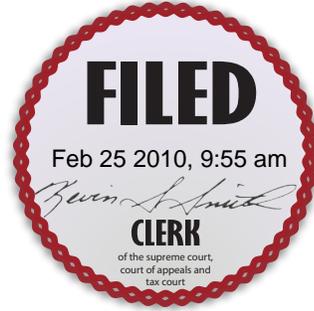


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

AL ANZINI, III
Fort Wayne, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

NICOLE DONGIEUX
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

MICHAEL BALL,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 02A03-0908-CR-372

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Kenneth Scheibenberger, Judge
Cause No. 02D04-0812-FD-1139

February 25, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Michael Ball appeals his conviction for Class D felony child solicitation. We affirm.

Issue

The sole issue is whether there is sufficient evidence to support Ball's conviction.

Facts

The evidence most favorable to the conviction reveals that, on November 17, 2008, fourteen-year-old P.W. was walking to school in Fort Wayne when a man in a minivan drove up beside her and said, "Let me eat your p***y." Tr. p. 7. P.W. noted the minivan's license plate, and police learned it was registered to Ball. P.W. also identified Ball from a photo array as the man who had made the statement to her.

The State charged Ball with one count of Class D felony child solicitation. After a bench trial, Ball was found guilty as charged. He now appeals.

Analysis

Ball's sole argument is that there is insufficient evidence to support his conviction. When we review the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the judgment. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). "It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction." Id. When confronted with conflicting evidence, we must consider it in a light most favorable to the conviction. Id. We will

affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. Id.

In order to convict Ball, the State was required to prove that he knowingly or intentionally solicited P.W., knowing or believing her to be between fourteen and sixteen years old, to engage in sexual intercourse, deviate sexual conduct, or any fondling or touching intended to arouse or satisfy the sexual desires of either himself or P.W. See Ind. Code § 35-42-4-6(c). “Deviate sexual conduct” includes acts involving the sex organ of one person and the mouth or anus of another person. I.C. § 35-41-1-9. To “solicit” means to “command, authorize, urge, incite, request, or advise an individual” to perform a sexual act. See I.C. § 35-42-4-6(a).

Ball contends the statement he made to P.W. did not constitute a prohibited solicitation. He relies on the probable cause affidavit in this case, in which P.W. purportedly told a police officer that Ball said, “I want to eat your p***y.” Ex. A. To the extent it makes any difference, P.W. unequivocally testified that Ball said, “Let me eat your p***y” and that the probable cause affidavit was inaccurate for stating otherwise. Tr. p. 7. P.W.’s trial testimony, not the probable cause affidavit, is what matters here. See Murray v. State, 761 N.E.2d 406, 409 (Ind. 2002) (noting that conflict between trial testimony and alleged pre-trial statement does not make trial testimony incredibly dubious, and that fact-finder may rely on trial testimony instead of alleged out-of-court statement). There is no doubt that Ball’s statement, as reflected by P.W.’s trial testimony, constituted a “request” that she submit to cunnilingus with Ball, and thus was a prohibited solicitation.

Conclusion

There is sufficient evidence to support Ball's conviction for Class D felony child solicitation. We affirm.

Affirmed.

MATHIAS, J., and BROWN, J., concur.