

Appellant-defendant Richard Dobbs appeals from his conviction for Attempted Sexual Battery,¹ a class D felony. Specifically, Dobbs argues that the evidence was insufficient to support his conviction because the State failed to prove the elements of use of force and intent to arouse sexual desires. Concluding that the evidence was sufficient to support his conviction, we affirm the trial court's judgment.

FACTS

On September 23, 2005, then ten-year-old S.B. spent the night with Dobbs's daughter, A.D., at Dobbs's apartment. The two girls made a "fort" by placing blankets over the kitchen table and slept in the fort that night. Tr. p. 58-59. The next morning, after S.B. awoke, Dobbs grabbed S.B.'s legs and pulled her out of the fort. At that time, A.D. was still asleep, and Dobbs's girlfriend was not home. Dobbs told S.B. to come into his bedroom, where Dobbs sat next to S.B. on his bed. Dobbs then got two pairs of his underwear from the dresser, sat back down on the bed next to S.B., and asked her to "model" the underwear for him. Id. at 98. S.B., who felt "weird" because of Dobbs's request, told Dobbs "no, [he] [could] have [A.D.] do it if he want[ed] it so bad, and [Dobbs] said that [S.B.] was bigger than [A.D.]." Id. at 61. S.B. then walked out of the bedroom and into the front room, where she sat on the sofa. Id. at 61. Dobbs followed S.B. to the sofa and sat on her shins, and S.B. could not move her legs. Then, as S.B. was "laying down" on the sofa, Dobbs pulled up her shirt with one hand while his other hand was on his lap, approached her with his tongue sticking out, and tried to lick her stomach. Id. at 98. S.B. pushed Dobbs's head away, said "[t]hat's gross[.]" and went back into the fort with A.D. Id. at 62. Later that day, S.B., who

¹ Ind. Code §§ 35-42-4-8(a), 35-41-5-1.

“still felt weird” about what Dobbs had done, told her sister and father what had happened. Id. at 101. S.B.’s father then called the police.

The State originally charged Dobbs with class C felony child molesting but later amended the charge to class D felony attempted sexual battery. A jury trial commenced on March 7, 2006, and the jury found Dobbs guilty as charged. The trial court sentenced Dobbs to three years in the Indiana Department of Correction. Dobbs now appeals his conviction.

DISCUSSION AND DECISION

Dobbs argues that the evidence is insufficient to support his conviction for attempted sexual battery. Specifically, Dobbs argues that the State failed to prove the elements of use of force and intent to arouse sexual desires.

When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Jordan v. State, 656 N.E.2d 816, 817 (Ind. 1995). Rather, we look to the evidence and the reasonable inferences therefrom that support the verdict. Id. We will affirm the conviction if there exists evidence of probative value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. Id. Moreover, the uncorroborated testimony of one witness may be sufficient by itself to sustain a conviction on appeal. Toney v. State, 715 N.E.2d 367, 369 (Ind. 1999).

The battery statute, Indiana Code section 35-42-4-8(a)(1), provides that “[a] person who, with intent to arouse or satisfy the person’s own sexual desires or the sexual desires of another person, touches another person when that person is . . . compelled to submit to the touching by force or the imminent threat of force . . . commits sexual battery, a Class D

felony.” The attempt statute, Indiana Code section 35-41-5-1, provides, in part, that “[a] person attempts to commit a crime when, acting with the culpability required for commission of the crime, he engages in conduct that constitutes a substantial step toward commission of the crime.” Thus, to convict Dobbs of attempted sexual battery as charged, the State was required to prove beyond a reasonable doubt that Dobbs, with intent to arouse or satisfy his own or S.B.’s sexual desires, attempted to touch S.B. when she was compelled to submit to the attempted touching by force or the imminent threat of force and that Dobbs engaged in conduct that constitutes a substantial step toward commission of the crime when he lifted S.B.’s shirt and leaned down towards her stomach with his tongue out of his mouth. See Appellant’s App. p. 45.

I. Intent to Arouse Sexual Desires

Dobbs argues that the State presented “no direct evidence” regarding his intent to arouse his sexual desires. Appellant’s Br. p. 10. However, “[a] person’s intent may be determined from [his] conduct and the natural consequences thereof and intent may be inferred from circumstantial evidence.” J.J.M v. State, 779 N.E.2d 602, 606 (Ind. Ct. App. 2002). The intent to gratify must correspond with the conduct because it is the purpose or motivation for the conduct. Id.

Here, S.B. testified that after Dobbs dragged her out of the fort and had her come into his bedroom, he sat on the bed next to her and asked her to “model” some of his underwear. Tr. p. 60-61, 98. After she refused, Dobbs followed S.B. to the sofa in the front room, sat on her shins, lifted up her shirt with one hand while his other hand was on his lap, approached

her with his tongue sticking out, and tried to lick her stomach. Id. at 98. In our view, this was sufficient evidence from which the trier of fact could have found that Dobbs had the intent to arouse or satisfy his sexual desires. See, e.g., Chatham v. State, 845 N.E.2d 203, 206 (holding that the defendant’s act of grabbing the victim’s crotch area was sufficient to show his intent to arouse or satisfy his own or the victim’s sexual desire because the defendant’s intent was inferred from his conduct and natural consequences thereof).

II. Use of Force

Dobbs argues that there was insufficient evidence to support the element of the use or threat of force because there was “no evidence that S.B. experienced fear of Dobbs prior to his lifting her shirt and leaning over” and “no evidence that Dobbs used any physical force to cause S.B. to submit to a touching.” Appellant’s Br. p. 13, 14.

Although an element of the offense of sexual battery is that the victim was “compelled to submit to the touching by force or the imminent threat of force,” the force need not be physical or violent, but may be implied from the circumstances. Scott-Gordon v. State, 579 N.E.2d 602, 604 (Ind. 1991). Evidence that a victim did not voluntarily consent to a touching does not, in itself, support the conclusion that the defendant compelled the victim to submit to the touching by force or threat of force. Bailey v. State, 764 N.E.2d 728, 730 (Ind. Ct. App. 2002). However, “it is the victim’s perspective, not the assailant’s, from which the presence or absence of forceful compulsion is to be determined.” Tobias v. State, 666 N.E.2d 68, 72 (Ind. 1996). “This is a subjective test that looks to the victim’s perception of the circumstances surrounding the incident in question.” Id. “The issue is thus whether the

victim perceived the aggressor's force or imminent threat of force as compelling her compliance." Id.

Here, S.B., who was ten years old at the time of the incident, testified that Dobbs pulled her from the fort where she had been sleeping, took her into his bedroom, and asked her to model his underwear for him. Tr. p. 61. S.B. told Dobbs "no, [he] [could] have [A.D.] do it if he want[ed] it so bad, and [Dobbs] said that [S.B.] was bigger than [A.D.]" Id. S.B. testified that refused Dobbs's request and left the bedroom because she felt "weird." Id. at 61. Dobbs then followed S.B. to the sofa in the front room, sat on S.B.'s shins to the point where she could not move her legs, pulled up S.B.'s shirt, approached her with his tongue sticking out, and tried to lick her stomach. Id. at 62, 99. S.B. pushed Dobbs's head away, said "[t]hat's gross[.]" got off the sofa, and went back into the fort with A.D. Id. at 62.

Based on S.B.'s testimony, we conclude that there was sufficient evidence from which the trier of fact could have found that S.B. was compelled to submit to the attempted touching by force or the imminent threat of force. See, e.g., Bailey, 764 N.E.2d at 730 (holding that the evidence was sufficient to support the element of use of force where the victim had previously refused the defendant's request to come home with him and let him pull down her pants prior to his encounter with the victim where he grabbed the victim's buttocks). Accordingly, we conclude that there was sufficient evidence to support Dobbs's conviction for attempted sexual battery.

The judgment of the trial court is affirmed.

DARDEN, J., and ROBB, J., concur.