



Nathan Brittain (“Brittain”) was convicted in St. Joseph Superior Court of two counts of Class C felony child molesting and two counts of Class B felony attempted child molesting. The trial court sentenced Brittain to an aggregate sentence of ten years executed. Brittain appeals and argues that the evidence presented at trial is not sufficient to support his convictions.

We affirm.

### **Facts and Procedural History**

In 2008, J.W., a ten-year-old girl, lived with her mother, her mother’s boyfriend Casey, her brother and sister, and Casey’s nephew, Brittain, an adult. Sometime in May or June of that year, J.W. and J.W.’s friend, nine-year-old M.A., spent the night at J.W.’s house. Sometime during the evening, J.W. and M.A. went to the basement to listen to music on the computer located there. In the basement, there were two couches.

While J.W. and M.A. were in the basement, Brittain came into the basement, pushed the two couches together and laid on the couches. He then placed M.A. on top of him so that she straddled his hips. He held her by the waist and moved her back and forth, while making moaning noises. Brittain moved M.A. off of him and placed J.W. in the same position on his hips and repeated what he had done with M.A.

Brittain then removed his penis from his pants and placed a hand on each of the girls’s heads and forced them towards his penis. Although, M.A. did not touch Brittain’s penis, she testified that she saw J.W.’s lower lip touch Brittain’s penis. Brittain then stopped trying to force the girls’s heads toward his penis and ran upstairs. The girls ran upstairs but did not tell anyone what Brittain had done to them. Approximately one week

later, M.A. told a friend's mother what had occurred. The friend's mother then informed J.W.'s mother and M.A.'s grandfather. After confirming this story with J.W., J.W.'s mother called police, who removed J.W. from the home.

On December 4, 2008, the State charged Brittain with two counts of Class B felony attempted child molesting, two counts of Class C felony child molesting, and two counts of Class D felony intimidation. On June 23, 2009, the State dismissed the two Class D felony intimidation charges. On June 25, 2009, a jury found Brittain guilty of the remaining charges. On July 22, 2009, Brittain was sentenced to ten years for each Class B felony conviction and four years for each Class C felony conviction, to be served concurrently for an aggregate ten year term. Brittain now appeals.

### **Sufficiency of Evidence**

Brittain argues that the evidence was not sufficient to support his convictions. When we review a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the verdict and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id. If inferences may be reasonably drawn that enable the trier of fact to find the defendant guilty beyond a reasonable doubt, then circumstantial evidence will be sufficient. Id.

#### *A. Child Molesting*

Brittain first argues that the evidence is not sufficient to support his two Class C felony child molesting convictions. Indiana Code section 35-42-4-3(b) (2004) states “[a] person who, with a child under fourteen (14) years of age, performs or submits to any fondling or touching, of either the child or the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person, commits child molesting, a Class C felony.”

The evidence established that Brittain touched both girls with the intent to arouse or to satisfy his sexual desires. Brittain made each of the girls straddle his hips in turn. He then moved their hips back and forth or up and down. The girls testified that Brittain positioned them so that their genitalia were in close proximity to his. M.A. testified that Brittain had unzipped his zipper when she was on top of him. J.W. testified that Brittain was moaning as he held her on top of him. From this evidence, the jury could reasonably infer that, through these actions, Brittain intended to arouse or satisfy his sexual desires. The evidence is sufficient to support Brittain’s convictions for Class C felony child molesting.

#### *B. Attempted Child Molesting*

Next, Brittain argues that the evidence is not sufficient to support his two Class B felony attempted child molesting convictions. Indiana Code section 35-42-4-3(a) (2004) states “[a] person who, with a child under fourteen (14) years of age, performs or submits to sexual intercourse or deviate sexual conduct commits child molesting, a Class B felony.”<sup>1</sup> Indiana Code section 35-41-5-1 (2004) provides that “[a] person attempts to

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<sup>1</sup> Indiana Code § 35-41-1-9 (2004) defines deviate sexual conduct as “an act involving:  
(1) a sex organ of one person and the mouth or anus of another person; or

commit a crime when, acting with the culpability required for commission of the crime, he engages in conduct that constitutes a substantial step toward commission of the crime. An attempt to commit a crime is a felony or misdemeanor of the same class as the crime attempted.”

The evidence presented established that Brittain committed a substantial step toward performing or submitting to deviate sexual conduct with J.W. and M.A. Both girls testified that Brittain pushed their heads towards his penis. M.A. testified that she had been forced to touch Brittain’s penis with her tongue. Tr. p. 255. J.W. testified that she saw M.A. touch Brittain’s penis with her lower lip. Tr. p. 320. The jury could reasonably infer that Brittain attempted to force M.A. and J.W. to perform oral sex on him. The evidence presented is sufficient to support Brittain’s convictions for Class B felony attempted child molesting.

### **Conclusion**

The evidence presented at trial is sufficient to support Brittain’s convictions for two counts of Class C felony child molesting and two counts of Class B felony attempted child molesting.

Affirmed.

RILEY, J., and BRADFORD, J., concur.

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(2) the penetration of the sex organ or anus of a person by an object.”