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IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF J.H.,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 49A04-0604-JV-185
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Danielle Gregory, Magistrate
Cause No. 49D09-0511-JD-5011

November 20, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

J.H. appeals his adjudication as a delinquent child for committing acts that would constitute Sexual Battery,[1] a class D felony, if committed by an adult. J.H. presents the following restated issue for review: Was there sufficient evidence to support the true finding of sexual battery?

We affirm.

The facts favorable to the judgment are that J.H. was born on July 15, 1992. On November 21, 2005, S.G., who was fourteen years old on that date, was walking in the school hallway. As S.G. walked, J.H. "came up from behind [] and [] grabbed [her] and then [] walked away." *Transcript* at 17. Specifically, J.H. "grabbed [S.G.] [with] his hands . . . on [her] butt[ocks]." *Id.* Prior to this incident, S.G. did not know and had never talked to or met J.H.

Approximately three minutes later, J.H. returned. S.G.'s friend, O.M., was with S.G. during this incident. "[W]hen [S.G. and O.M.] w[ere] walking down the hall, [J.H.] came from the side and pushed [S.G.] into the locker and started grabbing [her] chest and [her] butt[ocks] at the same time and so [S.G. and O.M.] tr[ied] to push him off [and] tell him to stop." *Id.* at 22. J.H. "just started laughing – just kept on doing it." *Id.* at 25. During the second incident, J.H. touched with his hands S.G.'s breasts twice and her buttocks once. "When [J.H.] . . . saw a teacher . . . walk past, he got off of [S.G.] and just started walking away." *Id.* at 27. S.G. reported the incidents to Officer Krueger, an officer at the children's school. Officer Krueger later arrested J.H.

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[1] Ind. Code Ann. § 35-42-4-8 (West 2005).

The State alleged J.H. was delinquent for committing acts that would constitute sexual battery as a class D felony and battery as a class A misdemeanor if he were an adult. Following a hearing, the trial court found true the allegation that J.H. committed acts that would constitute sexual battery as a class D felony if committed by an adult. J.H. now appeals.

J.H. contends there is insufficient evidence to support the true finding of sexual battery because "there is no evidence that [he] touched [S.G.] with the specific intent to arouse or satisfy his sexual desire." *Appellant's Brief* at 3. Our standard of review in a juvenile case regarding whether there is sufficient evidence is as follows: when the State seeks to have a juvenile adjudicated as a delinquent child, it must prove every element of an offense beyond a reasonable doubt. *S.D. v. State*, 847 N.E.2d 255 (Ind. Ct. App. 2006), *trans. denied*. We will not reweigh the evidence, judge the witnesses' credibility, or resolve conflicts in testimony because these are determinations properly made by the trier of fact. *Id.* Rather, we look to the evidence and the reasonable inferences to be drawn therefrom that support the true finding. *Id.* We will affirm a true finding if there is probative evidence from which the factfinder could conclude the defendant is guilty beyond a reasonable doubt. *Id.*

Pursuant to I.C. § 35-42-4-8, " [a] person who, with intent to arouse or satisfy the person's own sexual desires . . ., touches another person when that person is . . . compelled to submit to the touching by force or the imminent threat of force . . . commits sexual battery [as] a [c]lass D felony." J.H. challenges the sufficiency of the evidence with regard only to whether he intended to arouse or satisfy his own sexual desires. "'A

person's intent may be determined from [his] conduct and the natural consequences thereof and intent may be inferred from circumstantial evidence.'" *Chatham v. State*, 845 N.E.2d 203, 206 (Ind. Ct. App. 2006) (quoting *J.J.M. v. State*, 779 N.E.2d 602, 606 (Ind. Ct. App. 2002)). Furthermore, "'the intent to arouse or satisfy sexual desires may be inferred from evidence that the accused intentionally touched [another's] genitals.'" *Kirk v. State*, 797 N.E.2d 837, 841 (Ind. Ct. App. 2003) (quoting *Lockhart v. State*, 671 N.E.2d 893, 903 (Ind. Ct. App. 1996)), *trans. denied*.

In *Kirk*, the defendant was convicted of sexual misconduct with a minor. On appeal, the defendant argued there was insufficient evidence that he aroused or satisfied his own sexual desires. We concluded there was sufficient evidence to support his conviction, and stated "[the defendant] rubbed [the victim's] leg and touched her vagina. That conduct alone supports an inference that [the defendant] acted to arouse or satisfy his sexual desires." *Kirk v. State*, 797 N.E.2d at 841. Likewise, in *Pedrick v. State*, 593 N.E.2d 1213, 1220 (Ind. Ct. App. 1992), we affirmed the defendant's convictions of child molesting where the defendant "put his arm around the shoulder of [a victim] and let his hand hang, touching her breast. He also placed his hand on the shoulder of [a second victim] and then on her breast." We noted that "[w]hile the evidence of [the defendant's] sexual intent in touching [the victims] [wa]s not overwhelming, it [wa]s sufficient to sustain those convictions . . . ." *Id.*

In this case, both O.M. and S.G. testified that J.H. touched with his hands S.G.'s buttocks and breasts. Further, both O.M. and S.G. testified that J.H. laughed and smiled while he touched S.G. The natural and usual purpose of J.H.'s conduct was to satisfy his

sexual desires. *Cf. J.J.M. v. State*, 779 N.E.2d 602 (natural consequence of forcing another's head into one's crotch is to arouse one's sexual desire). We conclude, as we did in *Pedrick*, that the evidence is sufficient to sustain the judgment.

The remainder of J.H.'s argument amounts to an invitation to adopt O.M.'s testimony and disregard S.G.'s testimony, to the extent their versions of the events conflict. We reiterate it is the factfinder's province, not ours, to determine the witnesses' credibility, and on appeal we do not make such determinations anew. *S.D. v. State*, 847 N.E.2d 255.

Judgment affirmed.

NAJAM, J., and DARDEN, J., concur.