

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:

NEIL L. WEISMAN
South Bend, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

JAMES E. PORTER
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

WILLIE LACY,)
)
 Appellant-Defendant,)
)
 vs.)
)
 STATE OF INDIANA,)
)
 Appellee-Plaintiff.)

No. 71A03-0902-CR-51

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable John M. Marnocha, Judge
Cause No. 71D02-0803-FC-66

May 6, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Willie Lacy (“Lacy”) appeals his convictions after a jury trial for child molesting¹ as a Class C felony and sexual misconduct with a minor² as a Class C felony. Lacy presents the following restated issue for our review: whether the evidence presented to prove that Lacy formed the requisite intent for the offenses was sufficient to support his convictions.

We affirm.

FACTS AND PROCEDURAL HISTORY

J.T., who was born on August 19, 1992, was adopted by her grandmother (“Grandmother”) when J.T. was three years old. J.T. has cerebral palsy and requires care in all aspects of her life. Grandmother was married to Lacy at the time she adopted J.T., but then divorced Lacy prior to his arrest for the instant offenses. Lacy has admitted that he has a drinking problem.

From April 1, 2004 until June 30, 2004, while J.T.’s grandmother was hospitalized for triple bypass surgery, J.T. and Lacy stayed with J.T.’s great-aunt (“Great-Aunt”)—Grandmother’s twin sister--- and her husband. Lacy was separated from Grandmother at the time. One day, Great-Aunt was in the kitchen while J.T. was on the couch. Lacy, who was intoxicated, entered the house, laid down on J.T., began kissing her, placed his hands under J.T.’s shirt and rubbed J.T.’s breasts. Great-Aunt made her husband, Great-Uncle, aware of what Lacy was doing, and Great-Uncle observed Lacy with his hands under J.T.’s shirt rubbing her chest. Great-Aunt grabbed a butcher knife from the kitchen, confronted Lacy,

¹ See Ind. Code § 35-42-4-3(b).

² See Ind. Code § 35-42-4-9.

and told him that she would “cut his neck off” if she saw him “rubbing on [J.T.] again.” *Tr.* 163. Great-Aunt did not tell Grandmother about the incident because she was concerned that the information would upset her and aggravate her medical condition.

In November 2007, Lacy was living with J.T. and Grandmother again. Grandmother was preparing Thanksgiving dinner, when Lacy returned home intoxicated, “staggering” and “bumping up against doors and things.” *Tr.* at 136, 137-38. Grandmother noticed that it was suddenly quiet in the living room, looked, and saw Lacy kissing J.T. with his hands under J.T.’s blouse rubbing her chest. Grandmother grabbed a machete and confronted Lacy, who informed her that he was just playing with J.T. After Thanksgiving, Grandmother spoke with her sister and told her what she had seen Lacy doing to J.T. Great-Aunt then told Grandmother about the incident in 2004 at her house.

In January 2008, Grandmother confronted Lacy, who was intoxicated, after he exposed himself while standing in front of her and J.T. A few days later Grandmother called the police. Shortly thereafter, Grandmother filed for divorce. Lacy admitted during questioning by police officers, that he had felt J.T.’s breasts and her vagina.

On March 14, 2008, the State charged Lacy with sexual misconduct with a minor as a Class C felony and child molesting as a Class C felony. At trial, Lacy admitted that he touched J.T. inappropriately, but denied touching J.T. in a sexual manner. At the conclusion of Lacy’s jury trial, he was found guilty as charged. The trial court sentenced Lacy to the advisory sentence of four years for each count to be served concurrently. Lacy now appeals.

DISCUSSION AND DECISION

Lacy challenges the sufficiency of the evidence supporting his convictions claiming that he did not possess the requisite intent for these crimes. Our standard of review for a challenge to the sufficiency of the evidence is well-settled. When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). “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.” *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). “To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it ‘most favorable to the trial court’s ruling.’” *Id.* (quoting *Wright v. State*, 828 N.E.2d 904, 906 (Ind. 2005)). Appellate courts will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Drane*, 867 N.E.2d at 146. It is not necessary that the evidence overcome every reasonable hypothesis of innocence. *Id.* at 147. The evidence is sufficient if an inference may be reasonably drawn from it in support of the verdict. *Id.* The jury is free to believe or disbelieve witnesses as it sees fit. *McClendon v. State*, 671 N.E.2d 486, 488 (Ind. Ct. App. 1996).

The intent element for both crimes requires that the touching or fondling must have been performed with the intent to arouse or to satisfy the sexual desires of either the child or the defendant. Ind. Code § 35-42-4-3(b); Ind. Code § 35-42-4-9(b). 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). “The 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)). The same is true of sexual misconduct with a minor. See *Kirk v. State*, 797 N.E.2d 837, 841 (Ind. Ct. App. 2003).

Here, the record reflects that on at least two separate occasions, Lacy was seen kissing J.T. while his hands were under J.T.’s shirt rubbing her breasts. Both Grandmother and Great-Aunt testified about having violent reactions upon observing Lacy’s behavior causing them each to confront him and threaten him. The circumstantial evidence of Lacy’s intent to arouse or satisfy his sexual desires was sufficient to sustain his convictions.

Lacy’s reliance on this Court’s interpretation of *Clark*, in *Spann v. State*, 850 N.E.2d 411, 414 (Ind. Ct. App. 2006) is unpersuasive here. In *Clark*, the evidence was insufficient where that defendant removed all of his daughter’s clothes except for her shirt, hung her upside down and tickled her under her arms. *Clark*, 695 N.E.2d at 1002. In *Spann*, that defendant intentionally touched a child’s penis, from which the jury could infer that the touching was done with the intent to arouse or satisfy sexual desires. *Spann*, 850 N.E.2d at 414. In the present case, Lacy kissed J.T. while rubbing her breasts with his hands. The jury could infer from the evidence that Lacy intended to arouse or satisfy his sexual desires.

Last, we note that voluntary intoxication is not a defense to a charge of sexual misconduct with a minor or child molesting. *See* Ind. Code § 35-41-2-5. The evidence presented was sufficient to support Lacy's convictions.

Affirmed.

RILEY, J., and MATHIAS, J., concur.