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**IN THE
COURT OF APPEALS OF INDIANA**

CLYDE MILLER,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 71A03-0706-CR-279

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Roland W. Chamblee, Jr., Judge
Cause No. 71D01-0410-FA-98

December 31, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Clyde Miller (Miller), appeals his conviction for Count I, child molesting, as a Class A felony, Ind. Code § 35-42-4-3; and Count III, child molesting, as a Class C felony, I.C. § 35-42-4-3(b).

We affirm.

ISSUE

Miller raises one issue on appeal, which we restate as: Whether the State presented sufficient evidence to prove beyond a reasonable doubt his conviction for child molesting, as a Class A felony.

FACTS AND PROCEDURAL HISTORY

As Miller only contests the sufficiency of the evidence for the A felony, we will limit the facts to those most favorable to this conviction. In the spring of 2003, Miller molested his eleven-year-old stepdaughter, J.C., in his South Bend, Indiana, home. One evening, when J.C. was sleeping in bed with her little sister, Miller laid down beside her. Miller pulled J.C.'s shorts down and "started playing with the lips of [her] vagina." (Transcript p. 194). While he did not place his fingers inside her vagina, Miller, nevertheless, touched J.C.'s skin and "rubbed his hands in-between the lips of [her] vagina." (Tr. p. 193).

On October 19, 2004, the State filed an Information, charging Miller with Counts I & II, child molesting, as Class A felonies, I.C. § 35-42-4-3; and Count III, child molesting, as a Class C felony, I.C. § 35-42-4-3(b). April 23, 2007 through April 24, 2007, a jury trial was held. At the close of the evidence, the jury returned a guilty verdict on Counts I and III. The

jury found Miller not guilty on Count II. On May 21, 2007, during the sentencing hearing, the trial court sentenced Miller to thirty years with ten years suspended on Count I and four years on Count II, with sentences to run consecutive.

Miller now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Miller contends that the State failed to present sufficient evidence to convict him of child molesting, as a Class A felony. Specifically, he claims that he did not penetrate J.C.'s vagina with his fingers.

Our standard of review with regard to sufficiency claims is well settled. In reviewing a sufficiency of the evidence claim, this court does not reweigh the evidence or judge the credibility of the witnesses. *Perez v. State*, 872 N.E.2d 208, 213-14 (Ind. Ct. App. 2007), *trans. denied*. We will consider only the evidence most favorable to the verdict and the reasonable inferences drawn therefrom and will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. *Id.* at 214. Reversal is appropriate only when reasonable persons would not be able to form inferences as to each material element of the offense. *Id.* A conviction for child molesting may rest solely on the uncorroborated testimony of the victim. *McCoy v. State*, 856 N.E.2d 1259, 1263 (Ind. Ct. App. 2006).

Child molesting as a class A felony is defined by I.C. § 35-42-4-3 as: "A person who, with a child under fourteen (14) years of age, performs or submits to sexual intercourse or deviate sexual conduct commits child molesting, a Class B felony. However, the offense is a

Class A felony if: (1) it is committed by a person at least twenty-one (21) years of age;” Here, Miller merely contests his conviction on Count I which, pursuant to the charging information, states Miller, as “being twenty-one years of age or older, to-wit: fifty-four to fifty-five (54-55) years of age did perform deviate sexual conduct, to-wit: by penetrating with his finger the sex organ of [J.C.], a child then under the age of fourteen (14) years, to-wit: ten to eleven (10-11) years of age.” (Appellant’s App. p. 5). Deviate sexual conduct is defined as, “an act involving . . . or (2) the penetration of the sex organ or anus of a person by an object. I.C. § 35-41-1-9. Proof of the slightest penetration is sufficient to sustain convictions for child molesting. *Spurlock v. State*, 675 N.E.2d 312, 315 (Ind. 1996).

Our review of the record establishes that J.C. testified that Miller penetrated her vagina with his hands. In particular, she told the jury that “he has rubbed his hands in-between the lips of my vagina.” (Tr. p. 193). In *Short v. State*, 564 N.E.2d 553, 559 (Ind. Ct. App. 1991), we held that in determining whether an individual had engaged in sexual intercourse for the purpose of establishing the crimes of child molesting and incest, it was not necessary to prove that the vagina was penetrated. Rather, this court, relying in part upon the decisions of courts in other jurisdictions, determined that the penetration of the external genitalia was sufficient to sustain a conviction. *Id.* Accordingly, in light of our holding in *Short*, we find that Miller’s action constituted penetration for the purpose of the child molesting statute.

Nevertheless, Miller now attempts to discredit J.C.’s testimony by claiming that the State “put[] words in her mouth.” (Appellant’s Brief p. 7). However, Miller’s reference to

the trial court's admonition of the State relates to Count II, child molesting, as a Class A felony, for which the jury found him not guilty. With regard to the contested Count I, the record is clear that J.C., a very vocal fourteen-year-old, unequivocally testified to Miller's molestation. Thus, we hold the State presented sufficient probative evidence to sustain Miller's conviction on Count I, child molesting as a Class A felony.

CONCLUSION

Based on the foregoing, we conclude that the State presented sufficient evidence to prove beyond a reasonable doubt Miller's conviction for child molesting, as a Class A felony.

Affirmed.

KIRSCH, J., and MAY, J., concur.