

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE
Court of Appeals of Indiana

Brandon Louis Dale Geiling,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

May 9, 2024

Court of Appeals Case No.
23A-CR-2221

Appeal from the Shelby Superior Court

The Honorable R. Kent Apsley

Trial Court Cause No.
73D01-2209-F3-7

Memorandum Decision by Judge Vaidik
Judges May and Kenworthy concur.

Vaidik, Judge.

Case Summary

- [1] Brandon Louis Dale Geiling was convicted of Level 3 felony attempted rape and Level 6 felony sexual battery and sentenced to ten years, with eight years in prison and two years suspended to probation. Geiling now appeals, arguing the evidence is insufficient to support his convictions and his sentence is inappropriate. We affirm.

Facts and Procedural History

- [2] In November 2021, C.E. was friends with Samantha Spurlock and her siblings, one of whom is Geiling. C.E. split her time between her father's house and Samantha's apartment, where Geiling also lived. C.E., who was dating Samantha and Geiling's brother, considered Geiling her "brother." Tr. Vol. I p. 191.
- [3] On November 3, C.E. was at Samantha's apartment for most of the day. C.E. left to go see her friends at some point and returned around 2:00 a.m. the morning of November 4. When C.E. returned, she went into the room where the television was located, sat on the futon (which was in the couch position), and started watching TV. C.E.'s two young sons were asleep in the room, and Geiling was sitting in a recliner playing on his phone. C.E. talked for a short time with Geiling and then fell asleep while sitting up on the futon. C.E. was wearing loose-fitting jeans, a bra and a sports bra, a tank top, and an unzipped quarter-zip jacket over the tank top.

[4] The next thing C.E. knew someone was kissing her “neck” and “chest.” *Id.* at 204. C.E. then felt the person put a hand down her jeans and in her underwear and start rubbing her clitoris in a circular motion with two fingers. C.E. first thought she was dreaming but fully awakened when she felt the person’s fingers go “around [her] vagina hole.” *Id.* at 208. At this point, C.E. was no longer sitting up on the futon but lying on her back. She looked over and saw Geiling lying on the futon beside her. C.E. became “frantic” and immediately sat up and punched and kicked Geiling. *Id.* C.E.’s clothing was out of place, so she had to “readjust” it. *Id.* at 205. Her jacket had been moved over so the skin on her chest was exposed, and her jacket and tank top were pushed up above her belly button. In addition, her bra was moved over, and her breasts were “out of place.” *Id.* at 206. C.E. had to adjust her bra straps to get her “boobs back into the normal position.” *Id.*

[5] C.E. was “shaky” and smoked a cigarette while she decided what to do next. *Id.* at 208. She then pulled out her phone and began recording. C.E. told Geiling that what he did was wrong, that she never gave him permission to touch her, and that she thought he was supposed to be like family. Geiling responded that he was sorry and felt bad. *Id.*; Exs. 10, 11.

[6] C.E. reported the incident to police. Geiling was arrested and charged with Level 3 felony attempted rape for attempting to insert his fingers in C.E.’s vagina and Level 6 felony sexual battery for touching C.E.’s breast. A jury trial was held, and he was found guilty.

[7] At sentencing, the trial court found three aggravators: (1) Geiling has a criminal record consisting of two felonies and three misdemeanors; (2) Geiling has been placed on probation four times and has violated it three times; and (3) C.E.'s children were present in the room at the time of the offenses. The court found two mitigators: (1) Geiling was remorseful and (2) he had some "educational delay." Tr. Vol. II p. 108. Finding the aggravators to outweigh the mitigators, the court sentenced Geiling to ten years for attempted rape, with eight years executed and two years suspended to probation, and two years for sexual battery, to be served concurrently.

[8] Geiling now appeals.

Discussion and Decision

I. The evidence is sufficient to support Geiling's convictions

[9] Geiling contends the evidence is insufficient to support his attempted-rape and sexual-battery convictions. When reviewing sufficiency-of-the-evidence claims, we neither reweigh the evidence nor judge the credibility of witnesses. *Willis v. State*, 27 N.E.3d 1065, 1066 (Ind. 2015). We will only consider the evidence supporting the verdict and any reasonable inferences that can be drawn from the evidence. *Id.* A conviction will be affirmed if there is substantial evidence of probative value to support each element of the offense such that a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id.*

- [10] To convict Geiling of attempted rape as charged here, the State had to prove that he knowingly engaged in conduct that constituted a substantial step toward causing C.E. to submit to “other sexual conduct” when C.E. was unaware that the “other sexual conduct” was occurring. Ind. Code §§ 35-42-4-1(a)(2), 35-41-5-1; Appellant’s App. Vol. II p. 88. As relevant here, “other sexual conduct” means “the penetration of the sex organ or anus of a person by an object.” I.C. § 35-31.5-2-221.5; *see also Simmons v. State*, 746 N.E.2d 81, 86 (Ind. Ct. App. 2001) (providing that a finger is an object), *reh’g denied, trans. denied*.
- [11] Geiling argues the State failed to prove that he took a substantial step toward committing rape. The substantial-step requirement is a “minimal one, often defined as any overt act in furtherance of the crime.” *B.T.E. v. State*, 108 N.E.3d 322, 327 (Ind. 2018) (quotation omitted). The focus is on “the substantial step that the defendant has completed, not on what was left undone.” *Id.*
- [12] The evidence most favorable to the verdict shows that while C.E. was asleep on the futon, Geiling kissed her neck and chest and put his hand down her pants and inside her underwear. He then rubbed her clitoris in a circular motion with two fingers. C.E. thought she was dreaming but fully awakened when she felt his fingers go “around [her] vagina hole.” At this point, C.E. became “frantic” and started punching and kicking Geiling. Geiling stopped and apologized. The jury could easily infer from this evidence that Geiling took a substantial step toward causing C.E. to submit to the penetration of her vagina by Geiling’s fingers.

[13] Geiling highlights that he didn't threaten or coerce C.E. But as the State points out, these are not elements of attempted rape as charged here. Geiling also notes that they were both clothed. That Geiling was clothed does not matter. And as C.E. testified at trial, her jeans were loose fitting, which allowed Geiling easy access. The evidence is sufficient to support Geiling's attempted-rape conviction.¹

[14] To convict Geiling of sexual battery as charged here, the State had to prove that he, with intent to arouse or satisfy his or C.E.'s sexual desires, touched C.E.'s breast when C.E. was unaware that the touching was occurring. I.C. § 35-42-4-8(a)(2); Appellant's App. Vol. II p. 26. Geiling argues the evidence is insufficient to prove that he touched C.E.'s "breast" because she testified that he kissed her "chest," which is not the same thing as "breast."

[15] The State acknowledges that "chest" and "breast" are not synonymous. The State claims, however, that a reasonable inference from C.E.'s testimony is that Geiling touched her "breast." That is, C.E. testified that when she fully awoke and sat up, her quarter-zip jacket, which was unzipped, was "moved over" to expose the skin on her chest. In addition, her jacket and tank top were pushed up, revealing her belly button. Although C.E.'s breasts were not exposed, her bra was moved over, and her breasts were "out of place" and not in their

¹ Geiling also argues the evidence is insufficient to prove that he had "the required culpability." Appellant's Br. p. 8. He claims that the same evidence that fails to prove he took a substantial step also fails to prove that he "intended to put his finger in C.E.'s vagina." *Id.* For the reasons explained above, the evidence is sufficient to prove that Geiling had the required culpability.

“normal position” in her bra. She had to adjust her bra straps to get her breasts back into place. C.E. explained that Geiling’s actions caused her clothing to be out-of-place. The jury could reasonably infer from this evidence that Geiling touched C.E.’s breast. The evidence is sufficient to support Geiling’s sexual-battery conviction.

II. Geiling has failed to show that his sentence is inappropriate

[16] Geiling next contends that his ten-year sentence, with two years suspended to probation, is inappropriate under Indiana Appellate Rule 7(B), which provides that an appellate court “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” The appellate court’s role under Rule 7(B) is to “leaven the outliers,” and “we reserve our 7(B) authority for exceptional cases.” *Faith v. State*, 131 N.E.3d 158, 159-60 (Ind. 2019) (quotation omitted). “Whether a sentence is inappropriate ultimately turns on the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case.” *Thompson v. State*, 5 N.E.3d 383, 391 (Ind. Ct. App. 2014) (citing *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008)). Because we generally defer to the judgment of trial courts in sentencing matters, defendants must persuade us that their sentences are inappropriate. *Schaaf v. State*, 54 N.E.3d 1041, 1044-45 (Ind. Ct. App. 2016).

[17] The sentencing range for a Level 3 felony is three to sixteen years, with an advisory sentence of nine years. I.C. § 35-50-2-5(b). The sentencing range for a Level 6 felony is six months to two-and-a-half years, with an advisory sentence of one year. I.C. § 35-50-2-7(b). Geiling thus faced a maximum sentence of eighteen-and-a-half years. The trial court sentenced him to ten years for the Level 3 felony and a concurrent sentence of two years for the Level 6 felony, for a total sentence of ten years, with eight years executed and two years suspended to probation.

[18] The nature of the offenses does not warrant a reduction in Geiling's sentence. Geiling took advantage of a family friend who was sleeping in a room with her children. He kissed her neck and chest and put his hand in her underwear and rubbed her clitoris. She fully awakened when she felt Geiling's fingers go "around [her] vagina hole." Although Geiling didn't insert his fingers, it was presumably because C.E. woke up and stopped him.

[19] Geiling's character doesn't support a reduction in his sentence either. As the trial court found, Geiling has a learning disability and showed remorse for his actions. But he also has five convictions, including two felonies (receiving stolen property in 2013 and possession of methamphetamine in 2022). Moreover, he had been placed on probation four times and violated three times. Geiling has failed to persuade us that his ten-year sentence, with two years suspended to probation, is inappropriate.

[20] Affirmed.

May, J., and Kenworthy, J., concur.

ATTORNEY FOR APPELLANT

Amanda O. Blacketter
Blacketter Law, LLC
Shelbyville, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General
Kathy Bradley
Deputy Attorney General
Indianapolis, Indiana