

friends and often spent time together. The complaint was filed a day after appellant was interviewed by Detective Aaron Meyer at the Fairfield Police Department.

{¶ 3} Appellant moved to suppress statements he made to Detective Meyer during his interview. A hearing on the motion was held in January 2014. During the suppression hearing, Detective Meyer testified. A copy of the interview, which had been audio recorded and videotaped, was admitted into evidence and played during the hearing. On January 27, 2014, the juvenile court denied appellant's motion to suppress on the ground his statements to Detective Meyer were voluntary.

{¶ 4} The state subsequently filed an amended complaint alleging that appellant's sexual conduct with the victim involved both oral and anal sex and occurred in June 2013 at three specific locations in Fairfield, Ohio: appellant's home, the victim's home, and Mercy Healthplex.

{¶ 5} An adjudication hearing was held on March 4, 2014, and continued on April 10, 2014. During the adjudication hearing, the juvenile court heard testimony from the victim, the victim's mother, Detective Meyer, the partner of appellant's mother, and a psychology postdoctoral trainee.¹ By stipulation of the parties, the juvenile court also reviewed on its own the videotape of the victim's July 2013 forensic interview at the Mayerson Center at Cincinnati Children's Hospital. Appellant did not testify at the adjudication hearing but the videotape of his interview with Detective Meyer was admitted into evidence.

{¶ 6} The victim testified that appellant sexually assaulted him numerous times in June 2013, and that while it typically happened in appellant's home, it also happened once in the victim's home and once at Mercy Healthplex. The victim testified that the first time it happened, they were in appellant's home where appellant told the victim to disrobe and they

1. The witness testified that a psychology postdoctoral trainee is someone who has completed the educational requirements to be a psychologist but who has not yet been licensed as a psychologist by the state of Ohio.

masturbated one another. In addition, appellant told the victim to suck appellant's penis but the victim refused. Appellant also made the victim crouch down on his knees, he put his penis in the victim's "butthole and humped [him]," and appellant made the victim sit on appellant's erect penis. The victim testified that subsequent incidents involved similar demands and acts. Appellant also showed the victim "sex tapes" on appellant's phone.

{¶ 7} With regard to being raped, the victim testified that only the very tip of appellant's penis went into the victim's "butthole," "like barely through," as appellant's penis was too big and the victim's "butt [was] too small." The victim also testified that he and appellant had oral sex at Mercy Healthplex while they were in the hot tub in the men's locker room, and that appellant subsequently raped him in the shower in the locker room while the victim was crouched down on his knees.

{¶ 8} During his interview with Detective Meyer, appellant denied that any sexual activity occurred at Mercy Healthplex either in the hot tub or in the men's locker room showers. By contrast, appellant eventually admitted spitting on his penis and putting it in the victim's "butt" while the victim was "bent on a couch" in appellant's home. Appellant also admitted that a similar incident occurred in the victim's home a few days later.

{¶ 9} On April 10, 2014, the juvenile court adjudicated appellant delinquent for committing gross sexual imposition against the victim. Specifically, the juvenile court found "there was sexual contact and not sexual conduct" between appellant and the victim because (1) while the victim's testimony and appellant's admission both showed that appellant put his penis in the victim's "butt," the state failed to prove any penetration occurred, and (2) the state failed to prove any sexual activity took place at Mercy Healthplex. The juvenile court also noted that while the victim's trial testimony was at times inconsistent with his July 2013 forensic interview, inconsistencies in the testimony of a ten-year-old child were to be expected.

{¶ 10} Appellant appeals, raising three assignments of error. Appellant's second and third assignments of error will be addressed together.

{¶ 11} Assignment of Error No. 1:

{¶ 12} THE TRIAL COURT ERRED BY DENYING DELINQUENT'S MOTION TO SUPPRESS.

{¶ 13} Appellant argues the juvenile court erred in failing to suppress his statements to Detective Meyer because appellant did not voluntarily waive his *Miranda* rights. In support of his argument, appellant notes that (1) he was only 15 years old at the time he was interviewed by Detective Meyer, (2) although he was in high school, he had trouble reading at a third grade level, (3) he was diagnosed with a mood disorder, ADHD, and a psychotic disorder, (4) his only prior criminal experience was a runaway charge, (5) Detective Meyer repeatedly questioned appellant's credibility and asked several leading questions, and (6) appellant only "made the admissions to get out of the interrogation."

{¶ 14} Appellate review of a motion to suppress presents a mixed question of law and fact. *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8. "When considering a motion to suppress, the trial court assumes the role of trier of fact and is therefore in the best position to resolve factual questions and evaluate the credibility of witnesses." *Id.* "Consequently, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence." *Id.* The appellate court then determines, as a matter of law, and without deferring to the trial court's conclusions of law, whether the trial court applied the appropriate legal standard. *Id.*; *State v. Rodriguez*, 12th Dist. Butler No. CA2008-07-162, 2009-Ohio-4460, ¶ 38.

{¶ 15} In determining whether a juvenile's pretrial statement is involuntarily induced, and thus, whether the juvenile voluntarily waived his *Miranda* rights, a court must look at the totality of 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." (Internal quotations and citations omitted.) *State v. Frazier*, 115 Ohio St.3d 139, 2007-Ohio-5048, ¶ 112; *In re N.J.M.*, 12th Dist. Warren No. CA2010-03-026, 2010-Ohio-5526, ¶ 19. Special care must be taken to insure that a juvenile's rights are protected, particularly when it is alleged that he has waived his right to silence, since the validity of the waiver is affected by the factors of age, emotional stability, and mental capacity. *Rodriguez* at ¶ 41; *In re Goins*, 137 Ohio App.3d 158, 162 (12th Dist.1999).

{¶ 16} After carefully reviewing the record, including appellant's recorded interview, we find, based on the totality of the circumstances, that appellant's statements to Detective Meyer were voluntary.

{¶ 17} The record shows that before the questioning began, appellant was read his *Miranda* rights, he stated he understood his rights, and he signed the *Miranda* waiver form. While appellant was in the interview room for about one hour and 15 minutes, he was questioned by Detective Meyer for only 40 minutes or so. Appellant's interview with the detective was not particularly lengthy, intense or frequent. *In re N.J.M.*, 2010-Ohio-5526 at ¶ 25; *In re J.B.*, 12th Dist. Butler No. CA2004-09-226, 2005-Ohio-7029, ¶ 65. In addition, the detective's tone was conversational throughout the interview. *In re N.J.M.* at *id.*

{¶ 18} The detective did not use coercive police tactics to obtain appellant's statements. Coercive law enforcement tactics include, but are not limited to, physical abuse, threats, deprivation of food, medical treatment or sleep, use of certain psychological techniques, exertion of improper influences or direct or implied promises, and deceit. *Id.* at ¶ 20. There is no evidence of physical deprivation, mistreatment, threats, or improper inducement. Although the detective repeatedly told appellant he was not telling the truth and questioned appellant's credibility, admonitions to tell the truth are both permissible and non-

coercive. *Id.* at ¶ 25; *State v. Lewis*, 7th Dist. Mahoning No. 03 MA 36, 2005-Ohio-2699, ¶ 15. "Moreover, the use of leading questions does not coerce an individual to submit to those questions." *Lewis* at ¶ 16. Appellant's story changed during the questioning and the juvenile court could view appellant's decision-making process during the interview. *Id.*

{¶ 19} The record shows that appellant was 15 years old with virtually no prior criminal history at the time of the interview. In addition, he had been diagnosed with ADHD in 2010 and 2013, before his interview with Detective Meyer, and was subsequently diagnosed with a mood disorder and a psychotic disorder in December 2013, thus after his interview but before the suppression hearing. Nonetheless, the record does not support the conclusion that appellant's age and mentality prevented him from understanding the rights he was waiving.

{¶ 20} A low IQ and/or diminished cognitive abilities do not necessarily equate to an involuntary statement, especially where appellant did not have difficulty understanding Detective Meyer's questions, and the statements appellant made were clear and responsive. *In re N.J.M.*, 2010-Ohio-5526 at ¶ 27 (finding that the confession of a 13-year-old boy with no prior criminal experience, an IQ of 67, and delayed cognitive and emotional development, was voluntary). We agree with the juvenile court that during the interview, appellant understood the detective's questions, appellant's ADHD did not prevent him from understanding the questions and answering them, and appellant was never confused and never appeared to be in acute distress. There is simply nothing in the record to suggest appellant was of insufficient intelligence as to impair his ability to understand, and thus, waive his rights. See *In re M.D.*, 12th Dist. Madison No. CA2003-12-038, 2004-Ohio-5904 (finding that the confession of a 13 and three-quarters-year-old boy with no prior criminal experience was voluntary); *State v. Kirk*, 3d Dist. Crawford No. 3-12-09, 2013-Ohio-1941 (finding that although the defendant, an 18-year-old high school student, had a history of cognitive limitations, he neither manifested them nor an inability to understand his rights during the

course of the interrogation). Nothing about appellant's demeanor suggests that his will was overborne.

{¶ 21} In light of the foregoing, we find that appellant's statements to Detective Meyer were voluntary. The juvenile court, therefore, did not err in denying appellant's motion to suppress. Appellant's first assignment of error is overruled.

{¶ 22} Assignment of Error No. 2:

{¶ 23} DELINQUENT'S FINDING OF DELINQUENCY WAS NOT SUPPORTED BY LEGALLY SUFFICIENT EVIDENCE. [sic]

{¶ 24} Assignment of Error No. 3:

{¶ 25} DELINQUENT'S FINDING OF DELINQUENCY WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE. [sic]

{¶ 26} Appellant argues that his delinquency adjudication for committing gross sexual imposition is not supported by sufficient evidence and is against the manifest weight of the evidence because (1) as appellant's confession was not voluntarily made, the only admissible evidence of gross sexual imposition came from the victim's trial testimony and the statements the latter made during his forensic interview, (2) the victim's trial testimony on direct examination is replete with inconsistencies and conflicts with his testimony on cross-examination, his forensic interview, and his mother's trial testimony, and (3) the lack of physical evidence contradicted the victim's testimony.

{¶ 27} The appropriate standard of review in determining whether there was sufficient evidence presented to the trial court to support a juvenile court's adjudication of delinquency is the same as the one used in adult criminal cases. See *In re Washington*, 81 Ohio St.3d 337, 339 (1998); *In re A.L.*, 12th Dist. Butler No. CA2005-12-520, 2006-Ohio-4329, ¶ 11. "In reviewing a claim of insufficient 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." *State v. McKnight*, 107 Ohio St.3d 101, 2005-Ohio-6046, ¶ 70, quoting *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus.

{¶ 28} The standard of review applied in determining whether a juvenile court's finding of delinquency is against the manifest weight of the evidence is the same standard applied in adult criminal convictions. *In re N.J.M.*, 2010-Ohio-5526 at ¶ 34. Under the manifest weight of the evidence standard, a reviewing court must examine the entire record, weigh all of the evidence and 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. *Id.* at ¶ 35; *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997). The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction. *In re N.J.M.* at ¶ 35.

{¶ 29} Because a finding that a conviction is supported by the manifest weight of the evidence also necessarily includes a finding that it is supported by sufficient evidence, the determination that a juvenile court's delinquency finding is supported by the manifest weight of the evidence will also be dispositive of the issue of sufficiency. *In re D.L.B.*, 12th Dist. Fayette No. CA2011-09-019, 2012-Ohio-3045, ¶ 33.

{¶ 30} Appellant was adjudicated delinquent for committing gross sexual imposition in violation of R.C. 2907.05(A)(4), which provides in relevant part:

No person shall have sexual contact with another, not the spouse of the offender; [or] 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 * * * is less than thirteen years of age, whether or not the offender knows the age of that person.

R.C. 2907.01(B) defines "sexual contact" as "any touching of an erogenous zone of another,

including without limitation the thigh, genitals, buttock, pubic region * * * for the purpose of sexually arousing or gratifying either person."

{¶ 31} Upon carefully reviewing the record, we find that the juvenile court did not err in adjudicating appellant delinquent for committing gross sexual imposition. The victim's testimony and appellant's confession to Detective Meyer show that appellant twice engaged in sexual contact with the ten-year-old victim when appellant put his erect penis in the victim's "butt," once in appellant's home and once in the victim's home.

{¶ 32} Appellant argues that the only admissible evidence of gross sexual imposition came from the victim's testimony as appellant's confession to Detective Meyer was not voluntary. However, in light of our holding under appellant's first assignment of error, appellant's statements to Detective Meyer were voluntary and thus admissible. In addition, the reliability of a confession is the province of the trier of fact. *In re N.J.M.*, 2010-Ohio-5526 at ¶ 37, citing *Crane v. Kentucky*, 476 U.S. 683, 106 S.Ct. 2142 (1986). The juvenile court was aware of the circumstances surrounding appellant's confession, as the court had previously denied his motion to suppress. As the trier of fact, it was the juvenile court's responsibility to assess the reliability of appellant's confession. *In re N.J.M.* at *id.* The juvenile court did not lose its way in making this determination.

{¶ 33} Appellant also argues the lack of physical evidence contradicted the victim's testimony. The record shows that during his forensic interview, the victim stated that appellant ejaculated in the victim's basement and on the victim's bed, and that the two watched pornography on the victim's laptop in June 2013. At the adjudication hearing, the victim likewise testified that he and appellant watched pornography on the victim's laptop in June 2013. Detective Meyer testified that no evidence of semen was found on bedding items sent to a laboratory for testing. The detective further testified that a forensic analysis of the victim's laptop revealed there was no access to pornography, and in fact, no internet access

at all from the computer in June 2013.

{¶ 34} Although appellant was charged with committing rape, he was ultimately adjudicated delinquent for committing gross sexual imposition, which requires sexual contact, and not sexual conduct. Physical evidence of sexual contact is not a required element of gross sexual imposition. See *In re C.S.*, 10th Dist. Franklin No. 11AP-667, 2012-Ohio-2988, ¶ 30. "Where the testimony of [a] child victim is sufficient to support a conviction for gross sexual imposition, the conviction will not be reversed as being against the manifest weight of the evidence merely because there was no forensic evidence to support it." *In re A.L.*, 2006-Ohio-4329 at ¶ 27. See also *State v. While*, 11th Dist. Trumbull No. 2001-T-0051, 2003-Ohio-4594 (because sexual contact generally does not leave trace evidence, lack of physical evidence is neither surprising nor fatal). The lack of physical evidence in contradiction to the victim's testimony does not render the juvenile court's delinquency adjudication contrary to the manifest weight of the evidence.

{¶ 35} Finally, appellant argues the victim's trial testimony on direct examination included several inconsistencies and conflicted with his testimony on cross-examination, his forensic interview, and his mother's trial testimony. However, determinations regarding witness credibility, conflicting testimony, and the weight to be given such evidence are primarily for the trier of fact. *In re N.J.M.*, 2010-Ohio-5526 at ¶ 39. It is well-established that when conflicting evidence is presented at trial, a conviction is not against the manifest weight of the evidence simply because the trier of fact believed the prosecution testimony. *State v. Lunsford*, 12th Dist. Brown No. CA2010-10-021, 2011-Ohio-6529, ¶ 17. Further, "[t]he decision whether, and to what extent, to credit the testimony of particular witnesses is within the peculiar competence of the factfinder, who has seen and heard the witness." *State v. Rhines*, 2d Dist. Montgomery No. 23486, 2010-Ohio-3117, ¶ 39.

{¶ 36} As noted earlier, the juvenile court was able to see and hear the victim both

during the adjudication hearing and the victim's forensic interview. While the victim's testimony was at times inconsistent and conflicting, the juvenile court acknowledged that inconsistencies are to be expected when a pre-teenage victim testifies, and thus, "the Court has to look for consistencies[.]" Given the fact that the juvenile court found "there was sexual contact and not sexual conduct" between appellant and the victim, thereby adjudicating appellant delinquent for gross sexual imposition, and not for rape, it is clear the juvenile court discounted certain portions of the victim's testimony and relied on appellant's confession to resolve conflicts in the evidence. *In re N.J.M.* at ¶ 39. In fact, the juvenile court specifically found that in light of the victim's testimony and appellant's confession, the state failed to prove that any penetration occurred and that any sexual activity took place at Mercy Healthplex.

{¶ 37} In light of the foregoing, we find that the juvenile court did not lose its way in adjudicating appellant delinquent for committing gross sexual imposition. The state presented evidence that appellant twice engaged in sexual contact with the ten-year-old victim when appellant put his erect penis in the victim's "butt," once in appellant's home and once in the victim's home. We therefore find that the juvenile court's decision adjudicating appellant delinquent for gross sexual imposition is not against the manifest weight of the evidence. As a result, we also find sufficient evidence to support the juvenile court's decision.

{¶ 38} Appellant's second and third assignments of error are overruled.

{¶ 39} Judgment affirmed.

RINGLAND and HENDRICKSON, JJ., concur.