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IN THE COURT OF APPEALS OF INDIANA

A.E.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-1001-JV-17
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Gary K. Chavers, Judge Pro Tempore
Cause No. 49D09-0903-JD-738

July 13, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

A.E., a juvenile, appeals his adjudication as a delinquent child for committing acts that would be Class B[1] and Class C[2] felony child molesting if committed by an adult. We affirm.

FACTS AND PROCEDURAL HISTORY

In February 2009, eight-year-old X.W. drew a sexually-explicit picture at school. The picture was confiscated by his substitute teacher, who took it to the school principal. X.W. was questioned by his teacher in the presence of the school principal and school social worker, but he was reluctant to discuss with them his reason for drawing the picture. His teacher then spoke with him one-on-one and, when he was not comfortable talking about his reasons for drawing the picture, she asked him to write his explanation. X.W. wrote, "It all started when my big brother's friend came. He said where are you ticklelish [sic] then he said you want to know where I'm tickleish [sic]. He made me do bad inapropeit [sic] things." (State's Exhibit 2.)

The teacher contacted Child Protective Services ("CPS") and an investigator spoke with X.W. He told the CPS investigator that he drew the picture because someone had done something to him. He later told a representative from the Child Advocacy Center that A.E. had done those things to him. At a hearing on A.E.'s delinquency petition, X.W. testified A.E. forced him to commit sex acts on several occasions when he was four years old.

Based on X.W.'s testimony and that of his teacher, the juvenile court entered a true finding that A.E. committed acts that would be Class B and Class C felony child molesting if

[1] Ind. Code § 35-42-4-3(a).
[2] Ind. Code § 35-42-4-3(b).

committed by an adult. A.E. was placed on probation with special conditions: 1) to complete sex offender outpatient treatment; and 2) to have no contact with X.W. or any child under the age of 12, unless supervised by an adult.

DISCUSSION AND DECISION

Where the State seeks to have a juvenile adjudicated a delinquent for committing acts that would be crimes were the juvenile an adult, the State has the burden to prove every element of such crimes beyond a reasonable doubt. *M.S. v. State,* 889 N.E.2d 900, 901 (Ind. Ct. App. 2008), *trans. denied.* We neither reweigh the evidence nor judge the credibility of the witnesses. *K.S. v. State,* 849 N.E.2d 538, 543 (Ind. 2006). We consider only the evidence most favorable to the judgment and the reasonable inferences therefrom. *Id.* We will affirm where there is substantial probative evidence to support the determination of delinquency. *Id*. The delinquency finding will be sustained on appeal unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *D.B. v. State,* 842 N.E.2d 399, 402 (Ind. Ct. App. 2006). The uncorroborated testimony of a single witness may suffice to sustain the delinquency adjudication. *D.W. v. State,* 903 N.E.2d 966, 968 (Ind. Ct. App. 2009), *trans. denied*.

A.E. argues the State did not prove beyond a reasonable doubt that he committed what would be Class B and Class C felony child molesting if committed by an adult. Specifically, A.E. cites the juvenile court's reliance on X.W.'s uncorroborated testimony that "evolved and changed, and he admitted part of his earlier statements were not true." (Br. of App. at 3.)

While there were inconsistencies in X.W.'s testimony,[3] there was sufficient evidence to find A.E. a delinquent.

X.W. testified that when he was four, A.E. "took out his private part" and "made me suck it." (Tr. at 10.) He described the act in detail and also testified A.E. "put his private in my bottom." (*Id.* at 13.) X.W.'s teacher said that, in her experience as a teacher, the picture X.W. drew was "very explicit for his grade." (*Id.* at 44.)

Finding sufficient evidence to support the juvenile court's true finding, we affirm.

Affirmed.

BAILEY, J., and BARNES, J., concur.

[3] A.E. notes X.W. wrote in his original explanation of the incident that his "big brother's friend" asked him if he "was tickleish[sic]" and at trial, X.W. recanted the part of the statement about being asked if he were ticklish, but indicated the rest of the statement was true. (Tr. at 18-19.) A.E. also notes X.W. first testified the incidents happened "four or five" times, (*id.* at 12), and later said they happened "five or six times." (*Id.* at 35.) A.E. also argues X.W. concocted a story regarding incidents with A.E. as a way to avoid punishment for drawing a sexually explicit scene. We decline this invitation to assess X.W.'s credibility. *See K.S.*, 849 N.E.2d at 543.