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**IN THE
COURT OF APPEALS OF INDIANA**

NICHOLAS MILLS,)
)
Appellant- Defendant,)
)
vs.) No. 82A04-1012-CR-741
)
STATE OF INDIANA,)
)
Appellee- Plaintiff,)

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Robert J. Tornatta, Judge
Cause No. 82D02-1005-FC-503

June 3, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Chief Judge

Case Summary and Issue

Following a jury trial, Nicholas Mills appeals his conviction for child molesting as a Class C felony. On appeal he raises the sole issue of whether sufficient evidence was presented to support his conviction. Concluding that sufficient evidence was presented to support his conviction, we affirm.

Facts and Procedural History

By May 5, 2010, Mills had been living temporarily with a family for about one and one-half months. On May 5, while the family hosted a backyard barbeque, Mills entered the house to join J.R., a seven-year-old child of the family. J.R. later testified that Mills sat next to her on the couch and while they were alone in the room he “stuck his fingers up my butt.” Transcript at 17; accord id. at 18. More specifically, she testified that Mills put his fingers through the leg of and inside her underwear and “wiggled” his fingers. Id. at 19. Mills told J.R. not to tell anyone. At some point J.R.’s father entered the room and saw Mills’s hands on J.R.’s rear end which, at this point, were on top of and outside of her underwear and nightgown. Mills quickly removed his hands as soon as he saw J.R.’s father enter the room. J.R. reported Mills’s touching to her father, the police were called, and J.R. explained to officers what had happened.

A jury found Mills guilty of child molesting as a Class C felony, and the trial court entered a judgment of conviction and sentenced Mills to eight years in prison, all to be executed in the Department of Correction. Mills now appeals his conviction.

Discussion and Decision

I. Standard of Review

Our standard of reviewing a sufficiency claim is well-settled: we do not assess witness credibility or reweigh the evidence, and we consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). When confronted with conflicting evidence, we must consider it in a light most favorable to the conviction. Id. We affirm the conviction “unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. . . . The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.” Id. (quotations and citations omitted).

II. Child Molesting

To convict Mills of child molesting as a Class C felony, the State had to prove J.R. was under fourteen years old, and that Mills “fondl[ed] or touch[ed]” J.R. “with intent to arouse or to satisfy the sexual desires of either” J.R. or himself. Ind. Code § 35-42-4-3(b). “A person engages in conduct ‘intentionally’ if, when he engages in the conduct, it is his conscious objective to do so.” Ind. Code § 35-41-2-2(a). Intent as relates to child molesting may be established by circumstantial evidence and may be inferred from the defendant’s conduct and the natural or usual consequences to which that conduct points, including evidence that the defendant touched a child’s genitals. Kirk v. State, 797 N.E.2d 837, 841 (Ind. Ct. App. 2003), trans. denied.

Mills argues the State did not present sufficient evidence of his intent to arouse or satisfy sexual desires because it is unclear whether Mills touched J.R. over or under her clothing in light of J.R.’s inconclusive testimony and her father’s testimony that he saw

Mills's hands outside and not inside J.R.'s clothing. We disagree. J.R. testified that while she was lying down, Mills inserted his hands "inside [her] panties" and through the leg of her panties. Tr. at 41. J.R. also specifically distinguished between touching over or under her clothing by clearly stating that his fingers were "[u]nder" her underwear and not "on top" of her underwear. Id. at 19. Further, J.R. testified that Mills did this while no one was around, from which we reasonably infer that what J.R.'s father saw – Mills's hands on the outside of J.R.'s clothing – was not the entire incident.

Therefore, we conclude that a rational fact-finder could find that Mills touched J.R. under her clothes. Further, a rational fact-finder may reasonably infer from Mills quickly pulling his hands away from J.R.'s rear end when he knew J.R.'s father was looking at him that Mills engaged in such conduct intentionally and intending to arouse the sexual desires of either J.R. or himself. See Altes v. State, 822 N.E.2d 1116, 1121-22 (Ind. Ct. App. 2005) (stating a female's bare bottom is close enough to the female genitals for a reasonable fact-finder to consider it the source of sexual gratification).

To the extent Mills challenges the veracity of J.R.'s or her father's testimonies, we repeat that as an appellate court we do not assess witnesses' credibility or reweigh evidence, we consider reasonable inferences supporting the verdict, and we consider evidence in a light most favorable to the conviction. Drane, 867 N.E.2d at 146. Based on the evidence presented, a reasonable fact-finder could find that Mills intentionally touched J.R. in a manner intended to arouse the sexual desires of J.R. or himself, and therefore we must affirm his conviction. See Bowles v. State, 737 N.E.2d 1150, 1152 (Ind. 2000) (stating a victim's testimony, even if uncorroborated, is ordinarily sufficient to sustain a conviction for child molesting).

Because the record contains evidence that Mills touched J.R. inside her clothing and reasonable inferences are sufficient to sustain Mills's conviction, we need not address Mills's secondary argument that his touching J.R. over the clothing in a non-erogenous zone would never be sufficient to sustain a conviction for child molesting.¹

Therefore, the evidence presented, namely J.R.'s testimony of how Mills touched her and her father's testimony regarding how Mills quickly pulled his hands away upon being discovered, is sufficient to support Mills's conviction for child molesting as a Class C felony.

Conclusion

The evidence presented supports Mills's conviction of child molesting as a Class C felony, which is therefore affirmed.

Affirmed.

NAJAM, J., and CRONE, J., concur.

¹ It is worth noting that as a matter of logic this argument is equally as mistaken as an assertion that if credible eye witness testimony is sufficient to sustain a conviction, lack thereof is necessarily insufficient to sustain a conviction. In addition, the statement that touching over the clothing or in a non-erogenous zone would never be sufficient to sustain a conviction is incorrect. See Bass v. State, ___ N.E.2d ___, ___, 2011 WL 1435502, at *3 (Ind. Ct. App., Apr. 14, 2011) (concluding that touching a child's breasts or genitals is not required to sustain a conviction for child molesting), trans. pending; Altes, 822 N.E.2d at 1122 (touching female's bare skin from shoulders down to her waist led to an inference of intent to arouse or satisfy sexual desires).