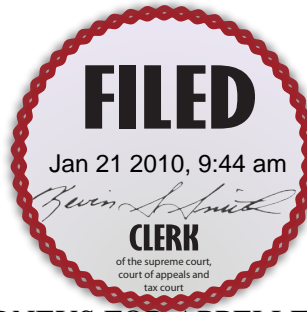


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

MICHAEL C. BORSCHEL
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ANN L. GOODWIN
Special Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

LAMAR CRITTENDEN,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)
)

No. 49A05-0906-CR-355

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Lisa Borges, Judge
Cause No. 49G04-0810-FA-227401

January 21, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Lamar Crittenden appeals his convictions for class A and class C felony child molesting. He contends that the State failed to establish that he was within the territorial jurisdiction of Indiana when he molested his victim. We affirm.

In 2006, Crittenden began cohabiting with Shontae Matlock and her daughter D.M., born February 8, 1999, on Denny Street in Indianapolis. On one occasion during 2007 or 2008, Crittenden entered D.M.'s bedroom while she was sleeping and ordered her to perform fellatio on him. When she refused, Crittenden placed his hand inside her vagina and moved it around. He then performed anal intercourse on her. Crittenden admonished D.M. not to tell anyone about the incident. Nevertheless, D.M. told her mother, who refused to believe her allegations. On May 11, 2008, D.M. reported the incident to her aunt, Lawanna Smith, who took her to the hospital for a medical examination.

On October 7, 2008, the State charged Crittenden with two counts of class A felony child molesting and two counts of class C felony child molesting. On April 7, 2009, the State filed a notice of intent to introduce child hearsay statements at trial. On April 27, 2009, the trial court held a hearing on the matter and determined that such statements were admissible, subject to limitations set forth in *Tyler v. State*, 903 N.E.2d 463 (Ind. 2009).¹ That same day, Crittenden waived his right to jury trial, and a bench trial ensued. The trial court found Crittenden guilty of one count of class A felony child molesting and one count of class C

¹ In *Tyler*, our supreme court held that where the statements are consistent and otherwise admissible, testimony of a protected person may be presented in open court or by prerecorded statement through the protected person statute, found in Indiana Code Section 35-37-4-6, but not both except as authorized under the Indiana Rules of Evidence. 903 N.E.2d at 467.

child molesting. At the May 26, 2009 sentencing hearing, the trial court made the following statement:

I want to state this specifically for the record, that my verdict was based on the child's testimony, that I gave no weight in my decision to the statements that the victim made to [Aunt] Lawanna Smith or any other individual but only upon her testimony here at trial, which I found to be compelling and credible.

Tr. at 153. This appeal ensued.

Crittenden contends that the State failed to present sufficient evidence to establish territorial jurisdiction over his case. Territorial jurisdiction refers to the state's authority to prosecute a person for an act committed within its territorial borders. *Ortiz v. State*, 766 N.E.2d 370, 374 (Ind. 2002). Although territorial jurisdiction is not considered an element of the offense, the State must prove it beyond a reasonable doubt. *Id.* When reviewing a claim of insufficient evidence, we neither reweigh evidence nor judge witness credibility; rather, we consider only the evidence and reasonable inferences supporting the judgment. *Id.* We affirm the conviction if there is substantial evidence of probative value from which a trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id.*

In advancing his sufficiency claim, Crittenden relies on the trial court's statement during sentencing that its verdict "was based on the child's testimony [and] that [it] gave no weight in [its] decision to the *statements that the victim made to* [Aunt] Lawanna." *Id.* at 153 (emphasis added). D.M. testified in court that Crittenden molested her in her bedroom at their old house. Tr. at 62. Aunt Lawanna testified that Shontae, D.M., and Crittenden lived in various houses all within Indianapolis during 2006, 2007, and 2008. *Id.* at 89. Aunt Lawanna also testified that she frequently spent time with D.M. and essentially helped raise

her. *Id.* at 87-88. Clearly, Aunt Lawanna's testimony regarding the location of D.M.'s home was based on personal knowledge and not on any hearsay statements D.M. made to her. Thus, the State presented sufficient evidence of territorial jurisdiction. Accordingly, we affirm Crittenden's convictions.

Affirmed.

RILEY, J., and VAIDIK, J., concur.