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IN THE
COURT OF APPEALS OF INDIANA

MICHAEL LEWIS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0611-CR-648
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Grant Hawkins, Judge
Cause No. 49G05-0505-FA-90964

October 25, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Michael Lewis appeals his conviction for Child Molesting,[1] as a class A felony. He presents the following restated issue for review: Did the State present sufficient evidence to support this conviction?

We affirm.

Forty-six-year old Lewis regularly babysat five-year-old H.T. and her two younger siblings for about two months. H.T. knew Lewis by the name of "Aunt Nikki." On one day in late May 2005, while the younger children were sleeping, Lewis had H.T. sit on the living room couch with him and watch a pornographic movie. He then took H.T. into his bathroom where he pulled down her pants and bent her over the bathtub. Lewis knelt behind the child and proceeded to rub his exposed penis on her lower back, just above her buttocks. For a significant period of time, Lewis rubbed his penis on the child in a motion "like a man and woman…having sex". *Exhibits* at 70. He then ejaculated on the bathroom floor. At some point during this incident, Lewis also put his penis in H.T.'s mouth. Lewis told H.T. that this was their secret and not to tell anyone.

On the evening of May 25, 2005, H.T. told her mother, Teresa Tyo, that she and Aunt Nikki had a secret. When Tyo inquired about the secret, H.T. first reported "he stuck his private part in her mouth." *Transcript* at 123. H.T. further stated that while her sister was asleep, Lewis had her (H.T.) watch a "mean, scary movie." *Id*. at 124. With respect to the movie, H.T. explained that "there was a man and a woman and the man was sticking his thing in the woman." *Id*. H.T. also indicated that she had to have her pants

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[1] Ind. Code Ann. § 35-42-4-3(a)(1) (West 2004).

off and that Lewis "rubbed his thing on her butt." *Id*. at 125. Thereafter, Tyo took H.T. to the hospital, where the police were called.

Detective Gregory Norris of the Indianapolis Police Department interviewed Lewis on May 30, 2005. Lewis admitted that he had exposed H.T. to a pornographic movie while the child was in his care. After initially denying that he had sexually touched the child, Lewis admitted taking the child into the bathroom and then rubbing his penis on her lower back for about forty-five minutes before he ejaculated on the floor. He also admitted touching her buttocks and possibly her breast with his hand during the sexual encounter. Lewis, however, denied placing his penis in the child's mouth. He indicated that after H.T. viewed oral sex in the pornographic movie, she asked to try it with Lewis but he declined.

On May 31, 2005, the State charged Lewis with two counts of child molesting, one as a class A felony and one as a class C felony,[2] and dissemination of matter harmful to minors, a class D felony. Thereafter, the State also alleged that he was a habitual offender. The jury trial commenced on October 3, 2006. The jury found Lewis guilty as charged. Lewis then waived trial by jury on the habitual offender allegation, and the court subsequently determined he was a habitual offender. On appeal, Lewis challenges only his conviction for child molesting as a class A felony, claiming that the State presented insufficient evidence.

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[2] The class A felony was based upon Lewis's act of placing his penis in H.T.'s mouth, while the class C felony was for Lewis fondling or touching the child with the intent to arouse or satisfy his own sexual desires.

When considering a challenge to the sufficiency of evidence supporting a conviction, we neither reweigh the evidence nor judge witness credibility. *McHenry v. State*, 820 N.E.2d 124 (Ind. 2005). This review "respects 'the jury's exclusive province to weigh conflicting evidence.'" *Id.* at 126 (quoting *Alkhalidi v. State*, 753 N.E.2d 625, 627 (Ind. 2001)). Considering only the probative evidence and reasonable inferences supporting the verdict, we 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 v. State*, 820 N.E.2d at 126 (quoting *Tobar v. State*, 740 N.E.2d 109, 111-12 (Ind. 2000)). Further, a victim's testimony, even if uncorroborated, is ordinarily sufficient to sustain a conviction for child molesting. *Bowles v. State*, 737 N.E.2d 1150 (Ind. 2000).

In an attempt to challenge H.T.'s testimony, Lewis directs us to conflicts in the evidence regarding the other count of child molesting (that is, whether his penis touched H.T.'s back, buttocks, or vagina).[3] Lewis argues:

> When relating the events of the alleged crime, [H.T.] stated that Aunt Nikki was *behind her* in the bathroom, and yet touched her "bad part" with his "bad part". In his own statement to the police, [Lewis] admitted to touching [H.T.'s] back with his penis, but denied any further sexual contact.
>
> Clearly, the positioning of [Lewis] and [H.T.] in the bathroom favors the veracity of [Lewis's] version of the incident rather than [H.T.'s] version. Additionally, when told by Detective Norris that DNA testing would show whether [Lewis's] penis touched [H.T.'s] mouth, [Lewis's]

[3] As set forth above, Lewis admitted during his statement to Detective Norris that he rubbed his penis against the child's lower back, just above her buttocks. H.T.'s mother testified that her daughter told her soon after the incident that Lewis "rubbed his thing on her butt." *Transcript* at 125. At trial, well over a year later, H.T. testified that he touched her "bad part" with his "bad part." *Id.* at 101-02. Her testimony further revealed that this meant he touched her vagina with his penis.

> response was "they can do all the test they want, they won't find nothing". The possible influence of the sexually explicit video, coupled with the virtual impossibility that [Lewis] could have touched [H.T.'s] "bad part" with his own "bad part" while kneeling *behind her* imparts serious doubt as to the accuracy of [H.T.'s] testimony. [Lewis's] statement that DNA testing would show nothing imparts credibility to his version of the incident.

Appellant's Brief at 6-7 (record citations omitted) (emphasis in original). Lewis further notes that none of his DNA was discovered during an examination of the child's body.

At trial, H.T. unequivocally testified that Aunt Nikki (i.e., Lewis) put his penis in her mouth. She made this same allegation to her mother within days of the incident. Further, we fail to see any relevance as to the distinction of whether, before he ejaculated, Lewis rubbed his penis on the five-year-old child's buttocks, just above her buttocks, and/or on her vaginal area. We reject Lewis's blatant invitation for us to reweigh the evidence and judge the credibility of the witnesses.

Finally, Lewis raises an additional argument, in passing, concerning the admission of his statement to police. He correctly observes that in order to render a confession admissible, the State must establish the *corpus delicti* of the crime charged by some independent evidence, as a crime may not be proven based solely upon a confession. *See Malinski v. State*, 794 N.E.2d 1071 (Ind. 2003). In the instant case, the State presented sufficient independent evidence of Lewis's sexual abuse of H.T. through the child's testimony and her statements to her mother. Therefore, we find no risk that Lewis was

convicted based upon his confession to a crime that did not occur.[4] *See Willoughby v. State*, 552 N.E.2d 462, 466 (Ind. 1990) ("[t]he primary function of the rule is to reduce the risk of convicting a defendant based on his confession for a crime that did not occur").

Judgment affirmed.

CRONE, J., and SHARPNACK, J., concur.

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[4] Moreover, we note that Lewis never confessed to the facts supporting the class A felony conviction, which is the only conviction he now appeals. *See Lawson v. State*, 803 N.E.2d 237, 240 (Ind. Ct. App. 2004) ("[w]hen a confession is not at issue, the *corpus delicti* rule does not apply"), *trans. denied*.