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IN THE
COURT OF APPEALS OF INDIANA

RICHARD E. DELL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 80A04-1009-CR-582
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE TIPTON CIRCUIT COURT
The Honorable Thomas R. Lett, Judge
Cause No. 80C01-0905-FC-126

June 17, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Richard E. Dell alleges the evidence was insufficient to support his conviction of Class D felony sexual battery[1] because the State did not prove his intent was to sexually arouse himself or the victim. Dell grabbed the chest of an eleven-year-old girl, pulled out the front of her shirt out to look down it, and then raised the bottom of her shirt up to her neck. He offered to buy the girl a necklace and said he would like to take her home with him. A reasonable trier-of-fact could find Dell touched the girl with the intent to arouse himself or the girl, and we therefore affirm.

FACTS AND PROCEDURAL HISTORY[2]

On May 20, 2009, Dell stopped his car in an alley near where four children were playing. He called and motioned for the children to come over to his car. Three children, including eleven-year-old S.M., approached the car. S.M. is autistic, has severe learning disabilities, and attends a special school.[3] Dell reached his hand out of the window and touched S.M.'s chest. S.M. walked away from the car, and Dell motioned for her to come back. Dell told the children his name was "Red," (Tr. at 109), and he offered to buy a necklace for S.M. When S.M. approached the car again, Dell grabbed the neckline of her

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[1] Ind. Code § 35-42-4-8.

[2] We remind counsel for Appellant that a Statement of Facts in an appellate brief is to be presented "in accordance with the standard of review appropriate to the judgment or order being appealed." Ind. Appellate Rule 46(A)(6)(b). Counsel asks us to review the sufficiency of the evidence supporting the judgment, which requires we consider only those facts and inferences that most favorable to the judgment, without reweighing the evidence or reassessing the credibility of the witnesses. *See Chatham v. State*, 845 N.E.2d 203, 205 (Ind. Ct. App. 2006). Dell's Statement of Facts, by contrast, includes only facts favorable to Dell and facts with no apparent relevance to the issues presented on appeal. Despite the violation of our rules, we choose to address the merits of the issue presented. *See, e.g.*, *Vaillancourt v. State*, 695 N.E.2d 606, 608 n.2 (Ind. Ct. App. 1998) (addressing merits despite counsel's failure to give appropriate statement of facts), *trans. denied*.

[3] Based thereon, the State alleged S.M. was unable to consent to Dell's touching. Dell does not challenge that implicit finding.

shirt and pulled her toward the car. As she was coming toward the car, he leaned out his car window to look down her shirt. He then put both arms outside the car, grabbed the bottom of S.M.'s shirt, and lifted her shirt up to her neck. Dell told S.M. that he wanted to take her home with him.

James Pore, who lives nearby, was returning from work when he noticed an unfamiliar car parked in the alley and neighborhood kids near the car talking to the driver. He thought the situation was unusual, so he parked his car and looked out his garage window just as Dell reached out the window to touch S.M.'s chest. Pore took Dell's license plate information and then saw Dell look down S.M.'s shirt and pull her shirt up to her neck. When Pore reached the car, he stepped between S.M. and the car, told the children to go find their parents, and asked Dell what he was doing. Dell claimed he had been looking for a necklace. As Pore began to call the police, Dell sped away.

S.M. ran inside to find her grandmother. She was terrified and told her grandmother that a man wanted her to go home with him and that she did not like that he touched her. Based on Pore's description of the car and its license plate information, police located Dell soon thereafter.

The State charged Dell with sexual battery and Class C felony criminal confinement.[4] After a bench trial at which Pore, S.M., and another of the children present at the car testified, the court acquitted Dell of confinement, but convicted him of sexual battery. The court ordered a three-year sentence.

[4] Ind. Code § 35-42-3-3.

DISCUSSION AND DECISION

When reviewing the sufficiency of the evidence to support a conviction, we neither reweigh the evidence nor assess the credibility of the witnesses. *Chatham v. State*, 845 N.E.2d 203, 205 (Ind. Ct. App. 2006). Rather, we view the evidence and reasonable inferences therefrom in the light most favorable to the judgment and affirm if the record contains probative evidence from which a reasonable trier-of-fact could have found the defendant guilty beyond a reasonable doubt. *Id.*

The State alleged Dell committed sexual battery by touching S.M. with the intent to sexually arouse or satisfy himself or S.M., when S.M. did not have the mental capacity to consent. Ind. Code § 35-42-4-8. Dell asserts the State did not prove he acted with sexual intent.

> Intent is a mental state, and absent an admission, the [trier-of-fact] must resort to the reasonable inferences based upon an examination of the surrounding circumstances to determine whether, from the person's conduct and the natural consequences that might be expected from that conduct, there exists a showing or inference of the required criminal intent.

Germaine v. State, 718 N.E.2d 1125, 1132 (Ind. Ct. App. 1999), *trans. denied*. A guilty verdict may rely on circumstantial evidence alone, and a trier-of-fact can draw reasonable inferences from direct or circumstantial evidence. *Id.*

There was ample evidence Dell's intentions were of a sexual nature. He stopped his car in an alley and called eleven-year-old S.M. over to his car. When S.M. approached, Dell

touched her chest.[5] She began to walk away, but he called her back over to the car. He then grabbed the neckline of her shirt and pulled it out, which caused her to lean over, and he leaned out of the car to look down her shirt. Dell offered to buy a necklace for S.M. and said he wanted to take her home with him. He grabbed the bottom of her shirt and lifted her shirt up to her neck. Dell's actions and statements permit a reasonable trier-of-fact to infer Dell's intent was to sexually arouse either himself or S.M. *See Chatham*, 845 N.E.2d at 206 (finding sufficient evidence of sexual intent where defendant approached victim from behind and put his hand as far up between her legs as possible). Accordingly, we affirm.

Affirmed.

BAKER, J., and BRADFORD, J., concur.

[5] Dell asserts a witness testified "Dell pulled at the young girl[']s shirt, and at one point in time had [h]is hand on her chest, but never does she state that Dell touched [S.M.] on her breast, or any other area that would be intended for the purpose of sexual arousal." (Br. of Appellant at 6.) We decline to hold the witness's use of the term "chest" necessarily indicates Dell did not touch her breasts. *See, e.g.*, *Atteberry v. State*, 911 N.E.2d 601, 604 (Ind. Ct. App. 2009) (victim "stabbed twice in the chest, once on each breast"); see also *Blakiston's Gould Medical Dictionary* 191 (4th ed. 1979) (defining "breast" as "[t]he front of the chest"); *id*. at 259 (defining "chest" as "[t]he front of the thorax"); and *id* at 1371 (defining "thorax" as "the portion of the truck above the diaphragm and below the neck"). Nor will we accept counsel's invitation to hold certain parts of the body are or are not "area[s] that would be intended for the purpose of sexual arousal." (Br. of Appellant at 6.)