

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JULY TERM 2006

C.C., JR., A CHILD,

Appellant,

v.

CASE NO. 5D06-679

STATE OF FLORIDA,

Appellee.

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Opinion filed December 1, 2006

Appeal from the Circuit Court for
Orange County,
Gail Adams, Judge.

James S. Purdy, Public Defender, and
Leonard R. Ross, Assistant Public
Defender, Daytona Beach, for Appellant.

Charles J. Crist, Jr., Attorney General,
Tallahassee, and Carmen F. Corrente,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

Appellant was found guilty of the charge of lewd and lascivious molestation, and sentenced to a term of probation. The only question raised by this appeal is the sufficiency of the evidence to convict him. Although the young victim could not remember what the perpetrator's face looked like at the time of trial, her out-of-court identification was sufficient to support the trial court's finding of guilt. See *State v.*

Freber, 366 So. 2d 426 (Fla. 1978). With respect to all other issues, we have considered the briefs and reviewed the trial transcript. “[T]he determination of whether appellant's ‘act was in fact lewd and lascivious’ is a question of fact and is based upon the circumstances of each individual case.” *W.R.H. v. State*, 763 So. 2d 1111, 1112 (Fla. 4th DCA 1999) (citing *Chesebrough v. State*, 255 So. 2d 675, 679 (Fla. 1971)). Although appellant offered several witnesses whose testimony, if believed, would have exonerated him, the trier of fact chose to believe the victim. The victim’s testimony was sufficient to sustain the finding of guilt, and we cannot substitute our judgment for the fact-finder’s on issues of witness credibility. See *Windom v. State*, 886 So. 2d 915, 927 (Fla.2004) (“This Court has held that it will not substitute its judgment for that of the trial court on questions of fact, and likewise on the credibility of witnesses and the weight given to the evidence so long as the trial court's findings are supported by competent, substantial evidence.”).

AFFIRMED.

ORFINGER, LAWSON and EVANDER, JJ., concur.