

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Joshua Govea,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



March 20, 2024

Court of Appeals Case No.
23A-CR-1671

Appeal from the Dubois Circuit Court
The Honorable Nathan Verkamp, Judge

Trial Court Cause No.
19C01-2105-F1-428

Memorandum Decision by Judge Riley
Judges Brown and Foley concur.

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Joshua T. Govea (Govea), appeals his convictions for child molesting, Level 1 felony, Ind. Code § 35-42-4-3(a); and public voyeurism, Class A misdemeanor, I.C. § 35-45-4-5(d).

[2] We affirm.

ISSUE

[3] Govea presents this court with one issue on appeal, which we restate as:
Whether the State presented sufficient evidence to support his conviction for child molesting as a Level 1 felony beyond a reasonable doubt.

FACTS AND PROCEDURAL HISTORY

[4] In 2017, A.L. was removed from her biological mother and placed in foster care by the Department of Child Services (DCS). On February 10, 2020, A.L., then ten-years-old, was placed in the home of Govea and his wife, Leah, with adoption being the goal for the placement. A.L. had her own bedroom in the apartment, where she slept on a mattress with a blue tent over the top.

[5] Although the family's morning routine was for Govea to go into A.L.'s bedroom to wake A.L. by turning on the lights or by leaving the lights off and pushing her arm, on the morning of Friday, April 30, 2021, A.L. awoke to Govea touching her leg. A.L. was lying on her back and Govea was on his knees. Govea slid his hand down her leg and put his hand inside the leg hole

and liner of her athletic shorts. Govea's hand touched "her private" on her "skin." (Transcript pp. 137, 139). He put his "finger" "inside" of her. (Tr. p. 139). Upon further questioning, A.L. explained that his finger "just like went in and then it came out." (Tr. p. 192). When Govea touched her "down there," it felt "slimy." (Tr. p. 138). A.L. became scared and did not tell Govea to stop. After touching her, Govea went downstairs and left for work. A.L. did not tell Leah because she was afraid Leah would not believe her.

- [6] The following Monday, A.L., who was in the third grade, broke down while taking a test in school. Not being able to concentrate because of the incident, A.L. approached her teacher. A.L.'s voice was shaky, she was wringing her hands, and she was not acting like herself. A.L.'s teacher called the school counselor, who took a tearful A.L. to her office. Based on her conversation with A.L., the school counselor contacted DCS.
- [7] Detective Gregory Brescher of the Jasper Police Department (Detective Brescher) interviewed Govea. Although Govea initially denied touching A.L., later during the interview, he mentioned that on that Friday morning, his hand slipped and went an inch too far and felt A.L.'s underwear. Govea denied that he had touched her intentionally. After an initial denial of having taken pictures of A.L. and Detective Brescher informing him that he would get a search warrant for Govea's phone, Govea admitted to having taken two pictures of A.L. Govea explained that on one occasion he took a photo of A.L. in her underwear and t-shirt, bending over a laundry basket, while on another occasion, he took a picture of her in her underwear when she was sleeping.

[8] On May 5, 2021, the State filed an Information which was amended on May 17, 2023, charging Govea with Level 1 felony child molesting, Level 4 felony child molesting, and Class A misdemeanor public voyeurism. On May 25, 2023, the trial court conducted a jury trial. During the proceedings, A.L. testified that Govea had touched her inappropriately on her “private.” (Tr. p. 137). Because she could not identify the area where Govea had touched her with an anatomically appropriate term, she circled the front pubic area on a diagram of a girl. A.L. also testified that on a morning prior to this incident, she saw a flash in her room through the crack in the blue tent over her bed that sounded like a camera. Following the presentation of the evidence, the jury found Govea guilty as charged. The trial court entered judgment of conviction for Level 1 felony child molesting and Class A misdemeanor voyeurism. The court vacated the Level 4 child molesting on double jeopardy grounds. On June 23, 2023, the trial court sentenced Govea to thirty years for child molesting and sixty-four days for voyeurism, with the sentences to run consecutively.

[9] Govea now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

[10] Govea contends that the State failed to present sufficient evidence beyond a reasonable doubt to support his conviction for Level 1 felony child molesting and requests this court to vacate his conviction and reinstate his conviction for Level 4 felony child molesting. Our standard of review of a challenge to the sufficiency of the evidence supporting a criminal conviction is well-established:

we do not reweigh the evidence or judge the credibility of the witnesses, and we affirm 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. *Lehman v. State*, 203 N.E.3d 1097, 1104 (Ind. Ct. App. 2023), *trans. denied*.

[11] To convict Govea of Level 1 felony child molesting, the State was required to establish beyond a reasonable doubt that Govea was at least twenty-one years of age and knowingly or intentionally performed “other sexual conduct” with A.L., who was less than fourteen years of age. See I.C. § 35-42-4-3(a). “Other sexual conduct” is statutorily defined as including, in pertinent part, the “act involving: [] the penetration of the sex organ or anus of a person by an object.” I.C. § 35-31.5-2-221.5(2). Our case law has established that a finger is an object for purposes of the child molesting statute. *Seal v. State*, 105 N.E.3d 201, 209 (Ind. Ct. App. 2018), *trans. denied*.

[12] Without disputing that he touched A.L. inappropriately, Govea focuses on the penetration element of the offense and contends that even though “A.L.’s testimony may be sufficient to infer that Govea touched a part of her body she considers to be an inner portion, it is not substantial evidence of a probative value that it was her internal sex organ.” (Appellant’s Br. p. 16). Govea maintains that by not questioning A.L. to explain what or where exactly Govea’s fingers touched, the State failed in its burden of proving the “penetration of a sex organ.” See I.C. § 35-31.5-2-221.5(2).

[13] In *Boggs v. State*, 104 N.E.3d 1287, 1289 (Ind. 2018), our supreme court confirmed “that proof of the slightest penetration of the sex organ, including penetration of the external genitalia, is sufficient to demonstrate a person performed other sexual misconduct with a child.” See also *Short v. State*, 564 N.E.2d 553, 559 (Ind. Ct. App. 1991) (concluding that the penetration of the female sex organ includes penetration of external genitalia); *Stetler v. State*, 972 N.E.2d 404, 407-08 (Ind. Ct. App. 2012) (concluding that touching the clitoral hood with a finger supported the jury’s finding that Stetler penetrated the victim’s sex organ), *trans. denied*. Upon questioning by the State, A.L. stated that after Govea slid his hand down her leg and put his hand inside the leg hole and liner of her athletic shorts, his hand touched “her private” on her “skin.” (Tr. pp. 137, 139). Even though she did not know a word other than “private,” A.L. circled the front vaginal area on a female diagram. She responded affirmatively when asked if the circle was where Govea had touched her. She further stated that he put his “finger” “inside” of her. (Tr. p. 139). Upon further questioning, A.L. explained that his finger “just like went in and then it came out.” (Tr. p. 192). When Govea touched her “down there,” it felt “slimy.” (Tr. p. 138). The State confirmed, asking if Govea’s finger went “in [her] and came out,” she responded, “yeah.” (Tr. p. 192).

[14] “A detailed anatomical description of penetration is unnecessary and undesirable” in child molestation cases because “to require such detailed descriptions would subject victims to unwarranted questioning and cross-examination regarding the details and extent of penetration.” *Spurlock v. State*,

675 N.E.2d 312, 315 (Ind. 1996); *see also Wisneskey v. State*, 736 N.E.2d 763, 765 (Ind. Ct. App. 2000) (holding that even though the child did not use the term “anus,” evidence was sufficient where the child testified that the defendant placed his “private” in the child’s “butt” and that it hurt). In this light, “[t]he term ‘private part’ is generally understood as commonplace designation of genital procreative organs.” *Stewart v. State*, 768 N.E.2d 433, 437 (Ind. 2002). To the extent Govea is now contending that there must be vaginal penetration to sustain his conviction, such is not required. In *Hale v. State*, 128 N.E.3d 456, 463 (Ind. Ct. App 2019), *trans. denied*, we concluded that penetration of the vaginal canal is not required to prove Level 1 felony child molesting where the charging information is phrased as performing ‘other sexual conduct’ by using a hand or finger to penetrate the sex organ. We held that the State was only required to prove penetration of the external genitalia. *Id.*

[15] The uncorroborated testimony of a child victim is sufficient to support a conviction for child molesting despite the child’s limited sexual vocabulary or unfamiliarity with anatomical terms. *Stewart*, 768 N.E.2d at 436. Here, a reasonable jury could infer from A.L.’s testimony that Govea penetrated her inner genitalia. A.L.’s testimony that Govea touched her private part and that his finger “just like went in and then it came out” is sufficient evidence of probative value to support Govea’s conviction for Level 1 felony child molesting. (Tr. p. 192). *See Sorgdrager v. State*, 208 N.E.3d 646, 651 (Ind. Ct. App. 2023) (holding that evidence was sufficient to support Level 1 felony child molesting where child testified, in part, that defendant put his hand inside her

underwear, rubbed her private part with his finger, and placed his finger “inside” her “private”); *Boggs*, 104 N.E.3d at 1289 (“proof of the slightest penetration of the sex organ, including penetration of the external genitalia, is sufficient”).

CONCLUSION

[16] Based on the foregoing, we hold that the State presented sufficient evidence to support Govea’s conviction for Level 1 felony child molesting beyond a reasonable doubt.

[17] Affirmed.

Brown, J. and Foley, J. concur

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