

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

C.M.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 17, 2022

Court of Appeals Case No.
21A-JV-1850

Appeal from the Hancock Circuit
Court

The Honorable R. Scott Sirk,
Judge

Trial Court Cause No.
30C01-2101-JD-3

Weissmann, Judge.

[1] Seventeen-year-old C.M. appeals his delinquency adjudication for sexual battery, arguing that the State failed to prove he forcibly compelled fourteen-year-old C.P. to submit to his touching of her vagina, breasts, and buttocks. Finding sufficient proof in C.P.'s testimony that C.M. tightened his grip around her waist when she tried to pull away from him, we affirm.

Facts

[2] Neighbors C.M. and C.P. went for a bike ride one evening in June 2020. After stopping to see if one of C.P.'s friends was home, they walked into a nearby wooded area at C.M.'s recommendation. Once there, C.M. grabbed C.P. from behind, wrapped his arm around her waist, took off her shirt, and squeezed her breasts under her bra. C.M. also pulled down C.P.'s pants, rubbed her vagina over her underwear, and squeezed her buttocks—all while making a soft moaning noise. C.P. told C.M. to stop and tried to get away, but she couldn't. C.M. kept his arm around C.P.'s waist the entire time.

[3] Eventually, C.M. stopped touching C.P. and left the wooded area. C.P. dressed herself and followed, and the two went home. Over the next several weeks, C.P. hesitantly shared details about the incident with her mother, who ultimately reported it to police. The State filed a delinquency petition against C.M., alleging he engaged in conduct that would constitute Level 6 sexual battery if committed by an adult. After a factfinding hearing, the juvenile court adjudicated C.M. a delinquent and placed him on 9 months' probation. C.M. appeals, arguing that the State failed to present sufficient evidence of force.

Discussion and Decision

- [4] When reviewing the sufficiency of the evidence, we do not reweigh evidence or judge witness credibility. *B.T.E. v. State*, 108 N.E.3d 322, 326 (Ind. 2018). We view all evidence and reasonable inferences in a light most favorable to the conviction and will affirm if there is substantial evidence of probative value from which a reasonable trier of fact could have found the allegations true beyond a reasonable doubt. *Id.*
- [5] To adjudicate C.M. as delinquent for sexual battery, the State had to prove that he touched C.P. with intent to arouse or satisfy sexual desires and that C.P. was compelled to submit to the touching by force or imminent threat of force. *See* Ind. Code § 35-42-4-8(a)(1)(A). C.M. argues only that the State failed to prove he forcibly compelled C.P. to submit to his touching.
- [6] “[E]vidence 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.” *Smith v. State*, 678 N.E.2d 1152, 1155 (Ind. Ct. App. 1997) (citing *Scott-Gordon v. State*, 579 N.E.2d 602, 604 (Ind. 1991)). However, “it is the victim’s perspective, not the assailant’s, from which the presence or absence of forceful compulsion is to be determined.” *Tobias v. State*, 666 N.E.2d 68, 72 (Ind. 1996). This “subjective test” looks to “whether the victim perceived the aggressor’s force or imminent threat of force as compelling her compliance.” *Id.* “[T]he force need not be physical or violent,

but may be implied from the circumstances.” *Bailey v. State*, 764 N.E.2d 728, 730 (Ind. Ct. App. 2002) (citing *Scott-Gordon*, 579 N.E.2d at 604).

[7] In this case, C.P. testified that she “actively resist[ed]” C.M.’s touches. Tr. Vol. II, p. 90. She told C.M. to stop and “tried to pull away,” but “[h]e just grabbed [her] tighter.” *Id.* at 57. From this testimony, a trier of fact could reasonably infer that C.P. perceived C.M. as forcibly compelling her to submit to his touching. See *J.J.M. v. State*, 779 N.E.2d 602, 606 (Ind. Ct. App. 2002) (finding sufficient evidence of victim’s forcibly compelled submission where assailant’s hold on victim’s head prevented her from pulling it away from assailant’s crotch), *abrogated on other grounds by R.J.G. v. State*, 902 N.E.2d 804 (Ind. 2009).

[8] Finding sufficient evidence supporting C.M.’s delinquency adjudication, we affirm the judgment of the juvenile court.

Robb, J., and Pyle, J., concur.