

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

STATE OF OHIO,	:	APPEAL NOS. C-110259
	:	C-110260
Plaintiff-Appellee,	:	C-110261
	:	TRIAL NO. 11CRB-186A-C
vs.	:	
	:	<i>JUDGMENT ENTRY.</i>
TERRY L. McGINNIS,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 3(A); App.R. 11.1(E); Loc.R. 11.1.1.

Defendant-appellant Terry McGinnis appeals his convictions, following a jury trial, for sexual imposition, obstructing official business, and public indecency. He raises two assignments of error.

At McGinnis’s trial, the state presented evidence that on January 3, 2011, Paula Lacker, was working in the gift shop at the Hamilton County Public Library when she observed McGinnis coming in and out of the shop for about 45 minutes. She felt McGinnis brush up against her buttocks. She yelled and McGinnis left the gift shop. Lacker, who was visibly upset, told her manager what had happened. Lacker’s manager then contacted Steve Cohn, a library security officer. Officer Cohn called Deputy McClure, a Hamilton County deputy sheriff on duty in the library. When Deputy McClure found McGinnis, he called out to him. As he approached, McGinnis ran out of the library and down the street. Deputy McClure chased McGinnis several blocks and was finally able to apprehend him. McGinnis then said, “What are you going to charge me with, having my fucking dick out.” A review of the

video taken in the gift shop showed that McGinnis was masturbating behind Lacker when he touched her.

In his first assignment of error, McGinnis argues that the trial court erred in admitting a statement that he had made to a deputy sheriff at the time of his arrest because it was not disclosed to him before trial in violation of Crim.R. 16(B). But the record reflects that the state was not aware of McGinnis's statement until after the trial started, and it disclosed the statement to defense counsel as soon as it learned of it. Under these circumstances, we cannot say that the trial court abused its discretion in admitting the statement. *See State v. Parson* 6 Ohio St.3d 442, 453 N.E.2d 689 (1983). Even if the court had erred in admitting the statement, the admission was harmless because there was more than sufficient evidence to convict McGinnis. As a result, we overrule his first assignment of error.

In his second assignment of error, McGinnis argues that his convictions were based on insufficient evidence and against the manifest weight of the evidence. The test for sufficiency is spelled out in *State v. Eley*, 56 Ohio St.2d 169, 283 N.E.2d 132 (1978). The test for manifest weight is set forth in *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1996-Ohio-52, 678 N.E.2d 541. McGinnis argues that R.C. 2907.01 requires a touching of an "erogenous zone," which was not proven in this case. One erogenous zone mentioned in the statute is the buttocks. The testimony was clear that McGinnis had rubbed up against Lacker's buttocks, that she could feel him there, and that he was in fact masturbating while touching her.

McGinnis also argues that the state failed to prove the charge of obstructing official business in that the state failed to show that he had delayed an officer in performing his lawful duties. The evidence was clear that when the deputy sheriff approached McGinnis, he ran down the street for several blocks, causing the deputy to chase him and apprehend him. Consequently, the state presented sufficient evidence to sustain McGinnis's convictions. Nor can we conclude that the jury lost

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its way and created a manifest miscarriage of justice in convicting McGinnis. We, therefore, overrule his second assignment of error and affirm the judgment of the trial court.

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

SUNDERMANN, P.J., CUNNINGHAM and DINKELACKER, JJ.

To the clerk:

Enter upon the journal of the court on March 2, 2012

per order of the court _____.
Presiding Judge