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IN THE COURT OF APPEALS OF INDIANA

CARLTON E. HORNE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0704-CR-351
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable William Robinette, Commissioner
Cause No. 49G03-0612-FC-250180

December 13, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Carlton Horne appeals his conviction for child molesting as a class C felony.[1] Horne raises one issue, which we revise and restate as whether the evidence is sufficient to sustain Horne's conviction. We affirm.

The facts most favorable to the conviction follow. Heather White, the mother of M.H., a five-year-old girl, and T.H., an eight-year-old boy. On December 26, 2005, White went to a bar with her boyfriend and mother. White left M.H. and T.H. with Horne, who was the father of White's coworker and was living in White's home. Horne, T.H., and M.H. were sitting on the couch watching television, and Horne was sitting beside M.H. Horne placed his hand around M.H. Horne, who was awake, touched M.H.'s "private" part on the front of her body over her clothes with his hand and moved his hand around. Transcript at 11. Horne said something in M.H.'s ear, but T.H. could not hear him. T.H. told his mother about the incident the next day.

Indianapolis Police Officer Kevin Kinder interviewed Horne. Horne stated that he had a few rum and cokes, that he was thinking of M.H.'s grandmother, and that his hand was on M.H.'s vagina. Horne indicated that, if he touched M.H., he might have been asleep. The State charged Horne with child molesting as a class C felony.

At the bench trial, T.H. testified that Horne was not asleep and that Horne whispered into M.H.'s ear. Horne testified that he fell asleep and argued that, if he did

[1] Ind. Code § 35-42-4-3 (2004).

touch M.H., any touching was unintentional. On cross examination, the prosecutor asked Horne about his statement to police in the following exchange:

> Q Okay. It says, Question: "And – and just, I mean was it just a – were you thinking about somebody else, you know, and sometimes that happens?" Answer: "I might have been." Question: "Okay." And you do not recall making that statement?
>
> A No.
>
> Q Okay. At the tope of page 16, this top half, I'll give you a chance to read that.
>
> A Okay.
>
> Q Okay. And your answer is, "It might have been, yeah." Question: "I mean were you thinking about somebody in particular?" Answer: "Thinking of Sue." Question: "Who is Sue?" Answer: "Heather's mom." Question: "Okay, are you attracted to her?" Answer: "Yeah, oh yeah." Question: "Okay, do you guys have a relationship?" Answer: "No, but I'd like to have one with her." Do you recall making that statement?
>
> A. Yes.
>
> * * * * *
>
> Q Okay. So it starts, Question: "So lets [sic] think real hard, try to, if you kind of go through the evening as you're sitting there, you're watching TV, she's sitting next to you coloring, you know, you may have just had a glass and you say something on – you saw something on TV that reminded you of Sue and you started to touch this girl and all of a sudden, I made a statement, you know, I shouldn't have done that, you know?" Answer: "Uh-huh." Question: "Talk to me about that?" Answer: "I'm telling you, I – all I remember is her coloring – sitting there coloring and [T.H.] playing a game and the next thing I know I woke up." Question: "Okay, but you remember thinking about Sue?" Answer: "Yeah, yeah, I was thinking about Sue." Question: "Okay, and where was your hand at when you were thinking about Sue?" Answer: "It was around her – her – it

was around her shoulder." Question: "Okay, while you were sitting on the couch in the living room?" Answer: "Uh-huh." Do you remember saying that?

A Yeah, but – yes.

Transcript at 51-52.

The trial court found Horne guilty as charged and stated:

And I felt that [T.H.] . . . was . . . a reliable witness. He was young, but credible. He said that he liked the defendant.

* * * * *

[T.H.] did state that he saw the defendant's hand between the – his sister's legs, and the hand was moving over the clothing. And she – and he was whispering into her ear, and he couldn't hear what – what the conversation was.

* * * * *

[Horne], through his testimony, remembered that the – he signed the Miranda warnings, and acknowledged that. He denied intentionally doing what – what he was accused of doing. But he did say, according to the statement, that when he woke up, his hand was between the minor's legs, that he had four rum and Coke's while he was baby-sitting, and that he fantasized about the grandmother at the time.

And when you consider all this evidence, together with the fact that I did observe [Horne]'s body language when he was listening to the testimony and when he was testifying, I'm going to find him guilty as charged on the one count and enter judgment of conviction of Child Molesting, as a Class C Felony.

Id. at 67-69. The trial court sentenced Horne to four years in the Indiana Department of Correction with three years suspended.

The sole issue is whether the evidence is sufficient to sustain Horne's conviction for child molesting as a class C felony. When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Jordan v. State, 656 N.E.2d 816, 817 (Ind. 1995), reh'g denied. Rather, we look to the evidence and the reasonable inferences therefrom that support the verdict. Id. We will affirm the conviction if there exists evidence of probative value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. Id.

The offense of child molesting as a class C felony is governed by Ind. Code § 35-42-4-3, which provides that "[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 Horne of child molesting as a class C felony, the State needed to prove that: (1) Horne; (2) performed or submitted to any fondling or touching; (3) of either M.H., a child under fourteen years of age, or Horne; (4) with the intent to arouse either M.H. or Horne.

Horne argues that the evidence is insufficient to prove an intention to arouse himself or M.H. "A person's intent may be determined from their conduct and the natural consequences thereof and intent may be inferred from circumstantial evidence." J.J.M. v. State, 779 N.E.2d 602, 606 (Ind. Ct. App. 2002). "Furthermore, the intent to gratify required by the statute must coincide with the conduct; it is the purpose or motivation for the conduct." Id. Specifically, Horne argues that he was asleep and that

the evidence does not support the finding that he was fantasizing about Sue. Horne's argument is simply a request that we reweigh the evidence and judge the credibility of the witnesses, which we cannot do. See Jordan, 656 N.E.2d at 817.

The record reveals that Horne placed his hand around M.H. Horne, who was awake, touched M.H.'s "private" part on the front of her body over her clothes with his hand and moved his hand around. Transcript at 11. Horne said something in M.H.'s ear, but T.H. could not hear him. T.H. testified that Horne was not asleep and that Horne whispered into M.H.'s ear while he was touching her. The trial court also stated that it found T.H. to be a "reliable" and "credible" witness. Id. at 67-68. The trial court also stated that it considered all of the evidence "together with the fact that I did observe the defendant's body language when he was listening to the testimony and when he was testifying" and found Horne guilty as charged. Id. at 69. Horne's intent may be inferred from his conduct and the natural consequences thereof. This evidence is sufficient to demonstrate that Horne was acting with the intent to arouse or satisfy his own sexual desires. See, e.g., Craun v. State, 762 N.E.2d 230, 239 (Ind. Ct. App. 2002) (holding that the evidence was sufficient to support finding that defendant touched the victim with the intent to arouse or satisfy his sexual desires), trans. denied; Thomas v. State, 612 N.E.2d 604, 608-609 (Ind. Ct. App. 1993) (holding that the evidence was sufficient to support conclusion that defendant's actions were taken to arouse or satisfy his sexual desires), trans. denied.

For the foregoing reasons, we affirm Horne's conviction for child molesting as a class C felony.

Affirmed.

RILEY, J. and FRIEDLANDER, J. concur