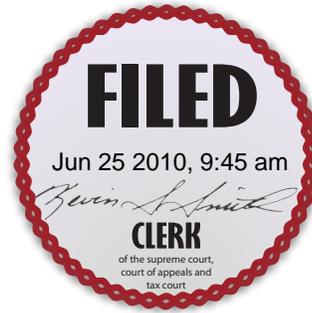


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE: THE MATTER OF R.J.K., a Child)
Alleged to be a Delinquent Child,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 02A05-0909-JV-539

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Karen A. Springer, Magistrate
Cause No. 02D07-0904-JD-196

JUNE 25, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

SULLIVAN, Senior Judge

Juvenile-Appellant R.J.K. appeals the court's true finding that he was a delinquent child who committed the offense of sexual battery, a Class D felony if committed by an adult. We affirm that determination.

R.J.K. presents one issue for our review which we restate as: Whether the juvenile court's finding of delinquency was supported by sufficient evidence.

In April of 2009, R.J.K., age 11, was riding on a school bus when he pulled E.W., a nine year old girl, by her wrist into the seat with him. R.J.K., referring to his penis, told E.W. to "sit on it". R.J.K. squeezed the girl's left breast on top of and underneath her clothing, while fondling his penis inside of his sweat pants. R.J.K. also pulled her hand and made her touch his penis. E.W. told R.J.K. to stop and tried to leave but could not.

Upon arriving home, E.W. immediately told her grandfather about R.J.K.'s actions. The girl's breast was red and swollen and she indicated that she was in pain. She also had red marks on her wrist and elbow. The marks on her breast changed to a bruise.

The State filed a delinquency petition alleging that R.J.K. had committed acts that would be Class D felony sexual battery and Class C misdemeanor public indecency if committed by an adult. The juvenile court dismissed the public indecency allegation on the State's motion, held a fact finding hearing, and entered a true finding for sexual battery.

R.J.K. contends that the evidence is insufficient to support the court's true finding.

The standard of review for juvenile cases is well settled. This court will neither reweigh evidence nor judge witness credibility. S.D. v. State, 847 N.E.2d 255, 257 (Ind. Ct. App. 2005), transfer denied. Rather, we will look to the evidence and the reasonable inferences from that evidence. Id. A true finding will be affirmed if there is probative evidence from which the fact finder could reasonably conclude that the juvenile is guilty beyond a reasonable doubt. Id. Thus, “we will affirm the finding of delinquency unless it may be concluded that no reasonable fact finder could find the elements of the crime proven beyond a reasonable doubt.” Id.

In order to show that R.J.K. committed the act of sexual battery, if committed by an adult, the State was required to prove that R.J.K., with intent to arouse or satisfy his own sexual desires or the sexual desires of E.W., touched E.W. and compelled her to submit to touching by force or the imminent threat of force. Ind. Code § 35-42-4-8. “[T]he force need not be physical or violent, but may be implied from the circumstances.” Bailey v. State, 764 N.E.2d 728, 730 (Ind. Ct. App. 2002), transfer denied.

R.J.K. argues that he and another boy were just “roughhousing in a jocular and teasing manner common to many young children who go to school together, ride the bus together, live in the same neighborhood, and are familiar with one another,” and that as E.W. was being pulled by both R.J.K. and another boy she accidentally touched R.J.K.’s “private area” and in the exchange sustained her injuries. Appellant’s Br. at 9. We do not accept R.J.K.’s invitation to conclude that mere “roughhousing” occurred.

Although the evidence most favorable to the court's true finding was in dispute, the court was within its discretion to credit the testimony of E.W. as to what occurred.

Citing Chatham v. State, 845 N.E.2d 203 (Ind. Ct. App. 2006), R.J.K. appears to argue that the State was required to prove that E.W. was in fear when he groped her and made her touch his penis.¹ In any event, the Chatham case is to be distinguished.

In that case, the defendant surprised the victim by grabbing her crotch from behind while she was walking away. Id. at 205. This court concluded that the defendant did not compel the victim to submit to the touching because she “did not have an opportunity to grant or deny consent to the touching.” Id. at 208.

Here, R.J.K. grabbed E.W. by the wrist and pulled her toward him against her will. Then he squeezed her breast and pulled her hand to his penis while she was trying to escape. Unlike the situation in Chatham, E.W. in the present case made explicit pleas for R.J.K. to stop and he refused.

We hold that there was sufficient evidence of the elements of sexual battery, including the use of force, to support the court's true finding.

The judgment is affirmed.

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

¹ Although the Chatham case discusses fear on the part of the victim in the context of the requirement that submission to the touching must be compelled, “fear” is not a distinct element of the crime of sexual battery. See Ind. Code § 35-42-4-8.