t]he 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." (Internal citations omitted.) *State v. Smith*, 80 Ohio St.3d 89, 113, 684 N.E.2d 668 (1997). In making that determination, the appellate court will not weigh the evidence or assess the credibility of the witnesses. *State v. Walker*, 55 Ohio St.2d 208, 212, 378 N.E.2d 1049 (1978).

{¶ 27} R.C. 2907.02(A)(1)(b) provides that "[n]o 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." Under R.C. 2907.01(A), "sexual conduct" includes anal intercourse and "insertion, however slight, of any part of the body * * * into the * * * anal opening of another." The statute further provides that "[p]enetration, however slight, is sufficient to complete * * * anal intercourse." *Id.*

{¶ 28} Here, D.N. testified that Dade—who D.N. was acquainted with through church and was able to identify—inserted his penis into D.N.'s anus, causing pain. The state also presented testimony that this occurred on June 18, 2017, when D.N. was ten

years old. The state was not obligated to present physical or scientific evidence of the assault. *See State v. Jeffries*, 2018-Ohio-2160, 112 N.E.3d 417, ¶ 72 (1st Dist.) ("[T]he state is not required to present corroborating DNA test results or other corroborating physical evidence to meet its burden of proof, even in a rape case."). Moreover, a victim's testimony need not be corroborated. *State v. Wampler*, 6th Dist. Lucas No. L-15-1025, 2016-Ohio-4756, ¶ 58. D.N.'s testimony alone was sufficient for the state to meet its burden of proof. *See State v. Trusty*, 1st Dist. Hamilton No. C-120378, 2013-Ohio-3548, ¶ 73 ("M.G.'s testimony, alone, was sufficient for the state to meet its burden of proof of each element beyond a reasonable doubt.").

{¶ 29} We find Dade's first assignment of error not well-taken.

B. Manifest Weight

{¶ 30} In his second assignment of error, Dade "draws upon the argument put forth in his First Assignment of Error," but also challenges the credibility of the evidence. He maintains that a search warrant should have been issued to collect DNA or fingerprint evidence and his cell phone should have been seized so that it could be determined whether Dade watched pornography on his cell phone at the time he was alleged to have sexually assaulted D.N. He emphasizes that after spending the court lunch recess with his therapist, the victim was coached to testify that he had been "raped" by Dade. And Dade insists that "the highly emotional nature of the allegation caused the jury to lose its way and convict [him] based on the nature of the charge."

{¶ 31} When reviewing a claim that a verdict is against the manifest weight of the evidence, the appellate court must weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and determine whether the jury clearly lost its way in resolving evidentiary conflicts so as to create such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. *Thompkins*, 78 Ohio St.3d at 387, 678 N.E.2d 541. We do not view the evidence in a light most favorable to the state. "Instead, we sit as a 'thirteenth juror' and scrutinize 'the factfinder's resolution of the conflicting testimony.'" *State v. Robinson*, 6th Dist. Lucas No. L-10-1369, 2012-Ohio-6068, ¶ 15, citing *Thompkins* at 388. Reversal on manifest weight grounds is reserved for "the exceptional case in which the evidence weighs heavily against the conviction." *Thompkins* at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983).

{¶ 32} Although under a manifest-weight standard we consider the credibility of witnesses, we must nonetheless extend special deference to the jury's credibility determinations given that it is the jury who has the benefit of seeing the witnesses testify, observing their facial expressions and body language, hearing their voice inflections, and discerning qualities such as hesitancy, equivocation, and candor. *State v. Fell*, 6th Dist. Lucas No. L-10-1162, 2012-Ohio-616, ¶ 14.

{¶ 33} Defense counsel cross-examined Detective Nelson extensively about the absence of a rape kit and other forensic evidence, and Detective Nelson explained that this evidence was not collected here because of the passage of time and because it was

undisputed that D.N. had been in Dade's car. He testified that he did not seize Dade's telephone because he not aware that Dade's phone was used to access pornography during the assault and he had no need for the phone's tracking information given Dade's concession that he drove to the store with D.N. Detective Nelson testified that he did not interview witnesses from the cookout because he felt that they would have no relevant information given that Dade admitted taking D.N. to the store. As for D.N.'s delay in reporting, Detective Nelson offered numerous factors that may deter a victim from immediately reporting a sexual assault, including fear and embarrassment. Finally, the issue of the potential influence of D.N.'s therapist, who D.N. met with during the lunch recess, was explored and defense counsel inquired of D.N. whether his therapist had instructed him what to say; D.N. denied that she had.

{¶ 34} All these matters presented credibility issues. The jury had the advantage of seeing the witnesses testify and observing their demeanors, and it resolved these credibility issues in favor of the state. We do not find that it lost its way in doing so or that the evidence weighed heavily against conviction. Nor do we accept that the jury's verdict was the product of its emotions.

{¶ 35} Accordingly, we find Dade's second assignment of error not well-taken.

III. Conclusion

{¶ 36} The evidence was sufficient to support Dade's rape conviction under R.C. 2907.02(A)(1)(b). D.N. testified that Dade—who he knew and identified—inserted his

penis into D.N.'s anus. No corroborating evidence was required. We find his first assignment of error not well-taken.

{¶ 37} The jury did not lose its way in resolving credibility issues in favor of the state, the evidence did not weigh heavily against Dade's conviction, and the verdict was not merely a product of the emotional nature of the allegations. Dade's challenge to the weight of the evidence is not supported. We find his second assignment of error not well-taken.

{¶ 38} We affirm the January 14, 2019 judgment of the Lucas County Court of Common Pleas. Dade is ordered to pay the costs of this appeal under App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Thomas J. Osowik, J. _____
JUDGE

Christine E. Mayle, J. _____
JUDGE

Gene A. Zmuda, P.J. _____
CONCUR.
JUDGE