

Case Summary and Issue

Following a bench trial, the trial court found Ronald Mastrog guilty of child molesting, a Class C felony. On appeal, Mastrog raises the sole issue of whether there was sufficient evidence to support his conviction. We affirm, concluding there was sufficient evidence for the trial court to conclude beyond a reasonable doubt that Mastrog was guilty of child molesting.

Facts and Procedural History

On December 29, 2005, eleven-year-old R.R. and her mother were waiting at a Flying J truck stop on the south side of Indianapolis for a mechanic to fix their jeep. R.R. and her mother decided to browse the truck stop's video section, which was in the back corner of the building. While they were walking toward the video section, R.R. stopped in an aisle to put on her coat. At that point, Mastrog approached R.R., told R.R. she was beautiful, attempted to give R.R. money, and asked R.R. if he could touch her bottom. R.R. tried to back up, but was cornered by a shelf. Mastrog then reached under R.R.'s skirt and "moved his hand back and forth" along R.R.'s bottom. Transcript at 25. When R.R.'s mother realized R.R. was not behind her, she turned around and observed Mastrog reaching under R.R.'s skirt with one hand and holding money with his other hand.

The State charged Mastrog with child molesting, a Class C felony, and child solicitation, a Class D felony. Following a bench trial, the trial court found Mastrog guilty of child molesting and not guilty of child solicitation. Based on these findings, the trial court

sentenced Mastrog to a suspended sentence of four years and to three years of probation. Mastrog now appeals.

Discussion and Decision

I. Standard of Review

Mastrog argues there was insufficient evidence to support his conviction for child molesting. In reviewing whether there is sufficient evidence to support a conviction, “appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict.” McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). It is the trier of fact’s duty to weigh the evidence to determine whether the State has proved each element of the offense beyond a reasonable doubt. Wright v. State, 828 N.E.2d 904, 906 (Ind. 2005). Accordingly, we will consider only the probative evidence and reasonable inferences supporting the trial court’s decision and “must affirm ‘if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.’” McHenry, 820 N.E.2d at 126 (quoting Tobar v. State, 740 N.E.2d 109, 111-12 (Ind. 2000)).

II. Sufficiency of the Evidence

Indiana Code section 35-42-4-3(b) states:

A person who, with a child under fourteen (14) years of age, performs or submits to any fondling or touching, of either the child or the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person, commits child molesting, a Class C felony.

Thus, to convict Mastrog of child molesting as a Class C felony, the State had to prove beyond a reasonable doubt that Mastrog fondled R.R.’s bottom with intent to arouse or satisfy

his or R.R.'s sexual desires when R.R. was under fourteen years of age. Mastrog does not argue that there was insufficient evidence to support a finding that he fondled R.R.'s bottom or that R.R. was under the age of fourteen. Instead, Mastrog argues there was insufficient evidence of intent to arouse his or R.R.'s sexual desires.

“The intent element of child molesting may be established by circumstantial evidence and may be inferred from the actor’s conduct and the natural and usual sequence to which such conduct usually points.” Bowles v. State, 737 N.E.2d 1150, 1152 (Ind. 2000). This court has found that the trier of fact could reasonably infer intent to arouse sexual desires where there was evidence the defendant intentionally touched the victim’s genitals, Kirk v. State, 797 N.E.2d 837, 841 (Ind. Ct. App. 2003), trans. denied, and where there was evidence the defendant touched the victim in an area in close proximity to the victim’s genitals, Nuerge v. State, 677 N.E.2d 1043, 1049 (Ind. Ct. App. 1997), trans. denied.

Although we agree with Mastrog that “there was no evidence that [he] touched R.R.’s genitals,” it does not necessarily follow that “the inference of the requisite intent cannot be made” Appellant’s Brief at 6. In Altes v. State, 822 N.E.2d 1116, 1122 (Ind. Ct. App. 2005), trans. denied, this court concluded the trier of fact could reasonably infer intent to arouse sexual desires based on evidence that the defendant, after receiving consent to rub the victim’s feet, ran his hands up the victim’s legs and touched her bare bottom. Critical to the court’s conclusion was that the defendant’s touching was “close enough to the female genitals as to constitute the source of sexual gratification.” Id.

Here the evidence indicates that Mastrog not only “moved his hand back and forth” along R.R.’s bottom, but that he did so after telling R.R. she was beautiful, attempting to give R.R. money, and asking R.R. if he could touch her bottom. Tr. at 25. Based on this evidence, we are convinced that the natural and usual sequence of Mastrog’s conduct reasonably supports an inference that Mastrog intended to arouse his or R.R.’s sexual desires. Thus, there was sufficient evidence for the trial court to conclude beyond a reasonable doubt that Mastrog was guilty of child molesting.

Conclusion

There was sufficient evidence to support Mastrog’s conviction for child molesting. Accordingly, we affirm.

Affirmed.

KIRSCH, J., and BARNES, J., concur.