

**COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO**

STATE OF OHIO :
Plaintiff : **CASE NO. 2014 CR 00368**
vs. : **Judge McBride**
ADAM PATRICK CHRISTMAN : **DECISION/ENTRY**
Defendant :

Carol A. Rowe, assistant prosecuting attorney for the State of Ohio, 76 S. Riverside Drive, 2nd Floor, Batavia, Ohio 45103.

Rapp Law Office, Joshua R. Crousey, counsel for the defendant Adam Patrick Christman, One E. Main Street, Amelia, Ohio 45102.

This case came before the court for trial on January 20, 2015. At the conclusion of the trial, the court took the issues raised at trial under advisement.

Upon consideration of the record of the proceeding, the evidence presented for the court's consideration, the oral arguments of counsel, and the applicable law, the court now renders this written decision.

The defendant is charged in a one-count indictment with Gross Sexual Imposition in violation of R.C. 2907.05(A)(1), a felony of the fourth degree.

FINDINGS OF FACT

On June 11, 2014, Kimberly Barber took her daughter and the defendant Adam Christman's son to vacation bible school. Around noon that day, Barber picked the two children up from the church and drove to the defendant's house.

The defendant's son exited the car and ran inside the house, yelling to his father that he was home, and Barber followed him into the house. The defendant came from the hallway into the front room of the house and Barber handed the defendant his son's papers from the bible school.

Barber bent down and took off the VBS T-shirt the defendant's son was wearing because Barber took the shirts to and from the church. When the defendant's son left the room to go get a new shirt to wear, Barber stood up and saw that the defendant's erect penis was exposed through the fly of his pajama pants.

The defendant quickly moved over to Barber and pushed her up against the wall with his hands holding her wrists. The defendant pushed his body against Barber's body, touching his erect penis to her lower midsection.

The defendant's daughter came into the room and asked what they were doing and the defendant said they were "playing." The defendant released Barber and put his penis back in his pants.

Barber left the house and heard the defendant tell his children that he would be right back. The defendant followed Barber to her car and asked for a cigarette. When Barber turned around and threw a cigarette at the defendant, she saw that his erect penis was exposed again.

Barber pushed the defendant and told him that if he did anything in front of her daughter, who was still in the car, that she would kill him. The defendant grabbed Barber, tried to hug her, and said “you know I love you.” Barber pushed the defendant again, got in her vehicle, and drove away.

Later that day, Barber told her husband about the incident and the police were called. Barber wrote a statement at the request of the responding officer, and she was contacted by Investigator Greg Moran of the Clermont County Sheriff’s Office the following day.

Investigator Moran requested that Kimberly Barber participate in a recorded controlled phone call to the defendant and she agreed to do so. During that call, Barber never specifically referenced the defendant pressing himself against her.¹ She did ask the defendant “why did you think it was ok to take your dick out” and the defendant responded “I was fucking around with you.”² The defendant also apologized several times throughout the controlled call and admitted that he knew that what he did made Barber uncomfortable.³

Investigator Moran then went to interview the defendant at his place of employment. During that interview, the defendant claimed that his flaccid penis accidentally fell out of his pants and he denied grabbing Barber and pushing her against the wall. However, the court did not find these statements to be credible.

¹ State’s Exhibit B.

² Id.

³ Id.

STANDARD OF REVIEW

In a criminal case, it is the state's burden to prove the defendant's guilt beyond a reasonable doubt.⁴ R.C. 2901.05(E) states that " 'reasonable doubt' is present when the [trier of fact], after * * * carefully consider[ing] and compare[ing] all the evidence, cannot say they are firmly convinced of the truth of the charge. It is a doubt based on reason and common sense. Reasonable doubt is not mere possible doubt, because everything relating to human affairs or depending on moral evidence is open to some possible or imaginary doubt. 'Proof beyond a reasonable doubt' is proof of such character that an ordinary person would be willing to rely and act upon it in the most important of the person's own affairs."

LEGAL ANALYSIS

Pursuant to R.C. 2907.05(A)(1), "[n]o person shall have sexual contact with another, not the spouse of the offender; 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 offender purposely compels the other person, or one of the other persons, to submit by force or threat of force."

Kimberly Barber is not the spouse of the defendant and, as such, that element of the statute has been satisfied.

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, or, if the

⁴ R.C. 2901.05(A).

person is a female, a breast, for the purpose of sexually arousing or gratifying either person.”

R.C. 2907.01(B) does not provide an exhaustive list of erogenous zones.⁵ The first question in the case at bar is whether the defendant’s act of pushing his erect penis against the lower midsection of Kimberly Barber constituted sexual contact. This court has discussed the issue of what can be considered an erogenous zone in its decision rendered in the case of *State v. Devin Stedman*, Clermont County Case No. 2012 CR 000563, and the court will include some of its discussion from that decision below.

In *State v. Dooley*, 8th Dist. Cuyahoga No. 84206, 2005-Ohio-628, the defendant got into bed with a minor male and placed his head on the boy’s chest “while kissing and sucking [the boy’s] nipple.”⁶ The court concluded that under this factual scenario the male breast constituted an erogenous zone.⁷

In *State v. Lawrence*, 12th Butler Dist. No. CA2007-01-017, 2008-Ohio-1354, in response to a jury question regarding what constituted “sexual contact,” the trial court clarified that the definition included more body parts than those listed in the definition and called upon the jury to “use the judgment of a reasonable person in determining whether an area of the body may be perceived as sexually stimulating or gratifying.”⁸ When the jury inquired further as to whether a male breast could be considered an erogenous zone, the court responded that the jury would have to determine that within

⁵ See, e.g., *State v. Peddicord*, 3rd Dist. Henry No. 7-12-24, 2013-Ohio-3398, ¶ 16, citing, e.g., *State v. Stair*, 12th Dist. Warren No. CA2001-03-017, 2002-Ohio-18.

⁶ *Dooley* at ¶ 21.

⁷ *Id.* See, also, *State v. Poirier*, 6th Dist. Lucas Nos. -01-1479, L-01-1480 and L-01-1481, 2002-Ohio-4218, ¶ 27.

⁸ *Lawrence* , supra, 2008-Ohio-1354 at ¶ 41.

the context of the case.⁹ The appellate court found no plain error in those instructions and did not find the court's recitation of the definitions to be misleading or prejudicial.¹⁰

The court in *State v. Jenkins*, 2nd Dist. Miami No. 2000-CA-59, 2001-Ohio-1525, held that the defendant touching his "nude stepdaughter between her legs with a vibrator constituted the touching of an erogenous zone of another, even if the area touched was not her vagina, buttock or thigh."¹¹

In *State v. Miesse*, 2nd Dist. Clark No. 99-CA-74, 2000 WL 1162027 (Aug. 18, 2000), the court noted that "the term 'erogenous' is an adjective meaning, '[r]esponsive to sexual stimulation.'"¹² In that case, the defendant admitted that he was sexually aroused by and derived sexual gratification from touching, kissing, or blowing on the stomachs of the minor victims.¹³ The trial court concluded that the language of R.C. 2907.01(B) indicates that the legislature intended that body parts that are not traditionally viewed as erogenous zones may, in some instances, be considered erogenous zones.¹⁴ The defendant did not challenge that finding on appeal but the appellate court noted that this ruling was correct and that, "by admitting under cross-examination that he touched children's stomachs to obtain sexual gratification, [the defendant] effectively confessed to seven of the eight [GSI] charges leveled against him, since seven of the eight charges alleged that the sexual contact that Miesse had with his victim included tickling and kissing their bellies."¹⁵

⁹ Id.

¹⁰ Id.

¹¹ *Jenkins*, supra, 2001-Ohio-1525 at *4.

¹² *Miesse*, supra, 2000 WL 1162027 at *4, quoting Webster's II *New College* Dictionary (1995) 382.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

In *State v. Stair*, 12th Dist. Warren No. CA2001-03-017, 2002-Ohio-18. the testimony offered at trial demonstrated that the defendant placed his hands on the minor victim's hips and slid his hands along her abdomen as he removed her shirt."¹⁶ The victim testified that these actions were sexual in nature and that the defendant threatened that he could rape her if he wanted to and he stated he wanted to see her breasts.¹⁷ The appellate court held that "[t]he jury which was able to judge [the victim's] credibility and to view her demonstration of appellant's movements, was best able to make the factual determination of whether appellant's actions were sexually motivated and whether the touching constituted sexual contact as defined by R.C. 2907.01(B)" and that the jury's verdict was not against the manifest weight of the evidence.¹⁸ The court offered no explanation as to how the victim's hips and abdomen fit the definition of "erogenous zone."

The court in *State v. Kleyman*, 8th Dist. Cuyahoga No. 90817, 2008-Ohio-6656, adopted the reasoning of a Lake County Common Pleas decision that the "sexual contact" definition encompasses the touching of "any part of the body of another, which the mind of the offender or victim or a reasonable person would perceive as sexually arousing or gratifying to either the offender or the victim, for the purpose of sexual arousal or gratification of either the offender or the victim."¹⁹ That court then held that there was sufficient evidence of "sexual contact" because the defendant was sexually aroused when he was rubbing the victim's arm, shoulder and stomach.²⁰

¹⁶ *Stair*, supra, 2002-Ohio-18 at *4.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *State v. Kleyman*, supra, 2008-Ohio-6656 at ¶ 27, citing *State v. Ackley*, 120 Ohio Misc.2d 60, 778 N.E.2d 676, 2002-Ohio-6002, ¶ 14 (Ohio Com.Pl. Lake County, 2002).

²⁰ *Id.* at ¶¶ 28-29.

In *State v. Ackley*, 120 Ohio Misc.2d 60, 778 N.E.2d 676, 2002-Ohio-6002, ¶ 14 (Ohio Com.Pl. Lake County, 2002). Judge Eugene Lucci offers the following definition for “erogenous zone” and an explanation for that definition:

“In the context of R.C. 2907.01(B), this court defines ‘erogenous zone’ to mean any part of the human anatomy that, when touched by another, is perceived by the offender, or by the victim, or by a reasonable person, as being sexually arousing or gratifying to either the offender or the victim.

* * * [O]ne with a fetish for navels or feet could be in violation of this statute for touching the navel or feet of another, not his or her spouse, for the purpose of sexual arousal or gratification. Although the body parts, namely navel or feet, are not specifically listed in the ‘sexual contact’ definition, if the state is able to prove beyond a reasonable doubt that, in the mind of the offender, or in the mind of the victim, or in the mind of a reasonable person, those body parts are sensitive to sexual stimulation, or are apt to cause sexual arousal or gratification in either the offender or the victim, and if it was the purpose of the offender in the touching to obtain sexual arousal or gratification for himself or the victim, then the state has carried its burden of proof.

* * *

[T]he offender is in the best position to know whether he considers the body part he touched to be an erogenous zone of the victim and whether his purpose is sexual arousal or gratification. The offender is put on notice by the statute that if he touches any erogenous zone of the body of another, not his spouse, and certainly of a person under the age of 13 years, to obtain sexual gratification or arousal, he is committing a crime.”²¹

The question of “[w]hether touching is done for the purpose of sexual gratification is a ‘question of fact to be inferred from the type, nature, and circumstances surrounding

²¹ *Ackley*, supra, at ¶¶ 14-15 and 19.

the contact.’ ”²² “If the trier of fact determines that the defendant was motivated ‘by desires of sexual arousal or gratification, and that the contact occurred, then the trier of fact may conclude that the object of the defendant’s motivation was achieved.’ ”²³

This court is persuaded after reviewing the relevant caselaw that the term “erogenous zone” is not easily definable and that the best definition is “any part of the body which, in the mind of the defendant, or in the mind of the victim, or in the mind of a reasonable person, is sensitive to sexual stimulation or apt to cause sexual arousal or sexual gratification to either the defendant or to the victim.” While this definition is admittedly very broad, the state still has the burden of proving beyond a reasonable doubt in a particular case both that the particular body is an “erogenous zone” and that the purpose of the offender in initiating or maintaining the touching of the body part was to sexually arouse or gratify either the defendant or the victim.

In the present case, the defendant exposed his erect penis to the victim and pushed his erect penis against her lower midsection. Considering the facts of this case, the court finds that this act was done for the purpose of sexual gratification and that, in the mind of the defendant, the victim’s lower midsection was apt to cause sexual gratification to him. As such, the court finds that the state has proven beyond a reasonable doubt in this case that the victim’s lower midsection is an erogenous zone. Therefore, the state has met its burden of proving that the defendant had sexual contact with Kimberly Barber.

²² *State v. Daniels*, 1st Dist. Hamilton No. C-020321, 2003-Ohio-1545, ¶ 10, citing *In Re Anderson*, 116 Ohio App.3d 441, 443-444, 688 N.E.2d 545 (12th Dist.,1996); and *State v. Mundy*, 99 Ohio App.3d 275, 289, 650 N.E.2d 502 (2nd Dist.,1994).

²³ *Stair*, supra, 2002-Ohio-18 at *4, quoting *State v. Cobb*, 81 Ohio App.3d 179, 185, 610 N.E.2d 1009 (9th Dist.,1991).

The only remaining question is whether the defendant purposely compelled Barber to submit by force. The Ohio Revised Code defines “force” as “any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing.”²⁴

As noted in the findings of fact above, the defendant pushed himself against Barber, pushing her up against a wall, while holding her wrists. The court finds that the defendant purposely compelled Barber to submit to his act of sexual contact by pressing her against a wall and holding her wrists and that this meets the definition of “force.”²⁵

Based on the above analysis, the state has proven all of the elements of gross sexual imposition beyond a reasonable doubt.

CONCLUSION

The court hereby finds that the state has proven beyond a reasonable doubt the defendant’s guilt to the charge of Gross Sexual Imposition in violation of R.C. 2907.05(A)(1), a felony of the fourth degree.

The Probation Department is hereby ordered to complete a presentence investigation and to submit to the court a presentence report.

Counsel are hereby ordered to conference and call the Assignment Commissioner (732-7108) within three days of the date of this decision to obtain a

²⁴ R.C. 2901.01(A)(1).

²⁵ See, e.g., *State v. Birkman*, 86 Ohio App.3d 784, 788, 621 N.E.2d 1266 (12th Dist.,1993) [The defendant backed the victim against a wall, placed his arms in such a way that she could not move away from him, and fondled her breasts. The appellate court held that the defendant’s act of placing his arms such that the victim could not move away from him constituted force within the meaning of R.C. 2907.05(A)(1) and 2901.01(A)].

sentencing date. That sentencing date must be 4-5 weeks from the date of this decision.

IT IS SO ORDERED.

DATED: _____

Judge Jerry R. McBride

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the within Decision/Entry were e-mailed on this _____ day of March 2015, to Carol Rowe, Assistant Prosecuting Attorney, at crowe@clermontcountyohio.gov; and to Joshua Crousey, attorney for the defendant at jcrousey@williamjrapp.com.

Administrative Assistant to Judge McBride