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**IN THE
COURT OF APPEALS OF INDIANA**

TERRY STAFFORD,)
)
Appellant-Defendant,)
)
vs.) No. 49A02-0611-CR-1011
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Grant Hawkins, Judge
Cause No. 49G05-0511-FC-194297

September 25, 2007

MEMORANDUM OPINION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Terry Stafford appeals his conviction for Child Molesting,¹ a class C felony. Specifically, Stafford argues that the evidence presented at trial was insufficient to sustain his conviction. Concluding that the evidence was sufficient, we affirm the judgment of the trial court.

FACTS

Twelve-year-old J.R. was a friend of Stafford's younger sister, Brittney. J.R. and Brittney occasionally stayed with twenty-year-old Stafford and his girlfriend in Stafford's trailer. On July 31, 2005, Stafford called J.R. and asked her to spend the night. Thinking that Brittney would also be present, J.R. agreed.

J.R. arrived at Stafford's trailer and was surprised to find that she and Stafford were alone. They began watching a movie, but Stafford soon pulled J.R. off the couch by her feet and restrained her on the floor. Stafford told J.R. about a sexual dream that he had had and asked J.R. to kiss him. J.R. repeatedly said no and Stafford offered her money to consent. Although J.R. again refused, Stafford attempted to kiss her neck and began rubbing his penis against her stomach and vagina.

The State charged Stafford with class C felony child molesting on November 17, 2005. Stafford was found guilty after a bench trial on October 13, 2006, and the trial court sentenced him to four years probation. Stafford now appeals.

¹ Ind. Code 35-42-4-3.

DISCUSSION AND DECISION

The standard of review for sufficiency claims is well settled. In addressing Stafford's challenge we neither reweigh the evidence nor reassess the credibility of witnesses. Sanders v. State, 704 N.E.2d 119, 123 (Ind. 1999). Instead, we consider the evidence most favorable to the verdict and draw all reasonable inferences supporting the ruling below. Id. We affirm the conviction if there is probative evidence from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. O'Connell v. State, 742 N.E.2d 943, 949 (Ind. 2001). A conviction may be sustained wholly on circumstantial evidence if such evidence supports a reasonable inference of guilt. Maul v. State, 731 N.E.2d 438, 439 (Ind. 2000).

To sustain a conviction for class C felony child molesting, the State had to prove beyond a reasonable doubt that Stafford engaged in fondling or touching with J.R., a child under the age of fourteen, with the intent to arouse or satisfy the sexual desires of either J.R. or himself. I.C. § 35-42-4-3. Mere touching alone is not sufficient to constitute child molesting. Clark v. State, 695 N.E.2d 999, 1002 (Ind. Ct. App. 1998). Instead, the State must also prove beyond a reasonable doubt that the act of touching was accompanied by the specific intent to arouse or satisfy sexual desires. Bowles v. State, 737 N.E.2d 1150, 1152 (Ind. 2000). "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 sequence to which such conduct usually points." Id. Furthermore, "[a] victim's testimony, even if uncorroborated, is ordinarily sufficient to sustain a conviction for child molesting." Id.

Stafford directs us to the trial court’s statement after the presentation of the evidence that “[t]he kissing does it for me. That’s the touching. The kissing in the context of [the] sex dream conversation does it for me.” Tr. p. 91. Stafford argues that because J.R. testified that she did not “remember like, if he actually kissed [her neck] or not . . .” the evidence presented was insufficient to sustain the conviction. Id. at 21. In sum, Stafford argues that his conviction must be reversed because J.R. did not unequivocally testify that Stafford kissed her and that without that touching “there can be no intent to satisfy any sexual desires Mr. Stafford may have had.” Appellant’s Br. p. 11.

Aside from the evidence that Stafford rubbed his penis on J.R.’s stomach and vagina,² J.R. testified that Stafford pulled her off the couch, pinned her to the ground, described a sexual dream, attempted to kiss her, and offered to pay her money to consent. Tr. p. 20-22. This evidence was sufficient for the factfinder to conclude beyond a reasonable doubt that Stafford restrained J.R. on the floor with the intent to arouse or satisfy his sexual desires. Even if we assume for the sake of the argument that his attempts to kiss J.R. ultimately failed, the State presented evidence that Stafford touched J.R. by “locking [her] hands down and [her] feet” on the floor while he described his sexual dream and asked her to consent to sexual contact. Id. at 20. Because it was reasonable for the factfinder to conclude from Stafford’s actions that he touched J.R. with the intent to satisfy his sexual desires, we conclude that the State presented sufficient evidence to support Stafford’s conviction.

The judgment of the trial court is affirmed.

² The trial court found this evidence to be a “red herring.” Tr. p. 91.

BAILEY, J., and VAIDIK, J., concur.