

Appellant/Defendant Brandon D. Lange appeals his convictions for five counts of Class A felony Child Molestation¹ and three counts of Class C felony Child Molestation.² On appeal, Lange contends that the evidence at trial was insufficient to support his convictions for child molestation. Lange also contends that the trial court violated the constitutional prohibition against ex post facto laws by adjudicating him to be a credit restricted felon. Concluding that the evidence was sufficient to support Lange's child molestation convictions but that the trial court erred in adjudicating Lange to be a credit restricted felon, we affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

FACTS AND PROCEDURAL HISTORY

A.H. was born on August 24, 1993. When she was around eleven years old, A.H. lived with her mother and her siblings in an apartment at 3018 Hillside Drive in Indianapolis. During the time in which A.H. and her family lived on Hillside Drive, A.H.'s mother allowed her half-brother, Lange, to babysit her children while she worked nights as a security guard for UPS.

One of these nights in approximately mid- to late-2004, Lange woke A.H., told her to go to her mother's bedroom where Lange had a pornographic moving playing on the television, undress, lie on the bed, and to do what the people on the television were doing. The people on the television were engaging in sexual intercourse. As A.H. lay on the bed, Lange pulled his pants and underwear down to his ankles, placed A.H.'s legs on his

¹ Ind. Code § 35-42-4-3(a) (2004).

² Ind. Code § 35-42-4-3(b).

shoulders, and inserted his penis into A.H.'s vagina. Lange continued to move his penis in and out of A.H.'s vagina for approximately ten minutes. Lange wore a condom during the encounter that he later flushed down the toilet. Lange then told A.H. to wash herself in the bathroom and “[g]o back to bed.” Tr. p. 15.

Lange subsequently had sexual intercourse with A.H. “many times.” Tr. p. 16. Each time, Lange placed his fingers into A.H.'s vagina before engaging in sexual intercourse. Lange also gave A.H. massages during which he would “rub [A.H.'s] body sexually” by allowing “his fingers and hands” to touch A.H.'s arms, back, breast, butt, and legs. Tr. p. 16.

When A.H. was twelve years old, she and her family were evicted from their apartment on Hillside Drive. A.H. and her family then went to live with Lange in his apartment on Arlington Avenue in Indianapolis. While A.H. and her family lived with Lange, Lange babysat for A.H. during the day while her mother was at work and her siblings were at school.³

One day while they were home alone together, Lange and A.H. engaged in sexual intercourse on the living room floor of his apartment. On another occasion, Lange sat A.H. in a La-Z-Boy chair in his bedroom, licked her vagina, and inserted his fingers into her vagina before engaging in sexual intercourse with her during which he touched her body “all over.” Tr. p. 21.

On yet another occasion, Lange brought A.H. into the living room of his apartment

³ A.H. was not enrolled in school during this time because she had previously been expelled for fighting.

and asked her if she shaved her vagina. When A.H. responded in the negative, Lange told her he would teach her how. Lange then “took the razor and soap and water, put it on [A.H.’s] vagina and [] shaved [her] vagina.” Tr. p. 22. When he finished shaving her vagina, Lange instructed A.H. to take a shower, after which they engaged in sexual intercourse.

At some point, A.H.’s mother and Lange argued about whether A.H.’s mother would pay rent to Lange, after which A.H.’s mother moved her family out of Lange’s apartment. A short time later, A.H.’s mother acquired a new home at 8054 Eugene Street in Indianapolis. A.H., who had re-enrolled in school, moved in with her grandmother, but stayed at her mother’s home on weekends and school vacations. Lange sometimes stayed at the home on Eugene Street as well.

On one occasion when A.H., who was now thirteen years old, was staying at her mother’s home, A.H. had another sexual encounter with Lange. Prior to this encounter, A.H. was lying on the couch in the living room of her mother’s home. Lange approached her and began massaging her body with his hands under her clothes. Lange was interrupted when someone came to the front door, but began massaging A.H. again once he was sure the individual at the door was gone and A.H.’s mother was in her room upstairs. Lange continued massaging A.H. until he was sure that her mother was asleep, at which time he and A.H. engaged in sexual intercourse.

A.H. did not report the sexual encounters with Lange because she was afraid she would get into trouble, but did document the encounters in her journal. When A.H. was

sixteen, her mother asked her if she was sexually active and if she wanted to take birth control. At this time, A.H. gave her journal containing the details of her encounters with Lange to her mother. After reading the journal, A.H.'s mother notified the police.

On June 17, 2009, the State charged Lange with five counts of Class A felony child molestation and three counts of Class C felony child molestation. A bench trial was conducted on January 27, 2010, at the conclusion of which Lange was found guilty as charged. On February 18, 2010, the trial court imposed an aggregate fifty-year sentence and classified Lange as a credit restricted felon. Lange now appeals.

DISCUSSION AND DECISION

I. Whether the Evidence is Sufficient to Support Lange's Convictions

Lange contends that the evidence presented at trial was insufficient to support his convictions for five counts of Class A felony child molestation and three counts of Class C felony child molestation.

The standard for reviewing sufficiency of the evidence claims is well settled. We do not reweigh the evidence or assess the credibility of the witnesses. Rather, we look to the evidence and reasonable inferences drawn therefrom that support the verdict and will affirm the conviction if there is probative evidence from which a reasonable jury could have found the defendant guilty beyond a reasonable doubt.

Stewart v. State, 768 N.E.2d 433, 435 (Ind. 2002).

A. Whether the Evidence was Sufficient to Prove that Lange was At Least Twenty-One Years of Age at all Times Relevant to the Instant Appeal

Lange claims that the evidence presented at trial was insufficient to support his Class A felony child molestation convictions because the evidence failed to establish that he was at

least twenty-one years of age during the time period in which the State alleged that he molested A.H. In order to convict an individual of Class A felony child molestation, the State must prove beyond a reasonable doubt that a person, who is at least twenty-one years of age, performs or submits to sexual intercourse or deviate sexual conduct with a child under fourteen years of age. Ind. Code § 35-42-4-3(a). Lange acknowledges that both the victim's mother, who also happened to be his half-sister, and the investigating detective testified regarding his age, but claims that their testimony should be discounted because the State failed to establish that either of these witnesses had personal knowledge of his birthday.

The State alleged that Lange committed five counts of Class A felony child molesting between August 24, 2004, and August 23, 2007. At trial, the victim's mother testified that she and Lange have the same father and that up until the time she became aware that Lange had molested A.H., she and Lange had a normal brother-sister relationship. She testified that Lange's date of birth was July 22, 1977, or possibly 1976. Additionally, the investigating detective assigned to the case, Detective Melton, testified that pursuant to and during the course of his investigation, he learned that Lange's date of birth was July 22, 1977. Lange did not object to either of these witnesses' testimony regarding his date of birth at trial. Through this testimony, the State proved that at the time he molested A.H., Lange was at least twenty-seven years old. Therefore, we conclude that the evidence was sufficient to establish that Lange was at least twenty-one years of age at all relevant times. Lange's argument on appeal is effectively a request for this court to reweigh the evidence, which we will not do. *See Stewart*, 768 N.E.2d at 435.

B. Whether the Victim’s Testimony was Sufficient to Sustain Lange’s Convictions

Lange also claims that the evidence presented at trial was insufficient to support his convictions because the only evidence presented by the State was the uncorroborated testimony of the child victim. In raising this claim, Lange argues that the victim’s testimony of her encounters with Lange “lacked specificity making it impossible to distinguish it as a fact rather than fiction.” Appellant’s App. p. 10. We disagree.

Again, in order to convict an individual of Class A felony child molestation, the State must prove beyond a reasonable doubt that a person, who is at least twenty-one years of age, performs or submits to sexual intercourse or deviate sexual conduct with a child under fourteen years of age. Ind. Code § 35-42-4-3(a). Likewise, in order to convict an individual of Class C felony child molestation, the State must prove beyond a reasonable doubt that a person, “with a child under fourteen (14) years of age, performs or submits to any fondling or touching, of either the child or the older person, with the intent to arouse or to satisfy the sexual desires of either the child or the older person.” Ind. Code § 35-42-4-3(b). The Indiana Supreme Court has held that the uncorroborated testimony of a child victim is sufficient to support a conviction for child molestation. *Stewart*, 768 N.E.2d at 436.

Here, the victim provided consistent, detailed testimony of her encounters with Lange, which began when she was eleven years old and ended when she was thirteen years old. The victim described one specific instance in which she had sexual intercourse with Lange when she was eleven years old, at least two distinct instances in which she had sexual intercourse with Lange when she was twelve years old, and another instance when she had sexual

intercourse with Lange when she was thirteen years old. In describing these encounters, the victim provided specific details such as the location, the time of day, how each encounter was initiated, statements made by Lange immediately preceding, during, or immediately following the encounters, and whether Lange wore a condom during each encounter. Upon review, we conclude this testimony was sufficient to sustain Lange's convictions for Class A felony child molestation, *i.e.*, engaging in sexual intercourse with a victim under the age of fourteen, as charged in counts I, II, and V.

In addition, the victim provided detailed testimony of an encounter with Lange when she was twelve years old during which Lange placed his mouth on her vagina, placed his fingers in her vagina, and licked her vagina before having sex with her. The victim described that during this encounter, she was seated in a La-Z-Boy chair in Lange's bedroom. The victim further testified that Lange inserted his fingers into her vagina before each of her sexual encounters with Lange. This testimony was sufficient to sustain Lange's convictions for Class A felony child molestation, *i.e.*, engaging in deviate sexual conduct with a victim under the age of fourteen, as charged in counts III and IV.

The victim also provided detailed testimony establishing that Lange fondled her and gave her massages during which he would "take [his] fingers and rub [her] body sexually" many times while she was eleven, twelve, and thirteen years old. Tr. p. 16. The victim explained that during these "massages," Lange would allow his fingers and hands to touch "[her] arms, [her] back, [her] breast, [her] butt, [and her] legs." Tr. p. 16. This testimony was sufficient to sustain Lange's convictions for Class C felony child molestation, *i.e.*,

performing fondling or touching with the intent to arouse or satisfy sexual desires, as charged in counts VI, VII, and VIII.

In sum, we conclude that the victim’s consistent and detailed testimony was sufficient to sustain Lange’s convictions for five counts of Class A felony child molestation and three counts of Class C felony child molestation. Lange’s claim essentially amounts to an invitation for this court to reweigh the evidence, which again, we will not do. *See Stewart*, 768 N.E.2d at 435.

II. Whether the Trial Court Erred by Adjudicating Lange to be a Credit Restricted Felon

Lange also contends that the trial court violated the constitutional prohibition against ex post facto laws by adjudicating him to be a credit restricted felon. Both the United States Constitution and the Indiana Constitution prohibit ex post facto laws and the analysis is the same under both. *Upton v. State*, 904 N.E.2d 700, 705 (Ind. Ct. App. 2009), *trans. denied*. “To fall within the ex post facto prohibition, a law must be retrospective—that is, it must apply to events occurring before its enactment—and it must disadvantage the offender affected by it.” *Id.* (quotations omitted).

“The credit restricted felon statute was enacted through Pub.L. 80-2008, Sec. 6, which was effective on July 1, 2008 and applied ‘only to persons convicted after June 30, 2008.’” *Id.* at 704. The statute defined “credit restricted felon” as:

[A] person who has been convicted of at least one (1) of the following offenses:

- (1) Child molesting involving sexual intercourse or deviate sexual conduct (IC 35-42-4-3(a)), if:
 - (A) the offense is committed by a person at least twenty-one (21)

- years of age; and
- (B) the victim is less than twelve (12) years of age.
- (2) Child molesting (IC 35-42-4-3) resulting in serious bodily injury or death.
- (3) Murder (IC 35-42-1-1), if:
 - (A) the person killed the victim while committing or attempting to commit child molesting (IC 35-42-4-3);
 - (B) the victim was the victim of a sex crime under IC 35-42-4 for which the person was convicted; or
 - (C) the victim of the murder was listed by the state or known by the person to be a witness against the person in a prosecution for a sex crime under IC 35-42-4 and the person committed the murder with the intent to prevent the person from testifying.

Id. at 704-05 (quoting Ind. Code § 35-41-1-5.5). ““A person who is a credit restricted felon and who is imprisoned for a crime or imprisoned awaiting trial or sentencing is initially assigned to Class IV. A credit restricted felon may not be assigned to Class I or Class II.””

Id. at 705 (quoting Ind. Code § 35-50-6-4(b)). “Indiana Code [section] 35-50-6-3(d) provides that: ‘A person assigned to Class IV earns one (1) day of credit time for every six (6) days the person is imprisoned for a crime or confined awaiting trial or sentencing.’” *Id.* (quoting Ind. Code § 35-50-6-3(d)).

Lange argues that, at the time he committed his offenses, he was eligible for Class I credit time, which would have allowed him to receive one day of credit time for each day he was confined awaiting sentencing, or Class II credit time, which would have allowed him to receive one day of credit time for every two days he was confined awaiting sentencing. *See* Indiana Code § 35-50-6-3 (2004). However, under the credit restricted felon statute, he is only entitled to one day of credit for every six days confined awaiting sentencing. The State

concedes that Lange is correct, and that the application of the credit restricted felon statute to him is an ex post facto violation. Appellee's Br. pp. 8-10. Consequently, we reverse the trial court's determination of Lange's credit time classification and remand for proceedings consistent with this opinion.

For the foregoing reasons, we affirm Lange's convictions for five counts of Class A felony child molestation and three counts of Class C felony child molestation, but we reverse the trial court's credit time classification of Lange and remand for proceedings consistent with this opinion.

The judgment of the trial court is affirmed in part, reversed in part, and remanded with instructions.

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