

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NOS. C-170445
		C-170446
Plaintiff-Appellee,	:	TRIAL NOS. 17CRB-16417B
		17CRB-16417C
vs.	:	
		<i>JUDGMENT ENTRY.</i>
JAMES EMANUEL,	:	
Defendant-Appellant.	:	

We consider these appeals on the accelerated calendar, and this judgment entry is not an opinion of the court. See Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Following a bench trial, defendant-appellant James Emanuel was convicted of sexual imposition and menacing. The jail term imposed for each crime was suspended, and the trial court placed Emanuel on one year of community control and classified him as a Tier 1 sexual offender. Emanuel now appeals his convictions, bringing forth two assignments of error.

In his first assignment of error, Emanuel contests the sufficiency of the evidence underlying his conviction for sexual imposition. We are unpersuaded.

R.C. 2907.06 provides that “[n]o person shall have sexual contact with another, not the spouse of the offender * * * when * * * [t]he offender knows that the sexual contact is offensive to the other person.” The Revised Code defines “sexual contact” as “any touching of an erogenous zone of another, including without

limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.” R.C. 2907.01(B).

Viewing the evidence presented in the light most favorable to the state, we hold that there was sufficient evidence to convict Emanuel of sexual imposition. *See State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 491 (1991). The victim testified that Emanuel touched her breasts and pubic region. With respect to the element of sexual arousal or gratification, the trial court was permitted to infer from the victim’s testimony, which concerned Emanuel’s prior unwanted, repeated sexual advances towards her, that Emanuel’s touching of the victim was for sexual arousal or gratification. *See State v. Astley*, 36 Ohio App.3d 247, 523 N.E.2d 322 (10th Dist.1987).

The first assignment of error is overruled.

In his second assignment of error, Emanuel argues that his convictions for sexual imposition and menacing are against the manifest weight of the evidence.

When considering a challenge to the weight of the evidence, the court must examine the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the 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. *See State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997).

Despite Emanuel’s testimony that he did not touch the victim and that he had not menaced the victim’s brother, the trial court specifically found the victim’s testimony credible. Given that substantial deference should be extended to the factfinder’s determinations of credibility, we cannot say that the trial court created

OHIO FIRST DISTRICT COURT OF APPEALS

such a manifest miscarriage of justice in resolving the conflicts in the evidence that Emanuel's convictions must be reversed. *See Barberton v. Jenney*, 126 Ohio St.3d 5, 2010-Ohio-2420, 929 N.E.2d 1047, ¶ 20, citing *State v. Lawson*, 2nd Dist. Montgomery No. 16288, 1997 WL 476684 (Aug. 22, 1997).

Accordingly, the second assignment of error is overruled, and the judgment of the trial court is affirmed.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., MILLER and DETERS, JJ.

To the clerk:

Enter upon the journal of the court on July 18, 2018

per order of the court _____
Presiding Judge