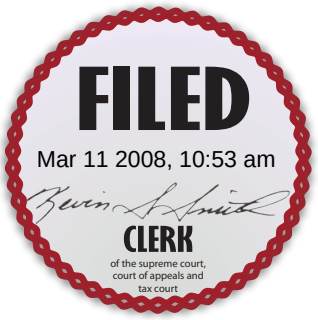

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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF A.L.,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 49A04-0708-JV-470
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn Moores, Judge
The Honorable Scott Stowers, Magistrate
Cause No. 49D09-0703-JD-000986

March 11, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

A.L. was adjudicated a delinquent child for committing sexual battery, which would be a Class D felony if committed by an adult. A.L. appeals and argues that the evidence is insufficient to establish that he committed sexual battery. We affirm.

Facts and Procedural History

On March 28, 2007, A.L. was sitting next to C.H. while they were eating lunch. A.L. put his hand down the front of C.H.'s pants and underwear. C.H. grabbed A.L.'s hand and tried to push him away. She also told him to stop. A.L. told C.H. that he knew that she "liked it." Tr. p. 21. C.H. continued to yell until A.L. removed his hand and walked away.

On March 30, 2007, the State filed a petition alleging that A.L. was a delinquent child for committing sexual battery, which would be a Class D felony if committed by an adult. After a hearing held on May 25, 2007, the trial court found that A.L. had committed sexual battery. A dispositional order was entered on June 9, 2007, and A.L. was placed on probation with special conditions including: no contact with C.H., counseling and community service. A.L. now appeals.

Discussion and Decision

A.L. argues that the evidence is insufficient to support the delinquency adjudication. When the State seeks to have a juvenile adjudicated as a delinquent for committing an act which would be a crime if committed by an adult, the State must prove every element of the crime beyond a reasonable doubt. J.S. v. State, 843 N.E.2d 1013, 1016 (Ind. Ct. App. 2006), trans. denied. In reviewing a juvenile adjudication, this court will consider only the evidence and reasonable inferences supporting the judgment and

will neither reweigh evidence nor judge the credibility of the witnesses. Id. If there is substantial evidence of probative value from which a reasonable trier of fact could conclude that the juvenile was guilty beyond a reasonable doubt, we will affirm the adjudication. Id.

The State was required to establish that A.L. "with intent to arouse or satisfy [A.L.'s] own sexual desires or the sexual desires of [C.H.]," touched C.H. when she was "compelled to submit to the touching by force or the imminent threat of force[.]" See Ind. Code § 35-42-4-8 (2004).

First, A.L. asserts that the evidence is insufficient to show that he acted with the intent to arouse or satisfy his own sexual desires or C.H.'s sexual desires. "A person's intent may be determined from their conduct and the natural consequences thereof and intent may be inferred from circumstantial evidence." J.J.M. v. State, 779 N.E.2d 602, 606 (Ind. Ct. App. 2002). "Furthermore, the intent to gratify required by the statute must coincide with the conduct; it is the purpose or motivation for the conduct." Id.

A.L. argues that the evidence is insufficient to show intent because he did not touch C.H.'s "vagina [or] the area around her vagina." Br. of Appellant at 3. A.L. put his hand down the front of C.H.'s pants and underwear, touching the skin underneath her underwear. After C.H. told him to stop, A.L. told C.H. that he knew that she "liked it." Tr. p. 21. This evidence is sufficient to establish that A.L. touched C.H. with the intent to arouse or satisfy his or C.H.'s sexual desires.

Next, A.L. argues that the State failed to establish that C.H. was "compelled to submit to the touching by force or the imminent threat of force." See Ind. Code § 35-42-4-8.

> Evidence that a victim did not voluntarily consent to a touching does not, in itself, support the conclusion that the defendant compelled the victim to submit to the touching by force or threat of force. However, "it is the victim's perspective, not the assailant's, from which the presence or absence of forceful compulsion is to be determined." "This is a subjective test that looks to the victim's perception of the circumstances surrounding the incident in question." "The issue is thus whether the victim perceived the aggressor's force or imminent threat of force as compelling her compliance."

Chatham v. State, 845 N.E.2d 203, 207 (Ind. Ct. App. 2006) (citations omitted). Moreover, the force need not be physical or violent, but may be implied from the circumstances. Scott-Gordon v. State, 579 N.E.2d 602, 604 (Ind. 1991).

After A.L. put his hand down the front of C.H.'s pants, she grabbed A.L.'s wrist and tried to push him away. She repeatedly told him to stop. A.L. finally removed his hand after C.H.'s friend also told him to stop. See Tr. pp. 19, 21, 41. C.H. testified that the incident made her feel uncomfortable and "freaked out." Tr. pp. 23, 29. This evidence is sufficient to establish that C.H. was compelled to submit to the touching by force.

For all of these reasons, we conclude that the evidence is sufficient to support the delinquency adjudication.

Affirmed.

FRIEDLANDER, J., and ROBB, J., concur.