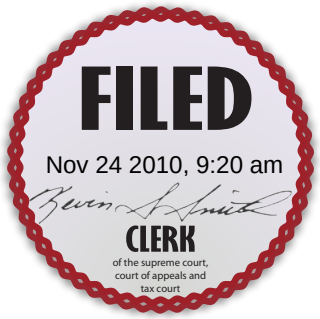

ATTORNEY FOR APPELLANT:

DONALD H. DUNNUCK
Dunnuck & Associates
Muncie, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

GEORGE P. SHERMAN
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

J.B. & J.G.,	)	
	)	
Appellants-Defendants,	)	
	)	
vs.	)	No. 18A02-1006-JV-679
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Richard A. Dailey, Judge
The Honorable Brian Pierce, Master Commissioner
Cause Nos. 18C02-1001-JD19, 18C02-1001-JD-20

November 24, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

J.B. and J.G. appeal their adjudications as delinquent children for acts that, if committed by an adult, would constitute child molesting as Class C felonies. We affirm.

Issue

J.B. and J.G. raise one issue, which we restate as whether the evidence is sufficient to sustain their adjudications.

Facts

Eleven-year-old S.E. was visiting her mother, her fourteen-year-old sister, W.H., and her seventeen-year-old brother, A.H., in Muncie during the summer of 2009. Seventeen-year-old J.B. and his brother, sixteen-year-old J.G., were friends with A.H. and frequently visited and stayed the night at S.E.'s mother's house. On four occasions, S.E., W.H., J.B., and J.G. played "sexual truth or dare" together, which involved daring each other to kiss, touch each other, show body parts, and kiss other body parts. Tr. p. 7. W.H. saw J.G. touch S.E.'s breast during the game. During another game, J.G. exposed his penis to W.H. and S.E. W.H. also saw J.G. and S.E. in bed together under the covers, and they appeared startled when W.H. walked into the room.

J.G. and J.B. sometimes woke S.E. during the middle of the night. One night, J.G. and J.B. woke S.E. and took her into A.H.'s bedroom. S.E. was between J.G. and J.B. on the bed, and they were watching a movie. Both J.G. and J.B. touched S.E.'s breasts and vagina over her pajamas for about an hour.

The State alleged that J.B. and J.G. committed acts that, if committed by an adult, would be child molesting as Class C felonies. After a hearing, the juvenile court found that the delinquency allegations were true. The juvenile court placed J.B. and J.G. on probation for one year and ordered that they undergo outpatient diagnostic testing and a sex offender registration evaluation.

Analysis

The issue is whether the evidence is sufficient to sustain the delinquency adjudications against J.B. and J.G. In juvenile delinquency adjudication proceedings, the State must prove every element of the offense beyond a reasonable doubt. A.B. v. State, 885 N.E.2d 1223, 1226 (Ind. 2008). On appeal, we do not reweigh the evidence or judge the credibility of witnesses. Id. "Reviewing solely the evidence and the reasonable inferences from that evidence that support the fact finder's conclusion, we decide whether there is substantial evidence of probative value from which a reasonable fact finder could find beyond a reasonable doubt that the defendant committed the crime." Id.

The offense of child molesting as a Class C felony is governed by Indiana Code Section 35-42-4-3(b), which provides: "A person who, 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 intent to arouse or to satisfy the sexual desires of either the child or the older person, commits child molesting, a Class C felony." J.B. and J.G. argue that the State failed to prove that the fondling or touching was accompanied by an intent to arouse or to satisfy the sexual desires of J.B., J.G., or S.E.

Mere touching alone is not sufficient to constitute the crime of child molesting. Rodriguez v. State, 868 N.E.2d 551, 553 (Ind. Ct. App. 2007) (citing Bowles v. State, 737 N.E.2d 1150, 1152 (Ind. 2000)). The State must also prove beyond a reasonable doubt that the act of touching was accompanied by the specific intent to arouse or satisfy sexual desires. Id. "The intent to arouse or satisfy the sexual desires of the child or the older person 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.'" Id. at 553-54 (quoting Kanady v. State, 810 N.E.2d 1068, 1069-70 (Ind. Ct. App. 2004)).

According to J.B. and J.G., S.E.'s testimony did not give enough detail to conclude that the touching was accompanied by the intent to arouse or satisfy sexual desires. However, J.B. and J.G. are merely requesting that we reweigh the evidence, which we cannot do. Eleven-year-old S.E. testified that J.B. and J.G. woke her and took her into her brother's bedroom. The three watched a movie while they were on the bed with S.E. between J.B. and J.G. For an hour during the movie, both J.B. and J.G. touched S.E.'s breasts and vagina on top of her pajamas. J.B. and J.G.'s intent is further demonstrated by their participation in sexualized games with S.E. We conclude that the evidence is sufficient to show that the touching was accompanied by the intent to arouse or satisfy sexual desires. See, e.g., Cruz Angeles v. State, 751 N.E.2d 790, 798 (Ind. Ct. App. 2001) (holding that the evidence was sufficient to show that the defendant touched his daughters for the purpose of satisfying or arousing sexual desires where he touched both girls' breasts through their clothing), trans. denied.

Conclusion

We conclude that the evidence is sufficient to sustain J.B. and J.G.'s delinquency adjudications for committing acts that, if committed by an adult, would be child molesting as Class C felonies. We affirm.

Affirmed.

FRIEDLANDER, J., and CRONE, J., concur.