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IN THE
COURT OF APPEALS OF INDIANA

CHRISTOPHER J. MATHIS	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A03-0703-CR-96
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART SUPERIOR COURT
The Honorable George W. Biddlecome, Judge
Cause No. 20D03-0411-FC-180

August 28, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Following a jury trial, Christopher J. Mathis was convicted of two counts of sexual misconduct with a minor,[1] each as a Class C felony. He appeals raising only one issue for our review: whether the evidence is sufficient to show Mathis's intent to arouse or satisfy his sexual desires.

We affirm.

FACTS AND PROCEDURAL HISTORY

The facts most favorable to the judgment are that E.D. moved to Mathis's home in 2003, when she was in the sixth grade. While there, E.D. lived with her brother and sister, Mathis and his wife, Margaret, and Mathis's three children. In the summer of 2004, Margaret took E.D. to a medical appointment, during which the doctor found a lump in E.D.'s breast. The doctor instructed E.D. to check the lump daily. A couple of days after the appointment, E.D. told Mathis about the lump in her breast. Without permission, Mathis regularly touched both of E.D.'s breasts, both over and under her clothing. E.D. testified that it made her uncomfortable when Mathis touched her breasts.

Mathis also had E.D. rub lotion on his feet, his legs, and his penis. This activity took place in Mathis's bathroom and occurred frequently enough so that Mathis would tell E.D. he was ready, and E.D. would know that Mathis wanted lotion applied to his feet, legs, and penis. On one occasion, Mathis made E.D. angry and she threatened to tell others what was happening. E.D. testified, "[Mathis] said if I ever told, he was going to whoop me." *Tr*. at 173. When E.D. asked Mathis why he never did these kinds of things to her older sister, Mathis said, "she was too old." *Id*. at 196. Mathis also told E.D. that she needed to learn

[1] *See* IC 35-42-4-9(b)(1).

how to use lotion and "tak[e] care of her man" when she was young. *Id*. at 197. Although scared that others would look down on her and ashamed of what Mathis made her do, E.D. eventually told Margaret's mother.

The State initially charged Mathis with one count of sexual misconduct with a minor as a Class C felony and one count of child molesting. The latter count was subsequently amended to a second count of sexual misconduct with a minor child as a Class C felony. Following a jury trial, Mathis was convicted of both. The trial court imposed a four-year sentence on each count and ordered the sentences to be served concurrently. Mathis now appeals.

DISCUSSION AND DECISION

Mathis contends that the evidence was insufficient to prove that he had the intent to arouse or satisfy his sexual desires. In reviewing sufficiency of the evidence, we will affirm a conviction if, considering only the probative evidence and reasonable inferences supporting the verdict, and without weighing evidence or assessing witness credibility, a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. *Weaver v. State*, 845 N.E.2d 1066, 1069 (Ind. Ct. App. 2006), *trans. denied*; *Kirk v. State*, 797 N.E.2d 837, 841 (Ind. Ct. App. 2003), *trans. denied*.

To prove Mathis committed sexual misconduct with a minor as a Class C felony, the State was required to prove: (1) Mathis was at least twenty-one years of age; (2) E.D. was at least fourteen years of age but less than sixteen years of age; (3) Mathis touched or fondled E.D. or submitted to being touched or fondled by E.D.; and (4) Mathis did so with the intent to arouse or satisfy his sexual desires. IC 35-42-4-9(b)(1). Mathis does not contest the first

three elements. Rather, he asserts that there is an absence of proof that he acted with the required intent to arouse or satisfy his sexual desires when E.D. touched his penis and he touched E.D.'s breasts. We disagree.

In Count I, the alleged sexual misconduct with which Mathis was charged was having E.D. repeatedly come into his bathroom to rub lotion on his penis. The evidence showed that this activity happened on more than one occasion, and that E.D. was so familiar with the activity that Mathis merely had to state he was ready and E.D. knew what Mathis wanted. E.D. testified, "[Mathis] said if I ever told, he was going to whoop me." *Id*. at 173. When E.D. asked Mathis why her older sister "never had to do these sorts of things to him," Mathis responded, "she was too old." *Id*. at 196. Mathis also told E.D. that she needed to learn how to use lotion and "tak[e] care of her man" while she was young. *Id*. at 197. There was sufficient evidence from which a jury could find Mathis had the requisite intent to arouse or satisfy his sexual desires.

In Count II, Mathis's alleged sexual misconduct was his repeated touching of E.D.'s breasts both over and under her clothes. On appeal Mathis contends, as he did at trial, that there was no intent to arouse because the breast touching was merely to check the status of E.D.'s lump. The intent element may be established by circumstantial evidence and may be inferred from the actor's conduct and the natural and usual consequences to which that conduct usually points. *Bowles v. State*, 737 N.E.2d 1150, 1152 (Ind. 2000); *Kirk*, 797 N.E.2d at 841.

Our court has found sufficient evidence to support a finding of touching with intent to satisfy sexual desires where a defendant put his arm around the shoulder of a child and let his

hand hang, touching her breast, and where he placed his hand on the shoulder of another child and then on her breast. *See Pedrick v. State*, 593 N.E.2d 1213, 1220 (Ind. Ct. App. 1992). Here, the evidence is more clear. Mathis repeatedly and over a period of time touched E.D. both over and under her shirt. The activity occurred in his bathroom without anyone else present. The touching made E.D. uncomfortable and when she said she would tell on him, Mathis said he would "whoop" her. *Tr*. at 173. We find sufficient evidence for the jury to have determined that the touching was done with the required intent to arouse or satisfy his sexual desires. Mathis's contention that his acts were not related to his sexual desires is an invitation for us to reweigh the evidence or assess witness credibility. This we cannot do. *Sutherlin v. State*, 784 N.E.2d 971, 974 (Ind. Ct. App. 2003) (court declined appellant's invitation to reweigh evidence and assess witness credibility). On the record before us, the jury reasonably could have found that the State proved intent beyond a reasonable doubt. *See Kirk*, 797 N.E.2d at 841.

Affirmed.

ROBB, J., and BARNES, J., concur.