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.

FILED
Jun 03 2011, 8:32 am
CLERK
of the supreme court, court of appeals and tax court

ATTORNEY FOR APPELLANT:

COREY L. SCOTT
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

JAMES E. PORTER
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

C.W.,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 49A02-1011-JV-1314
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Gary K. Chavers, Judge Pro Tempore
The Honorable Scott B. Stowers, Magistrate
Cause No. 49D09-1005-JD-1261

June 3, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

C.W. appeals her adjudication as a juvenile delinquent, for an act that would be Child Molesting, if committed by an adult. She presents the single issue of whether there is sufficient evidence to support the delinquency adjudication. We affirm.

Facts and Procedural History

For six weeks during 2007 or 2008, C.W. and her mother lived with A.R. and his family. On multiple occasions, C.W. entered A.R.'s bedroom, removed his pajamas and underwear, positioned herself on top of A.R., and inserted A.R.'s penis into her vagina.

On May 13, 2010, the State alleged that C.W. is a juvenile delinquent because she had engaged in acts that would be Child Molesting, as Class B and Class C felonies, if committed by an adult. On September 15, 2010, the juvenile court held a denial hearing and entered a true finding as to the allegation of Child Molesting, as a Class B felony, if committed by an adult. A dispositional hearing was conducted on November 3, 2010. The juvenile court imposed upon C.W. a suspended commitment to the Indiana Department of Correction. This appeal ensued.

Discussion and Decision

When reviewing a juvenile delinquency adjudication, we will consider only the evidence and reasonable inferences that support the judgment. B.R. v. State, 823 N.E.2d 301, 306 (Ind. Ct. App. 2005). We neither reweigh the evidence nor judge witness credibility. Id. If there is substantial evidence of probative value from which a reasonable trier of fact could conclude beyond a reasonable doubt that the juvenile committed a

delinquent act alleged, we will affirm the adjudication. Id.

To support the true finding for Child Molesting, otherwise a Class B felony, the State was required to establish that C.W. performed or submitted to sexual intercourse with A.R., a child then under the age of fourteen years. See Ind. Code § 35-42-4-3. More specifically, the State alleged that A.R. had been ten years old when victimized.

A.R. testified that C.W. removed his pajama bottoms and underwear, got on top of him, and touched his penis with her vagina. A.R. more particularly described the activity as "I went in." (Tr. 16.) He further testified that this type of "touching" continued "for about as long as they lived with us." (Tr. 17.)

C.W. nonetheless argues that A.R.'s testimony does not support the true finding. According to C.W., because the delinquency petition stated that A.R. had been ten years old, and A.R. vacillated as to the year of the events,[1] A.R.'s precise age was not established, and there was a failure of proof. C.W.'s argument is unavailing. First, A.R. testified that he had been ten years old when C.W. came to live with his family. Second, time is not of the essence in most child molesting cases. Love v. State, 761 N.E.2d 806, 809 (Ind. 2002). "An exact date is important only in situations such as those where a victim's age at the time the crime occurred falls near the dividing line between classes of offenses." Carter v. State, 754 N.E.2d 877, 884 (Ind. 2001), cert. denied, 537 U.S. 831 (2002). Here, the victim was clearly under age fourteen.

C.W. also claims it to be incredible that, if sexual activity occurred, none of the other

---

[1] A.R. testified "I can't quite remember if it was in 2007 or 2008." (Tr. 34.)

residents of the house awoke, including a child sleeping in the bunk bed above A.R.'s bed. The argument in this regard merely presents an invitation to reweigh the evidence. This we cannot do. B.R., 823 N.E.2d at 306. The State presented sufficient evidence from which the juvenile court could adjudicate C.W. a delinquent.

Affirmed.

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