

STATEMENT OF THE CASE

James McMahon appeals his conviction, after a bench trial, for class C felony child molestation.¹

We affirm.

ISSUE

Whether sufficient evidence supports his conviction.

FACTS

On the evening of October 4, 2009, while his wife was at work, McMahon was at home with his twelve-year old step-daughter, A.P.² While A.P. was washing dishes, McMahon approached her from behind, pressed the front of his body against the back of her body, and rubbed his hands on her breasts, sides, thighs and buttocks. A.P. recoiled and looked at McMahon, who said, "Sorry," (tr. 11), but again pressed himself against her body and resumed rubbing her breasts, sides, thighs and bottom.

A.P. went across the street to her neighbor's home and, crying "hysterically," recounted the incident to her neighbor, who called the police. (Tr. 37). A.P. also telephoned her mother, biological father, and step-mother, who soon arrived at the neighbor's home. Officer Dustin Loeb of the Indianapolis Metropolitan Police Department ("IMPD") interviewed McMahon, who claimed that he and A.P. had been wrestling when she slipped near the sink; and that he had grabbed her side -- near her

¹ Ind. Code § 35-42-4-3.

² McMahon's four-year old daughter was also at home, but was not involved in the underlying incident.

breast, and buttocks -- as he helped her to regain her balance. McMahon further stated that A.P. may have believed that his hands had lingered too long on her body. On October 6, 2009, McMahon gave a similar account of the incident to IMPD Detective Kevin Kinder.

On October 9, 2009, the State charged McMahon with one count of child molestation as a class C felony. He was tried to the bench on January 20, 2010. A.P. testified that she and McMahon had not been wrestling and that she had not slipped, or otherwise lost her footing, when McMahon rubbed his hands on her breasts, sides, thighs and buttocks. McMahon testified in his defense, admitting that he had touched A.P., but denying any sexual intent. The trial judge found McMahon guilty, stating that “the victim’s testimony was credible.” (Tr. 85). On March 23, 2010, McMahon was given a four-year suspended sentence, and four years of probation. He now appeals.

DECISION

McMahon challenges the sufficiency of the evidence to sustain his conviction. Specifically, he argues that the trial court heard “conflicting evidence of [his] intent,” and that the State failed to prove that he acted with the requisite intent. McMahon’s Br. at 7.

Our standard of review for sufficiency of the evidence claims is well-settled. We do not reweigh the evidence or judge the credibility of the witnesses. We consider only the evidence which supports the conviction and any reasonable inferences which the trier of fact may have drawn from the evidence. We will affirm the conviction if there is substantial evidence of probative value from which a reasonable trier of fact could have drawn the conclusion that the defendant was guilty of the crime charged beyond a reasonable doubt.

Kien v. State, 782 N.E.2d 398, 407 (Ind. Ct. App. 2003), *trans. denied*. It is for the fact-finder, not the appellate court, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). “To preserve this structure, we must consider conflicting evidence in a light most favorable to the conviction.” *Id.* We will affirm unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Id.*

In order to convict McMahon of class C felony child molesting, the State was required to prove that he, with a child under fourteen years of age, performed or submitted to fondling or touching, of either the child or himself, with intent to arouse or satisfy the child’s or his own sexual desires. Ind. Code § 35-42-4-3.

Mere touching alone is not sufficient to constitute the crime of child molesting. *Rodriguez v. State*, 868 N.E.2d 551, 553 (Ind. Ct. App. 2007). 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. *Clark v. State*, 695 N.E.2d 999, 1002 (Ind. Ct. App. 1998). We have previously held that “[t]he intent to arouse or satisfy the sexual desires of the child or the older person 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.’” *Rodriguez*, 868 N.E.2d at 553-54 (quoting *Kanady v. State*, 810 N.E.2d 1068, 1069-70 (Ind. Ct. App. 2004)).

Here, A.P. testified that McMahon approached her from behind, “pressed up against [her] and started to rub his hands along [her] body,” touching her side, back, “butt

and breasts and chest area” with “[b]oth hands.” (Tr. 11). She testified further that when she “backed up and looked at him,” he “coughed and said, ‘Sorry,’” but “continued to do what he was doing.” (Tr. 11).

The trial court could reasonably infer from A.P.’s testimony and the nature and usual sequence of McMahon’s conduct that he intended to arouse or satisfy his own or A.P.’s sexual desires when he rubbed her breasts, thighs, and buttocks. Inasmuch as conflicting evidence was presented on this issue, we decline McMahon’s invitation that we should discredit A.P.’s testimony and reweigh the evidence in his favor; this we cannot do. *See Drane*, 867 N.E.2d at 146. The State presented sufficient evidence to prove beyond a reasonable doubt that McMahon committed class C felony child molestation.

Affirmed.

BAILEY, J., and NAJAM, J., concur.