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IN THE COURT OF APPEALS OF INDIANA

ROBERT MARTIN,	)	
	)	
Appellant/Defendant,	)	
	)	
vs.	)	No. 47A01-1005-CR-269
	)	
STATE OF INDIANA,	)	
	)	
Appellee/Plaintiff.	)	

APPEAL FROM THE LAWRENCE SUPERIOR COURT
The Honorable Andrea K. McCord, Judge
Cause No. 47C01-0803-FC-167

October 19, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Defendant Robert Martin appeals from his conviction of Class C felony Child Molesting,[1] contending that the State failed to produce sufficient evidence to sustain his conviction. We affirm.

FACTS

K.H. was born in December of 1998, and Martin was a family friend who "stepped into the grandfather role" when K.H.'s grandfather died. Tr. p. 317. Sometime around Easter of 2008, Martin, with whom K.H. often stayed overnight, asked K.H. and her sister to spend the weekend at his home. At some point during the weekend, as Martin and K.H. were watching television together on a couch, Martin placed his entire hand inside the front of K.H.'s pants. Martin moved his hand around on top of K.H.'s underwear, "right around the area where he was getting ready to touch" her genitals. Tr. p. 304. K.H. jumped up, retreated to a "tent" that she and her sister had constructed, and attempted to telephone her mother. Tr. p. 302. When interviewed about the incident, Martin admitted to touching K.H. "down just above her vagina" and that he had done something "dumb[,]" agreed that he had acted in a moment of weakness, stated that he "gave in to [sic] the temptation to touch [K.H.]'s vaginal area[,]" and acknowledged that what he did was wrong and that he should receive counseling for his actions. Tr. pp. 412, 442, 444.

On March 24, 2008, the State charged Martin with Class C felony child molesting. A jury found Martin guilty as charged, and the trial court sentenced him to four years of incarceration with two years suspended to probation.

[1] Ind. Code § 35-42-4-3(b) (2007).

DISCUSSION AND DECISION

Whether the State Produced Sufficient Evidence to Sustain Martin's Conviction

Our standard of review for challenges to the sufficiency of the evidence supporting a criminal conviction is well-settled:

> In reviewing a sufficiency of the evidence claim, the Court neither reweighs the evidence nor assesses the credibility of the witnesses. We look to the evidence most favorable to the [finding of guilt] and reasonable inferences drawn therefrom. We will affirm the conviction if there is probative evidence from which a reasonable [finder of fact] could have found Defendant guilty beyond a reasonable doubt.

Vitek v. State, 750 N.E.2d 346, 352 (Ind. 2001) (citations omitted).

In order to sustain Martin's conviction for Class C felony child molesting, the State was required to prove that he touched K.H. with the intent to arouse or satisfy the sexual desires of himself. Ind. Code § 35-42-4-3(b). Martin contends only that the State failed to establish that he touched K.H. with the intent to arouse himself. "The intent element of child molesting may be established by circumstantial evidence and may be inferred from the actor's conduct and the natural and usual sequence to which such conduct usually points." *Bowles v. State*, 737 N.E.2d 1150, 1152 (Ind. 2000).

While Martin acknowledges that the requisite intent for child molesting can be inferred from evidence that the defendant touched the victim's genitals, *see, e.g.*, *Wise v. State*, 763 N.E.2d 472, 475 (Ind. Ct. App. 2002), *trans. denied*, he suggests such an inference is impermissible here, as K.H. testified that that he did not actually touch her genitals. The facts of this case, however, clearly allow for such an inference. First, K.H. testified that Martin put his hand down her pants and was "getting ready" to touch her

genitals. A reasonable inference is that Martin was prevented from touching K.H.'s genitals only by her flight. In other words, as far as proving intent is concerned, Martin may as well have touched K.H.'s genitals.

Second, even though genital touching supports an inference of intent to arouse, it is not the same thing to say that it is necessary, which is what Martin urges. Indeed, in several cases, we have found evidence sufficient to support an inference of intent to arouse in the absence of genital touching. For example, in *Altes v. State*, 822 N.E.2d 1116 (Ind. Ct. App. 2005), *trans. denied*, we concluded that an inference of intent to arouse was permissible in light of evidence that the defendant massaged the victim's legs and bare buttocks. *Id.* at 1121-22. Likewise, in *Nuerge v. State*, 677 N.E.2d 1043 (Ind. Ct. App. 1997), *trans. denied*, we concluded that kissing the inside of the upper thigh was sufficient to prove the intent to arouse. *Id*. at 1049. As in *Altes* and *Nuerge*, we conclude that Martin's touching of K.H. so close to her genitals was sufficient to allow an inference of an intent to arouse. Finally, Martin's own statements that his actions were "dumb," deserving of punishment, and the result of weakness and succumbing to temptation support an inference of his intent to arouse. If Martin was tempted put his hand down K.H.'s pants and touch her very close to her genitals by something *other* than a desire to arouse or satisfy his sexual desires, he does not explain what that something might be. The State produced sufficient evidence to sustain Martin's conviction.

We affirm the judgment of the trial court.

DARDEN, J., and BROWN, J., concur.