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IN THE
COURT OF APPEALS OF INDIANA

RODNEY WALLS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0605-CR-373
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Sheila A. Carlisle, Judge
Cause No. 49G03-0505-FA-90383

December 8, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Rodney Walls appeals his convictions for two counts of Child Molesting, as Class A felonies, and two counts of Child Molesting, as Class C felonies, following a jury trial. He presents the following issues for our review:

1. Whether the State presented sufficient evidence to support two of his convictions.

2. Whether the trial court erred when it instructed the jury.

We affirm.

FACTS AND PROCEDURAL HISTORY

Walls was married to Jacqueline Walls ("Jacqueline"), who had two minor children from a prior relationship, including C.S. C.S. was born March 4, 1999.[1] Beginning approximately March 4, 2005, Walls molested C.S. on a number of occasions. Sometimes Walls would touch C.S.'s chest under her clothes, and other times he would force C.S. to perform oral sex on him. Walls told C.S. that if she told anyone about the molestations, "he wouldn't love [her] no more." Transcript at 34.

In approximately May 2005, C.S. told her friend U.J. about the molestations, and U.J. told one of her parents, who, in turn, notified someone at C.S.'s school. On May 27, 2005, Linda Culclasure, a social worker at C.S.'s school, interviewed C.S. and notified Child Protective Services ("CPS") of the allegations. The State charged Walls with four counts of child molesting, two as Class A felonies and two as Class C felonies. The charging information alleged that one of the Class A felonies and one of the Class C felonies occurred "on or about March 4, 2005[,] through May 22, 2005," and the other

[1] C.S. has a brother whose first initial is R., but the record does not indicate his last name.

two counts allegedly occurred "on or about May 23, 2005." Appellant's App. at 23-24. A jury found Walls guilty as charged, and the trial court entered judgment accordingly and sentenced him to thirty years executed. This appeal ensued.

DISCUSSION AND DECISION

Issue One: Sufficiency of the Evidence

Walls contends that the State presented insufficient evidence to support his convictions for one count of child molesting, as a Class A felony, and one count of child molesting, as a Class C felony. In particular, Walls maintains that there was no evidence showing that he forced C.S. to perform oral sex on him or that he touched her with intent to arouse his sexual desires between March 4 and May 22, 2005.[2] We cannot agree.

When reviewing the claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the verdict and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

At trial, seven-year-old C.S. testified in relevant part as follows:

Q: . . . And where on your body did [Walls] touch?

A: The chest.

Q: In the chest? Okay. Did he touch you over your clothes, under your clothes or something else?

A: Under my clothes.

[2] Walls does not challenge the other two convictions, which, according to the charging information, occurred on or about May 23, 2005.

Q: Okay. And what part of [Walls'] body touched your chest?

A: His hands.

Q: His hands, okay. Did he use one hand or two hands?

A: Two.

Q: Okay. Now, [C.S.], did this happen one time or more than one time?

A: More than one time.

Q: Okay. How many times did this happen?

A: A lot.

Q: A lot? Okay. Do you know how old you were?

A: Six.

Q: Okay. Is there any place else on your body that [Walls] has touched?

A: No.

Q: Okay. Is there any place on his body that he made you touch?

A: My mouth.

Q: Okay. So you had to touch with your mouth, is that right?

A: Yes.

Q: Okay. What part of his body did your mouth touch?

A: His private part up front.

Q: His private part in the front. Okay. And, [C.S.], when your mouth—he made your mouth touch that part?

A: Yes.

Q: When he did that was it inside, outside or something else?

A: Inside.

Q: Okay. And when his private part touched the inside of your mouth what happened?

A: Messy stuff came in my mouth.

Q: Okay. Where were you when this happened?

A: In my mommy's room.

Q: Okay. When these things would happen with [Walls], were you always in your mommy's room or were you sometimes in other places?

A: Other places.

* * *

Q: . . . When [Walls] had you touch his private part with your mouth, did that happen one time or more than one time?

A: More.

* * *

Q: Okay. How many times did that happen?

A: A lot.

Transcript at 22-25.

Walls contends that because C.S. could not give specific dates for the alleged molestations other than to state that they occurred "a lot," the evidence is insufficient to support the two challenged convictions. But it is well established that "time is not of the essence in the crime of child molesting." Barger v. State, 587 N.E.2d 1304, 1307 (Ind. 1992). As our supreme court recognized, "[i]t is difficult for children to remember specific dates," and "[t]he exact date becomes important only in limited circumstances,

including the case where the victim's age at the time of the offense falls at or near the dividing line between classes of felonies." Id. Here, Walls makes no contention that the specific timing of the alleged crimes was material, and there is no potential statute of limitations issue. See Carter v. State, 754 N.E.2d 877, 880 n.7 (Ind. 2001). C.S.'s testimony makes clear that beginning at age six,[3] she was the victim of molestation "a lot," including being forced to engage in oral sex more than once and submitting to Walls' touching her chest under her clothes more than once.

Walls' contention on this issue amounts to a request that we reweigh the evidence, which we will not do. A conviction for molestation can rest on the uncorroborated testimony of the victim even if there is equivocation or inconsistency in that testimony. Id. at 880. The State presented sufficient evidence to support each of Walls' convictions.

Issue Two: Jury Instruction

Walls next contends that the trial court abused its discretion when it instructed the jury. In particular, he maintains that when the trial court instructed the jury under Indiana Jury Rule 20(a)(8), the court denied him "his right to a fair and impartial jury as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 13 of the Indiana Constitution." Brief of Appellant at 11. We cannot agree.

The instruction of the jury is within the discretion of the trial court and it is reviewed only for an abuse of discretion. Tanner v. State, 471 N.E.2d 665, 667 (Ind. 1984). Here, the trial court instructed the jury in relevant part:

[3] C.S. turned six years old on March 4, 2005. The dates of the alleged molestations in the challenged counts correspond to the time from that birthday until the time of the most recent alleged molestations, which occurred on or about May 23, 2005.

You have been selected as jurors and have taken an oath to well and truly try this case.

During the trial there will be times when you will be allowed to separate, such as recesses, rest periods, lunch periods, and overnight. When you are outside the courtroom, you must not talk about this case amongst yourselves or with anyone else. However, you may discuss the evidence with your fellow jurors in the jury room during recesses from trial when all are present as long as you reserve judgment about the outcome of the case until the deliberations begin.

During the trial, do not talk to any of the parties, their lawyers, or any of the witnesses.

If anyone makes any attempt to talk to you concerning this case, you should report the fact to the court immediately.

If there is publicity in newspapers, on radio, or on television concerning this trial, you should not read or listen to these accounts. You must confine your attention to the court proceedings, listen attentively to the evidence as it comes from the witnesses, and reach a verdict solely upon what you hear and see in this court.

During the trial, you must not consume any alcohol or drugs that would affect your ability to hear the evidence fairly and impartially.

You should keep an open mind. You should not form or express an opinion or reach any conclusion in this case until you have heard all of the evidence, the arguments of counsel and the final instructions as to the law.

Appellant's App. at 69-70 (emphasis added).

Walls' counsel objected to that instruction, which incorporates the language of Indiana Jury Rule 20(a)(8), stating:

> I'd just like to make a record. The defense objects to [the jurors'] being allowed to discuss the evidence with their fellow jurors prior to the final closing arguments. It is the defense['s] belief that allowing so will allow them to pre-judge evidence, to come to conclusions and not pay attention to other witnesses and would deny my client a fair and impartial jury.

Transcript at 7. The trial court allowed the instruction over Walls' objection.

In Fuller v. State, 852 N.E.2d 22, 25 (Ind. Ct. App. 2006), trans. denied, this court addressed a similar challenge to an instruction based on Jury Rule 20(a)(8) and held that the defendant had not shown that he was denied due process or that the jurors were unable to render a fair and impartial verdict. Walls asserts that "Fuller places defendants in an untenable position. Mr. Walls cannot prove prejudice in this case, nor could any other defendant." Brief of Appellant at 14. Because Walls cannot prove prejudice, we cannot grant relief on appeal. See Ind. Appellate Rule 66(A) (harmless error). The trial court did not abuse its discretion when it instructed the jury.

Affirmed.

MAY, J., and MATHIAS, J., concur.