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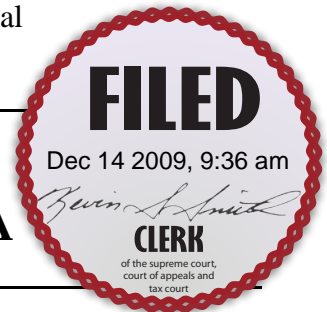
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**IN THE
COURT OF APPEALS OF INDIANA**



A.M.,)
)
Appellant- Respondent,)
)
vs.) No. 49A04-0905-JV-273
)
STATE OF INDIANA,)
)
Appellee- Petitioner,)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Geoffrey Gaither, Magistrate
Cause No. 49D09-0810-JD-3358

December 14, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

A.M., a juvenile, appeals his adjudication of delinquency based on the juvenile court's finding he committed acts that, if committed by an adult, would constitute three counts of child molesting as Class B felonies and two counts of child molesting as Class C felonies. For our review, A.M. raises a single issue, which we restate as whether sufficient evidence supports A.M.'s adjudication. Concluding the evidence is sufficient, we affirm.

Facts and Procedural History

On October 16, 2008, then six-year-old L.C. and then ten-year-old B.C. were at the residence of their father, J.C., and his fiancée, C.W. C.W. noticed the two boys were "fidgeting on top of one another." Transcript at 63-64. In response to questioning by C.W., L.C. said a teen called "Drew," later identified as A.M., had "done a few things in the bathroom with the two boys." Id. at 65. B.C. and L.C. both said A.M. "was fondling their private areas and that he would take his private area and put it to their private area." Id. Later that day, Officer Layton of the Indianapolis Metropolitan Police Department responded to the residence to investigate possible child molesting. L.C. told Officer Layton a teen who "was his mom's boyfriend's brother" had done "bad things" to him while babysitting him and B.C. over the summer at the residence of A.M. and his mother. Id. at 41. B.C. reported a similar story.

On October 20, 2008, L.C. and B.C. were separately interviewed by forensic child interviewer Jessica Irish. B.C. told Irish A.M. touched him "in wrong places," that is,

“my butt,” on multiple occasions. Transcript of Exhibits at 12. L.C. said A.M. had, on multiple occasions, “sucked” both L.C.’s and B.C.’s genitalia. Id. at 48.

On October 23, 2008, the State filed a delinquency petition charging A.M. with three counts of child molesting as Class B felonies and two counts of child molesting as Class C felonies. On February 5, 2009, the trial court held a child hearsay hearing. A.M. stipulated he was fifteen years old, his date of birth being in June 1993. L.C. testified regarding “bad touch[es]” given him by “Drew,” whom he identified as A.M. Tr. at 8. L.C. testified A.M., “about three times,” placed his mouth on and sucked L.C.’s “wrong place,” that is, his penis. Id. at 12-13. According to L.C., this happened at A.M.’s house. L.C. further testified that about four times A.M. pulled down L.C.’s pants and touched L.C.’s buttocks with his “wrong place.” Id. at 14-15. B.C. also testified regarding “bad touch[es]” given him by “Drew,” whom he identified as A.M. Id. at 31. B.C. testified that between five and ten times, A.M. pulled down B.C.’s pants and underwear and touched B.C.’s buttocks with his “wiener,” identified as his penis, and moved “[u]p and down.” Id. Further, according to B.C., A.M. put his penis inside B.C.’s buttocks such that “[i]t hurt.” Id. at 32. The State also called S.C., the mother of L.C. and B.C., and J.C. Both parents testified they never told their children what to say to the police except to tell the truth.

The juvenile court held a denial hearing on February 12, 2009. The juvenile court found L.C.’s and B.C.’s testimony in the child hearsay hearing to be reliable and accepted the parties’ stipulation to admit the testimony in the State’s case in chief. A.M. called his older brother and sister, who both testified they had no knowledge of A.M. being left

alone with L.C. or B.C. during the time he lived in the same house with the boys. A.M. denied engaging in any inappropriate sexual conduct with L.C. or B.C.

The juvenile court entered a true finding on all counts, and following a dispositional hearing on March 13, 2009, issued a dispositional order placing A.M. on probation. A.M. now appeals.

Discussion and Decision

I. Standard of Review

When reviewing the sufficiency of the evidence supporting a juvenile's delinquency adjudication, we neither reweigh the evidence nor judge witnesses' credibility. C.D.H. v. State, 860 N.E.2d 608, 610 (Ind. Ct. App. 2007), trans. denied. Rather, we consider only the probative evidence and reasonable inferences supporting the juvenile court's finding. M.S. v. State, 889 N.E.2d 900, 901 (Ind. Ct. App. 2008), trans. denied. We will affirm the adjudication of delinquency if probative evidence exists such that a reasonable factfinder could find the elements of the offense proven beyond a reasonable doubt. Id.

II. Sufficiency of the Evidence

A. Class B Felony Child Molesting

When the State seeks to have a juvenile adjudicated a delinquent for an act that would be a crime if committed by an adult, the State must prove every element of the crime beyond a reasonable doubt. C.D.H., 860 N.E.2d at 610. "A person who, with a child under fourteen (14) years of age, performs or submits to sexual intercourse or deviate sexual conduct commits child molesting, a Class B felony." Ind. Code § 35-42-4-

3(a).¹ Here, Counts 1 and 3 alleged A.M. committed deviate sexual conduct with L.C., and Count 2 alleged A.M. committed deviate sexual conduct with B.C. A.M. does not dispute L.C. and B.C. were under fourteen years old.

“A victim’s testimony, even if uncorroborated, is ordinarily sufficient to sustain a conviction for child molesting.” Bowles v. State, 737 N.E.2d 1150, 1152 (Ind. 2000). This court will make an exception to the rule and judge the credibility of the witness only in cases of “incredible dubiousity,” that is, only “where a sole witness presents inherently contradictory testimony that is equivocal or the result of coercion, and there is a complete lack of circumstantial evidence of guilt.” Id. Here, L.C. testified A.M. performed oral sex on him three times. Further, B.C. testified A.M. put his penis inside B.C.’s buttocks, and “[i]t hurt” as a result. Tr. at 32. This testimony was sufficient to establish A.M. committed two counts of deviate sexual conduct with L.C. and one count with B.C. Because the victims’ testimony was not equivocal or contradictory and there is no evidence it was coerced, the incredible dubiousity rule does not apply. Therefore, we decline to reevaluate L.C.’s and B.C.’s credibility, and we conclude sufficient evidence supports the juvenile court’s findings A.M. committed three counts of Class B felony child molesting.

B. Class C Felony Child Molesting

To support a true finding on two counts of child molesting as a Class C felony, the State must prove A.M., 1) with a child under fourteen years of age, 2) performed or submitted to fondling or touching, 3) with the intent to arouse or satisfy his own sexual

¹ “Deviate sexual conduct” is defined as “an act involving: (1) a sex organ of one person and the mouth or anus of another person; or (2) the penetration of the sex organ or anus of a person by an object.” Ind. Code § 35-41-1-9.

desires or those of the child, and 4) A.M. was older than the child. Ind. Code § 35-42-4-3(b); C.D.H., 860 N.E.2d at 611-12 (holding it is an element of this crime that the defendant be older than the child victim). The element of intent “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.” Bowles, 737 N.E.2d at 1152. Here, Count 4 alleged A.M. engaged in fondling or touching with L.C., and Count 5 alleged A.M. engaged in fondling or touching with B.C. A.M. does not dispute he was older than L.C. and B.C.

According to L.C.’s testimony, A.M. on multiple occasions pulled down L.C.’s pants and touched L.C.’s buttocks with his penis. Further, according to B.C.’s testimony, A.M. on multiple occasions pulled down B.C.’s pants and underwear and “bad touch[ed]” him on the buttocks using his penis. Tr. at 31. This was sufficient evidence that A.M. engaged in sexual touching with both L.C. and B.C., and from the surrounding facts and circumstances, the juvenile court could reasonably infer A.M. did so with the intent to arouse his desires or those of the younger children.

A.M. argues the evidence was insufficient “because there were serious inconsistencies in the testimony of the key witnesses,” Brief of the Appellant at 7, and the only evidence corroborating B.C.’s and L.C.’s testimony is their own out-of-court statements. This argument, however, is merely a request to reweigh the evidence and reassess witness credibility, which under our standard of review we will not do. See C.D.H., 860 N.E.2d at 610.

Conclusion

Sufficient evidence supports the juvenile court's true findings A.M. committed three counts of child molesting, Class B felonies, and two counts of child molesting, Class C felonies, if committed by an adult. Therefore, A.M.'s adjudication of delinquency is affirmed.

Affirmed.

BAKER, C.J., and BAILEY, J., concur.