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IN THE
COURT OF APPEALS OF INDIANA

PATRICIA A. TACKETT,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 18A02-1008-CR-1053
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Marianne L. Vorhees, Judge
Cause No. 18C01-0809-FB-42

May 16, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Patricia A. Tackett ("Tackett") appeals her convictions for Rape, as a Class B felony,[1] Sexual Misconduct with a Minor, as a Class B felony, and Child Solicitation, as a Class D felony. We reverse.

Issue

Tackett articulates several issues for review. We find one dispositive: whether territorial jurisdiction in Indiana was proven beyond a reasonable doubt.

Facts and Procedural History

During 1994, Tackett resided in Muncie, Indiana with her husband, Duane Tackett ("Duane"), and her two daughters, S.R. and A.J.[2] In August of 1994, the family moved to Kentucky, where they resided continuously for almost fourteen years. In March of 2008, Tackett, Duane, and A.J. moved back to Muncie. A.J., then aged twenty-seven but functioning at the level of a six-to-eight year-old child, remained in the custody of her mother.[3]

At a family gathering in May of 2008, A.J. approached her aunt, Sylvia Norris ("Norris") and said, "daddy makes me pull my pants down and if I don't, daddy hits me."

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[1] Ind. Code § 35-42-4-1.

[2] S.R. is Duane's biological daughter and A.J. is his step-daughter.

[3] A.J. has an I.Q. of approximately 57, and has been diagnosed as mildly mentally retarded. Tackett has an IQ of approximately 59, and has also been diagnosed as mildly mentally retarded. However, unlike A.J., Tackett has demonstrated a high level of adaptive functioning, has been regularly employed, and has maintained a driver's license.

(Tr. 265.) Norris began to cry, whereupon A.J. began shaking Norris, saying "never let them see you cry, Aunt Sylvia." (Tr. 266.) Norris immediately confronted Tackett about A.J.'s accusation, which Tackett did not deny. Norris then called Duane in Kentucky and confronted him. Having observed that A.J. was wearing a birth control patch and a wedding ring, Norris decided to make a police report regarding her suspicions that A.J. had been sexually victimized.

On May 5, 2008, Norris told Tackett that she would take her to City Hall where Tackett could sign over custody of A.J. to Norris. Instead, Norris and her sister-in-law – acting upon their own initiative – took Tackett to the Muncie Police Station. At the police station, Tackett was given Miranda warnings and interviewed for two hours. During the interview, Tackett admitted that Duane had, with Tackett's acquiescence and assistance, engaged in sexual activity with A.J. at age fourteen and during successive years. A.J. had turned fourteen thirty-three days before the family moved to Kentucky.[4]

Tackett was arrested and charged with Rape and Sexual Misconduct with a Minor, as an accomplice. She was also charged with Child Solicitation.

Tackett was brought to trial before a jury on July 26, 2010. A.J. testified that Duane had touched "her private with his private" and that her mother had been in the room. (Tr. 420.) She also testified that she had touched Duane's "private" with her mouth, and that Tackett had instructed her on how to touch Duane. (Tr. 426.) When asked on direct

[4] A.J.'s fourteenth birthday was July 24, 1994. Muncie school records indicated her withdrawal from the school system on August 26, 1994.

examination where she was living "the first time that your dad touched you in a way that you didn't like," A.J. specified that she lived in Kentucky and attended Magoffin County High School there. (Tr. 424.) On cross-examination, A.J. reiterated that the "touches [she] didn't like" happened in Kentucky. (Tr. 464.)

Tackett's videotaped police statement was admitted, comprising the sole evidence proffered by the State relative to alleged criminal activity by Tackett in the State of Indiana. Tackett was convicted as charged, and sentenced to an aggregate term of forty years imprisonment. She now appeals.

Discussion and Decision

I. Standard of Review

A person may be convicted of a crime in Indiana if either the conduct, the result that is an element of the offense, or both, occurred in Indiana. Ind. Code § 35-41-1-1(1)(b). Territorial jurisdiction relates to the authority of the State to prosecute a person for an act committed within the State's territorial boundaries and is "not necessarily thought of as an element of the offense." Ortiz v. State, 766 N.E.2d 370, 374 (Ind. 2002). However, where the law has established the necessity of a certain fact for an accused to be guilty of an offense, the existence of that fact is treated much like an element of the offense. Id. Accordingly, the State is required to prove territorial jurisdiction beyond a reasonable doubt. Id.

In reviewing a claim of insufficient evidence, we neither reweigh the evidence nor judge the credibility of witnesses. Id. We consider only that evidence which supports the

verdict and all reasonable inferences drawn therefrom. Id. We will uphold a conviction if there is substantial evidence of probative value from which a jury could have found the defendant guilty beyond a reasonable doubt. Id.

II. Analysis

The State charged that Tackett committed Rape as an accomplice when she assisted Duane to engage in sexual intercourse with A.J. when A.J. was so mentally disabled as to be unable to give consent, and that this occurred between July 24, 1994 and July 24, 2004. The State also charged that Tackett committed Sexual Misconduct with a Minor as an accomplice when she assisted Duane to engage in either sexual intercourse or deviate sexual conduct with A.J. when A.J. was at least fourteen years of age but less than sixteen years of age (the time period from July 24, 1994 to July 24, 1996). Finally, Tackett was charged with soliciting A.J. to engage in sexual intercourse when A.J. was at least fourteen years of age but less than sixteen years of age, more specifically, fourteen years of age.

As previously observed, A.J. testified at trial that the offenses against her were committed in Kentucky as opposed to Indiana. Thus, the State became reliant upon Tackett's police statement to establish territorial jurisdiction. In the interview, Tackett had admitted to various sexual encounters between Duane and A.J. Not surprisingly, given that a mildly mentally retarded woman was responding to questions from multiple officers in an out-of-court setting, the evidence ultimately relied upon to establish a timeline was elicited in something less than a clear and sequential manner.

Early in the videotaped interview, Officer Allen Williams asked Tackett to describe

events when A.J. was fourteen, apparently because Tackett had focused upon this age in an earlier, unrecorded statement. When asked about A.J. being "sexually active," Tackett stated that, when A.J. was fourteen, "she would go up to guys and stuff and want their attention." (Tr. 512, 514.)

Officer Williams asked Tackett about touching "here in Muncie" at the house on Walnut Street, and Tackett recalled A.J. "laying over on [Duane's] stomach." (Tr. 515, 517.) Eventually, Tackett indicated that A.J. had "rubbed [Duane's] penis" when they were "over on Walnut." (Tr. 535.) Subsequently, Tackett admitted that sexual intercourse and oral sex between Duane and A.J. had occurred. At first, she insisted that these activities took place only after A.J. was twenty-one. However, Tackett later agreed that Duane started performing oral sex on A.J. "at fourteen." (Tr. 562.) She also agreed with the interviewing officer that "having sex" took place when A.J. was fourteen.[5] (Tr. 565, 599.) She did not contemporaneously describe the geographic location, nor did she specify that this was within the first thirty-three days after A.J. had turned fourteen (before the move to Kentucky).

The State contends that Tackett's own admissions establish that the three charged offenses, involving sexual intercourse or deviate sexual conduct, occurred in Indiana. We disagree. At most, Tackett admitted to sexual activity by fondling occurring in Indiana. All of the instant charges were predicated upon Tackett's solicitation or participation in events of

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[5] The interview does not make clear whether Tackett understood "having sex" as consisting of only sexual intercourse or whether she included various sexual activities within the description of "having sex." At one point in the interview, she indicated that A.J. was "gettin' sexual active when I would see her leanin' over on him, and rubbin' on him." (Tr. 544.)

sexual intercourse or deviate sexual conduct. Her police statement does not establish, beyond a reasonable doubt, that the charged offenses occurred in Indiana.[6]

Reversed.

FRIEDLANDER, J., and BROWN, J., concur.

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[6] Furthermore, although a corpus delicti challenge is not raised by Tackett, we observe that a crime cannot be proven solely on the basis of a confession. West v. State, 755 N.E.2d 173, 182 n.5 (Ind. 2001).