

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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Anthony Lam,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

September 30, 2022

Court of Appeals Case No.  
22A-CR-990

Appeal from the Hendricks  
Superior Court

The Honorable Stephenie LeMay-  
Luken, Judge

Trial Court Cause No.  
32D05-2006-F4-20

**Riley, Judge**

## STATEMENT OF THE CASE

- [1] Appellant-Defendant, Anthony Lam (Lam), appeals his conviction for child molesting, a Level 4 felony, Ind. Code § 35-42-4-3(b).
- [2] We affirm.

## ISSUES

- [3] Lam presents two issues on appeal, which we restate as:
- (1) Whether the trial court abused its discretion by admitting certain evidence; and
- (2) Whether the State presented sufficient evidence beyond a reasonable doubt to support Lam’s conviction for Level 4 felony child molesting.

## FACTS AND PROCEDURAL HISTORY

- [4] Mother and Father (Parents) are the biological parents of B.L., who was four years old in early 2020. Parents have two other daughters who were aged seven and one in 2020. Mother’s sister was married to Lam, and B.L. referred to Lam as “Uncle Anthony.” (Transcript Conf. Vol. II, p. 144). To ensure their daughters’ safety, Parents implemented strict house rules (House Rules). These rules stipulated that the girls had to obtain permission to play in their basement, that they could not play in the basement or upstairs without the presence of

multiple adults, and that they could not play in their rooms with the door closed.

- [5] In May 2020, Parents hosted several family gatherings at their house in Danville, Indiana. They invited their extended family, including Lam, his wife, and their child. At some point, B.L., B.L.'s older sister, and a nephew, could not be located. When Father entered the house, he found that the children were not in the living room but that the basement door was open and the light was on, indicating that someone was in there. Father then called for anyone down there to come up. Lam and B.L. were the only ones who emerged. Father reprimanded B.L. and Lam for breaking the House Rules. In her defense, B.L. insisted that it was Lam who suggested they go to the basement.
- [6] On May 29, 2020, Parents hosted yet another family gathering at their home. Mother noticed that B.L. was not outside, so she went inside to find her. Seeing the basement light on, Mother went downstairs, only to find B.L. alone with Lam. Mother picked up B.L. and reminded B.L. that she had to ask permission before going into the basement. B.L. cuddled into Mother's arms and quietly stated that she had forgotten.
- [7] On June 20, 2020, Parents organized a birthday pool party for B.L., at the home of Mother's aunt. Mother talked to B.L. before the party and reminded her that "her privates are just for her," and that she should not allow anyone to "see or touch[]." (Tr. Conf. Vol. II, p. 149). Following Mother's instructions, B.L. became "upset and quiet" and indicated that "Uncle Anthony had

separated her privates.” (Tr. Conf. Vol. II, pp. 150, 152). Mother excused herself and immediately called Father and asked him to come home. Parents called a neighbor to watch their daughters so that they could go to Mother’s parents’ home, where Lam was, to question him about the allegation. When Mother informed Lam of what B.L. had alleged, and Father asked if it was true, Lam immediately stated that he and B.L. were just “playing around.” (Tr. Conf. Vol. II, p. 205). Father pressed for a definitive yes or no response, and Lam admitted that the allegations were true. Following his response, Father informed Lam that he would report him to the authorities. B.L.’s pool party went ahead as planned despite the turn of events. After Parents settled their daughters in for the night, they reported Lam to the Department of Child Services (DCS).

[8] Lam reached out to Father by text the following morning and asked to talk. During the phone call, Lam led with an apology and claimed that he “never meant for things to get out of hand [] with [B.L.]” and “he had looked up” online that “he could go to prison for a year for what he did and that would ruin his life, and he didn’t want that to happen.” (Tr. Vol. II, p. 208). Lam offered to go to counseling and was “willing to register as a sex offender.” (Tr. Vol. II, p. 211). Also, that morning, Lam told his wife, Mother’s sister, that there was nothing “sexual” about him touching B.L. and that he was only trying to “get a reaction” out of B.L. (Tr. Vol. III, p. 15).

[9] Three days after disclosing Lam’s inappropriate touching, on June 23, 2020, Parents took B.L. for an interview at Susie’s Place Child Advocacy Center

(Susie's Place). Anna Cope (Cope), B.L.'s forensic interviewer, described to B.L. what would happen during the interview and stressed the importance of narrating real events. Upon getting comfortable, B.L. divulged that Uncle Anthony touched her "privates" on more than one occasion and that it occurred "in the basement." (State's Exh. 1 at 17:03). B.L. explained that Lam touched the part she uses "to pee." (State's Exh. 1 at 17:31). Following that disclosure, B.L. began to cry, expressed a desire to go to the bathroom, and asked if she could see Mother. Based on B.L.'s reluctance to proceed, Cope suspended the interview and allowed B.L. to reunite with Mother in the lobby. In the meantime, Cope conferred with her team, which included a prosecutor, a detective, and a DCS family case manager (FCM), about whether to allow Mother into the interrogation room so that B.L. could be more comfortable. Mother was allowed to be in the room with B.L. When the interview resumed and B.L. sat on Mother's lap, Cope explained to B.L. that Mother was there to only offer comfort. B.L. once again began to cry and stated that she did not "want to talk her about [her] privates" anymore. (State's Exh. 1 at 41:28). Upon sensing that B.L. was unwilling to proceed with the interview, Cope stated that she would be ending the interview, and asked B.L. if she had any questions. In response, Mother interjected and asked B.L. if she was willing to answer more questions from Cope. Rather than responding to Mother's unpermitted interruption, Cope stated she was ending the interview.

[10] On June 26, 2020, the State filed an Information, charging Lam with Level 4 felony child molesting. On March 26, 2021, the State filed a notice pursuant to

Indiana's Protected Persons Statute (PPS), Indiana Code section 35-37-4-6, indicating that it intended to use B.L.'s recorded forensic interview at trial. The trial court conducted a pre-trial hearing on this matter, during which Cope and B.L.'s pediatrician testified. Cope testified that she interrogated B.L. three days after B.L. disclosed Lam's inappropriate touching, and that the protocol for such an interview was followed. B.L.'s pediatrician testified that when she saw B.L. for a wellness checkup in June 2021, a year after the incident, she questioned B.L. if she remembered the previous summer's events. B.L. claimed that she could not remember anything, and B.L.'s pediatrician opined that B.L. had "begun to repress" the molestation incident and that probing her about those events would "cause a lot of emotional distress and trauma." (Tr. Conf. Vol. II, p. 8). B.L. then testified via closed-circuit television that she had an Uncle Anthony who visited her house and played with her. B.L. also claimed she remembered going to a place where she spoke to a woman about Uncle Anthony and that she told her the truth. B.L. was thereafter cross-examined. Following the hearing, the parties tendered briefs, and on October 13, 2021, the trial court issued an order permitting the State to present B.L.'s forensic interview at Lam's trial.

[11] A two-day jury trial was held on March 7 and 8, 2022. Over Lam's objection, Mother testified that B.L. had reported to her that "Uncle Anthony had separated her privates." (Tr. Vol. II, p. 152). The jury was also permitted to view B.L.'s forensic video interview over Lam's objection. In his defense, Lam testified he had never been left alone with B.L., while he may have touched her

during play, he could not remember touching her privates, and if he did, it was not sexual. At the close of the evidence, the jury found Lam guilty as charged. After a sentencing hearing, on April 6, 2022, the trial court sentenced Lam to six years, with two years executed and four years suspended to probation.

[12] Lam now appeals. Additional facts will be provided as necessary.

## DISCUSSION AND DECISION

### I. *Admission of the Evidence*

[13] The admission or exclusion of evidence is entrusted to the discretion of the trial court. *Farris v. State*, 818 N.E.2d 63, 67 (Ind. Ct. App. 2004). We will reverse a trial court's decision only for an abuse of discretion. *Id.* An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. *Doolin v. State*, 970 N.E.2d 785, 787 (Ind. Ct. App. 2012).

[14] The PPS, "allows for the admission of otherwise inadmissible hearsay evidence relating to specified crimes whose victims are deemed 'protected persons.'" *Tyler v. State*, 903 N.E.2d 463, 465 (Ind. 2009). The PPS defines a protected person, in relevant part, as "a child who is less than fourteen (14) years of age." I.C. § 35-37-4-6(c)(1). B.L. meets the definition of a protected person under the PPS. The PPS states in relevant part:

(d) A statement or videotape that:

(1) is made by a person who at the time of trial is a protected person;

(2) concerns an act that is a material element of an offense listed in subsection (a) or (b) that was allegedly committed against the person; and

(3) is not otherwise admissible in evidence;

is admissible in evidence in a criminal action for [certain enumerated offenses, including child molesting] if the requirements of subsection (e) are met.

(e) A statement or videotape described in subsection (d) is admissible in evidence in a criminal action listed in subsection (a) or (b) if, after notice to the defendant of a hearing and of the defendant's right to be present, all of the following conditions are met:

(1) The court finds, in a hearing:

(A) conducted outside the presence of the jury; and

(B) attended by the protected person in person or by using closed circuit television testimony as described in section 8(f) and 8(g) of this chapter;

that the time, content, and circumstances of the statement or videotape provide sufficient indications of reliability.

(2) The protected person:

(A) testifies at the trial; or



(B) is found by the court to be unavailable as a witness for one (1) of the following reasons:

(i) From the testimony of a psychiatrist, physician, or psychologist, and other evidence, if any, the court finds that the protected person's testifying in the physical presence of the defendant will cause the protected person to suffer serious emotional distress such that the protected person cannot reasonably communicate.

(ii) The protected person cannot participate in the trial for medical reasons.

(iii) The court has determined that the protected person is incapable of understanding the nature and obligation of an oath.

(f) If a protected person is unavailable to testify at the trial for a reason listed in subsection (e)(2)(B), a statement or videotape may be admitted in evidence under this section only if the protected person was available for cross-examination:

(1) at the hearing described in subsection (e)(1); or

(2) when the statement or videotape was made.

I.C. § 35-37-4-6.

*A. Sufficient Indications of Reliability*

[15] Considerations in making the reliability determination under the PPS include:

(1) the time and circumstances of the statement, (2) whether there was significant opportunity for coaching, (3) the nature of the questioning, (4)

whether there was a motive to fabricate, (5) use of age-appropriate terminology, and (6) spontaneity and repetition. *Trujillo v. State*, 806 N.E.2d 317, 325 (Ind. Ct. App. 2004). Lam argues that the trial court abused its discretion by admitting B.L.’s forensic interview because it lacked sufficient indications of reliability. In Lam’s view, the conditions surrounding the forensic interview were “unusual”, in that Mother was allowed to be present and that “she actually interjected during the interview to guide B.L.’s responses.” (Appellant’s Br. p. 14). Stated differently, Lam claims that Mother coached B.L. during the forensic interview.

[16] Contrary to his claim that Mother might have coached B.L., the record shows that no more questions or information were obtained from B.L. after Mother joined B.L. in the room because B.L. categorically stated that she did not wish to carry on with the interview. Further, aside from Lam’s claims that it was unusual for a parent to be present during a forensic interview, Cope stated that this has happened in other interviews. Accordingly, we conclude that there was evidence that B.L.’s recorded forensic interview contained sufficient indications of reliability.

### B. *Unavailability*

[17] Lam contends that the trial court erred in finding B.L. to be unavailable to testify not because she would suffer emotional trauma, but because she could not recall the alleged molestation. Lam’s argument is unpersuasive. The purpose of the PPS is to “spare children the trauma of testifying in open court against an alleged sexual predator.” *Tyler*, 903 N.E.2d at 466. To that end, the

PPS explicitly states, in part, that the State can show that the protected person is found to be unavailable as a witness based on the testimony of a “physician.” I.C. § 35-37-4-6(e)(2)(B)(i). The State in the instant case relied on B.L.’s pediatrician’s testimony to prove that B.L. would suffer emotional distress if required to testify against Lam face-to-face. Therefore, we find that this evidence readily supports the trial court’s conclusion that B.L. is a protected person who was unavailable as a witness under Indiana Code section 35-37-4-6 and that, consequently, her out-of-court statements to the forensic interviewer were admissible under the PPS.

### C. *Specific Findings*

- [18] Lam first contends that the trial court failed to make specific findings as to the reliability of B.L.’s testimony and her unavailability to testify at trial. We initially observe that Indiana Trial Rule 52(A) provides that “[f]indings of fact are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(B) (dismissal) and 59(J) (motion to correct errors).” Further, as a matter of statutory interpretation, “we will not ordinarily read requirements into clear and unambiguous statutes that are not there.” *Tibbs v. State*, 86 N.E.3d 401, 405 (Ind. Ct. App. 2017), *trans. denied*.
- [19] The plain language of the PPS as written, does not require the trial court to enter express findings. *See Willsey v. State*, 698 N.E.2d 784, 789 (Ind. 1998) (holding that aside from sentencing decisions, trial courts in Indiana generally have no obligation to enter findings in support of their rulings in criminal

cases). It was therefore unnecessary for the trial court to enter specific findings as to the reliability and unavailability of B.L. to testify at Lam’s trial.

## II. *Sufficiency of the Evidence*

[20] When reviewing a claim of insufficient evidence, it is well established that our court does not reweigh evidence or assess the credibility of witnesses. *Walker v. State*, 998 N.E.2d 724, 726 (Ind. 2013). Instead, we consider all of the evidence, and any reasonable inferences that may be drawn therefrom, in a light most favorable to the verdict. *Id.* We will uphold the conviction “‘if there is substantial evidence of probative value supporting each element of the crime from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt.’” *Id.* (quoting *Davis v. State*, 813 N.E.2d 1176, 1178 (Ind. 2004)).

[21] A person commits Level 4 felony child molesting when that person, with a child under fourteen years old, “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[.]” I.C. § 35-42-4-3(b). “The intent element of child molesting may be established by circumstantial evidence and may be inferred from the actor’s conduct and the natural and usual consequence to which such conduct usually points.” *Carter v. State*, 31 N.E.3d 17, 30 (Ind. Ct. App. 2015), *trans. denied*. In addition, “[t]he testimony of a sole child witness is sufficient to sustain a conviction for molestation.” *Hoglund v. State*, 962 N.E.2d 1230, 1238 (Ind. 2012).

[22] Lam presents many theories, one of which is that he “testified under oath that any possible touching of B.L. was accidental in nature and not motivated by a sexual desire.” (Appellant’s Br. p. 17). He claims that the State “failed to show how the natural and usual sequence of an accidental touching in the crotch area during wrestle-playing was to satisfy [his] or B.L.’s sexual desires.” (Appellant’s Br. p. 17).

[23] Parents found Lam and B.L. alone in the basement on two separate occasions. On the first occasion, Father noticed that the basement light was on, called for anyone down there to come up, and only B.L. and Lam emerged from the basement. In the second instance, Mother went to the basement and found B.L. and Lam alone in the basement. Following a safety talk with Mother the morning of her birthday party, B.L. disclosed that Lam had touched and separated her privates. Upon being confronted by Parents, Lam claimed that he and B.L. were just playing, but Lam responded that the allegations were true when pressed hard for a definitive answer. Lam then admitted to his wife that the touching was not “sexual” and was only aimed at getting “a reaction” out of B.L. (Tr. Vol. III, p. 15). Contrary to his explanation that his touching was not sexual, after the molestation claims emerged, Lam called Father to offer an apology, and he admittedly stated that he “never meant for things to get out of hand [] with [B.L.]” and “he had looked up” online that “he could go to prison for a year.” (Tr. Vol. II, p. 208). Lam also offered to register as a sex offender to mitigate the harm he caused B.L. When B.L. was interviewed at Susie’s

Place, she stated that Uncle Anthony touched her privates in the basement on more than one occasion.

[24] The jury could reasonably infer from this evidence that Lam knowingly touched B.L. and did so with the intent to arouse or satisfy his or her sexual desires. *See Amphonephong v. State*, 32 N.E.3d 825, 833 (Ind. Ct. App. 2015) (holding that child’s testimony that defendant repeatedly put his hand in her pants and touched her genitals was sufficient evidence of intent to arouse or satisfy defendant’s sexual desires). The jury was not obligated to accept Lam’s claims that his touching resulted from wrestle-play and, therefore, was accidental or unintentional. His assertion on appeal is simply another request that we reweigh the evidence and reassess witness credibility. Accordingly, we conclude that the State proved beyond a reasonable doubt that Lam committed the offense of child molesting, a Level 4 felony.

## CONCLUSION

[25] Based on the foregoing, we conclude that the trial court did not abuse its discretion by concluding B.L.’s statements made at the forensic interview were admissible under the PPS. We also hold that the State presented sufficient evidence beyond a reasonable doubt to convict Lam of Level 4 felony child molesting.

[26] Affirmed.

[27] Bailey, J. and Vaidik, J. concur