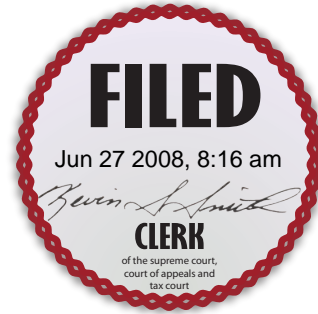


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

CICERO OFFERLE,)
)
Appellant-Defendant,)
)
vs.) No. 02A03-0801-CR-9
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Frances C. Gull, Judge
The Honorable Robert J. Schmoll, Magistrate
Cause No. 02D04-0612-FC-260

June 27, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Cicero Offerle appeals the trial court's refusal to accept his guilty plea, arguing that the trial court's decision was erroneous. Finding no error, we affirm.

FACTS

In October 2006, Angela Waldron and her children, including ten-year-old K.W., lived near the apartment of Offerle and his girlfriend. Waldron often left K.W. in Offerle's care because she had to make frequent trips to the hospital with her other child. One evening in October 2006, K.W. spent the night in Offerle's apartment. After Offerle's girlfriend went to bed, K.W. asked Offerle if she could also go upstairs to sleep. He said no. Later, while K.W. was laying on the couch watching TV, Offerle lay down "kind of like on top of" K.W. and began "cuddling" with her. Tr. p. 95-96. K.W. could feel Offerle's "private part" on her leg and it "felt kind of hard." Id. at 96. After about five to ten minutes, Offerle got up and warned K.W. that if she told anyone what had happened, they would both get into trouble.

On December 18, 2006, the State charged Offerle with class C felony child molesting. On July 24, 2007, Offerle pleaded guilty as charged. At the guilty plea hearing, Offerle told the trial court that there "was no touching, no fondling," guilty plea tr. p. 20-21, but subsequently conceded that he had told the investigating detective that while he was with K.W. on the couch, he had rubbed against her leg, causing him to become "semi-erect," id. at 21-22. The trial court took Offerle's guilty plea under advisement. At the September 14, 2007, sentencing hearing, Offerle denied intentionally committing the crime. Thus, the trial court refused to accept his guilty plea and set the

matter for trial. A jury trial was held on November 8, 2007, and Offerle was found guilty as charged. On December 7, 2007, the trial court sentenced Offerle to four years imprisonment, with two years suspended and two years of probation. Offerle now appeals the trial court's refusal to accept his guilty plea.

DISCUSSION AND DECISION

A defendant has no right to have a guilty plea accepted. Newsome v. State, 797 N.E.2d 293, 297 (Ind. Ct. App. 2003). In fact, "when a trial court, after complying with the guilty plea statute and taking evidence on the factual basis for the plea, rejects a plea bargain, we will presume that the court has properly evaluated the propriety of accepting it." Snyder v. State, 500 N.E.2d 154, 157 (Ind. 1986). A trial court, therefore, has wide discretion in determining whether to accept a defendant's guilty plea, and we review the rejection of a guilty plea for an abuse of that discretion. Newsome, 797 N.E.2d at 297. (citing Meadows v. State, 428 N.E.2d 1232, 1233-35 (Ind. 1981) (refusing to adopt a bright-line rule that "if no proper cause exists to vitiate a plea the trial court should be obligated to accept it"))).

The record reveals a significant amount of equivocation from Offerle. At the guilty plea hearing, he acknowledged that he had told the investigating detective that while he was with K.W. on the couch, he had rubbed against her leg, causing himself to become "semi-erect," but he denied that he was sexually aroused during the incident, telling the court that "[t]here was no touching, no fondling." Guilty Plea Tr. p. 20-22. Additionally, at the sentencing hearing, the following discussion occurred between the trial court and Offerle:

Court: Why are we here?

Offerle: I'm here because [K.W.'s] mother is getting revenge on me, Your Honor.

Court: So you're saying that you did not commit this offense?

Offerle: My private part did. I did not. I mean, I have no control of where blood flows, Your Honor.

Court: Excuse me?

Offerle: I have no control where blood flows, Your Honor. But yeah, I did plead guilty to—

Court: Well, my problem is at this point and in looking at the Pre-Sentence Investigation, sir, you are in effect saying you did not commit this offense. The offense under the statute requires that you did this knowingly and intentionally.

Offerle: Not intentionally.

Court: Okay. We've got a trial.

Sentencing Tr. p. 4-5.

Offerle made several equivocal statements about his intent—or lack thereof—to molest K.W. at the guilty plea and sentencing hearings. It would have been reasonable, therefore, for the trial court to have been concerned that, had the plea been accepted, Offerle would have later challenged the conviction because the plea was made involuntarily or unknowingly. Given Offerle's refusal to admit that he acted knowingly or intentionally on the night in question, we find that the trial court did not abuse its discretion by refusing to accept the guilty plea.

The judgment of the trial court is affirmed.

RILEY, J., and ROBB, J., concur.