



## **Case Summary**

Dustin Chadwick appeals his conviction for one count of Class C felony child molesting. We affirm.

### **Issue**

Chadwick raises two issues, which we combine and restate as whether there is sufficient evidence to support his conviction.

### **Facts**

The evidence most favorable to the conviction shows that J.C., Chadwick's daughter and the minor female victim, was between the ages of six and seven from August of 2003 through mid-November of 2004. J.C. attended first grade during at least a portion of that time. J.C. lived with her mother, Davina Sedam, and Kevin Gordon, a family friend. J.C. spent the weekend of November 19-21, 2004 with her father. Davina was in Tennessee exploring housing opportunities for a potential relocation during the same weekend. When J.C. was returned to her home on Sunday, November 21, 2004, Gordon noticed that she was vigorously rubbing her genitals. Gordon asked J.C. why she was rubbing herself, and J.C. responded by shyly looking away. J.C. then told Gordon "what happened," and based on that conversation, Gordon took J.C. to J.C.'s aunt's house for an examination. Tr. p. 62. J.C.'s aunt examined J.C.'s body and noticed redness and irritation around the vagina. Gordon phoned Davina in Tennessee, and Davina returned to Indianapolis.

The State charged Chadwick with two child molestation counts. The first count of the information alleged that on or between August 12, 2003 and November 17, 2004,

Chadwick committed Class A felony child molesting by performing or submitting to sexual intercourse with J.C. The second count of the information alleged that on or between August 12, 2003 and November 17, 2004, Chadwick committed Class C felony child molesting by performing or submitting to any fondling or touching with J.C. with the intent to arouse or satisfy the sexual desires of Chadwick. The State later dismissed the first count. Chadwick was convicted on the second count. Chadwick now appeals.

### **Analysis**

We neither reweigh the evidence nor judge the credibility of witnesses. Trimble v. State, 848 N.E.2d 278, 279 (Ind. 2006). If there is sufficient evidence of probative value to support the conclusion of the trier of fact then the verdict will not be disturbed. Id. Put differently, we must affirm if the probative evidence and reasonable inferences drawn therefrom could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. Id.

Chadwick contends that there is insufficient evidence to support his conviction for Class C felony child molesting within the fifteen-month window set forth in the charging information. J.C. testified that Chadwick touched her “private part” with his hands and with his “private part.” Tr. pp. 25-27. J.C. further testified that Chadwick touched her “private part” with his hands and with his “private part” while Ms. Burlington was her first grade teacher. Id. at 22, 28. Ms. Burlington was J.C.’s teacher during at least a portion of the time between August of 2003 and November of 2004. Tr. pp. 22-23. J.C.’s mother also testified that J.C. visited with Chadwick during the time period set forth in the charging information. Id. at 57.

In addition to this evidence, the State also presented specific evidence that Chadwick molested J.C. on the weekend of November 19-21, 2004. Chadwick argues that evidence should be disregarded because it falls outside the dates alleged in the charging information. Indiana Code Section 35-34-1-2(a)(5) requires that a charging information “[state] the date of the offense with sufficient particularity to show that the offense was committed within the period of limitations applicable to that offense.” The State must also include in the charging information “the time of the offense as definitely as can be done if time is of the essence of the offense.” I.C. § 35-34-1-2(a)(6) (emphasis added). “Where time is not of the essence of the offense, however, it is well established that ‘the State is not confined to proving the commission on the date alleged in the affidavit or indictment, but may prove the commission at any time within the statutory period of limitations.’” Love v. State, 761 N.E.2d 806, 809 (Ind. 2002) (quoting Herman v. State, 247 Ind. 7, 17, 210 N.E.2d 249, 255 (1965)).

As a general rule, time is not of the essence in child molesting prosecutions. See id. (citing generally Barger v. State, 587 N.E.2d 1304, 1307 (Ind. 1992)). In child molesting cases, the exact date is only important in limited circumstances, such as where the victim’s age at the time of the offense falls at or near the dividing line between classes of felonies. Id. J.C. was between the ages of six and seven between August of 2003 and November of 2004; therefore, the exact date is not material in this case because J.C.’s age was not near the dividing line between classes of felonies. Additionally, charging informations in child molesting prosecutions may allege a broad time period without preventing the defendant from presenting certain defenses such as an alibi or an

insanity defense. Hodges v. State, 524 N.E.2d 774, 779 (Ind. 1988) (citing Merry v. State, 166 Ind. App. 199, 209-12, 335 N.E.2d 249, 256-57 (Ind. App. 1975), trans. denied). The statutory period of limitations was also not an issue. Therefore, the evidence establishing commission of Class C felony child molesting during the weekend of November 19-21, 2004 was sufficient to support Chadwick’s conviction, regardless of the specific date alleged in the charging information.<sup>1</sup>

### **Conclusion**

The evidence in this case was sufficient to support Chadwick’s conviction. We affirm.

Affirmed.

BAILEY, J., and VAIDIK, J., concur.

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<sup>1</sup> Chadwick also argues that a jury instruction reading, “[t]ime is not an element of the crime of Child Molesting” was misleading and a misrepresentation of the law. App. p. 147. However, when time is not of the essence, as it is not in most child molesting cases, the State need only prove commission within the statutory period of limitations. Therefore, the jury instruction was an accurate statement of the law and not misleading.