

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

David A. Riddle,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

October 18, 2022

Court of Appeals Case No.
22A-CR-700

Appeal from the Morgan Superior
Court

The Honorable Sara A. Dungan,
Judge

Trial Court Cause No.
55D03-2002-F4-356

Crone, Judge.

Case Summary

- [1] David A. Riddle appeals his conviction, following a jury trial, for level 4 felony child molesting. He contends that the State presented insufficient evidence to support his conviction and that the trial court abused its discretion when instructing the jury. Finding sufficient evidence and no abuse of discretion, we affirm.

Facts and Procedural History

- [2] In 2018, Riddle and his wife Ellen lived in Morgan County with their two grandchildren, B.R. and E.R. E.R. was born in 2008 and was adopted by her grandparents. E.R. referred to Ellen and Riddle as “Grandma” and “Grandpa” or “Mamaw” and “Papaw.” Tr. Vol. 2 at 247; Tr. Vol. 3 at 55. One night, sometime in 2018, E.R. woke up during a nightmare and was unable to wake her grandmother. She went to Riddle’s bed, and he gave her permission to sleep with him. E.R. fell asleep in Riddle’s bed. When she awoke, she realized that Riddle’s hand was placed on her hand, and that her hand was on Riddle’s penis. She tried to pull her hand away, but Riddle held her hand tighter. She again tried to pull her hand away, but Riddle grabbed her hand “really hard” and squeezed it while holding it on his penis. Tr. Vol. 3 at 8. E.R. was eventually able to break free of Riddle’s grip and get out of bed. As she was leaving Riddle’s room, he asked her where she was going. She replied that she was going to her room. E.R. then ran back to her room. The following day, Riddle approached E.R. and told her to not tell anyone what happened. E.R. said, “Okay,” and Riddle walked away. *Id.* at 14. E.R. revealed what happened

to her brother, B.R., and then she and B.R. went and told Ellen. Ellen “looked a little disappointed” after hearing what Riddle had done. *Id.* at 16.

[3] Sometime in 2020, E.R. attended a body safety class at school. E.R. filled out a form indicating that she did not feel safe at home. She was called down to the school office to take part in an interview about her answer. She disclosed what Riddle had done to her. Authorities were contacted, and Morgan County Sheriff’s Department Detective Mark Anderson conducted an investigation. Detective Anderson attended an interview with E.R. at a child advocacy center during which she recalled the incident in Riddle’s bed. Detective Anderson also interviewed Riddle. Riddle stated that if E.R.’s hand was ever on his penis, it was an accident and happened while he was asleep.

[4] The State charged Riddle with one count of level 4 felony child molesting. A jury trial was held in February 2022. The jury found Riddle guilty as charged. Following a hearing, the trial court sentenced Riddle to an eight-year executed term. This appeal ensued.

Discussion and Decision

Section 1 – The State presented sufficient evidence to support Riddle’s conviction.

[5] Riddle challenges the sufficiency of the evidence supporting his conviction. In reviewing a claim of insufficient evidence, we do not reweigh the evidence or judge the credibility of witnesses, and we consider only the evidence that supports the judgment and the reasonable inferences arising therefrom. *Bailey v.*

State, 907 N.E.2d 1003, 1005 (Ind. 2009). It is “not necessary that the evidence ‘overcome every reasonable hypothesis of innocence.’” *Drane v. State*, 867 N.E.2d 144, 147 (Ind. 2007) (quoting *Moore v. State*, 652 N.E.2d 53, 55 (Ind. 1995)). “We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt.” *Bailey*, 907 N.E.2d at 1005.

[6] To convict Riddle of level 4 felony child molesting, the State was required to prove that Riddle, with a child under fourteen years old, “perform[ed] or submit[ted] 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[.]” Ind. Code § 35-42-4-3(b). “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 consequence to which such conduct usually points.” *Carter v. State*, 31 N.E.3d 17, 30 (Ind. Ct. App. 2015), *trans. denied*. In addition, “[t]he testimony of a sole child witness is sufficient to sustain a conviction for molestation.” *Hoglund v. State*, 962 N.E.2d 1230, 1238 (Ind. 2012).

[7] Here, E.R. testified that she awoke to Riddle holding her hand on his penis. When she initially tried to remove her hand, he simply gripped her hand tighter. When she again tried to pull her hand away, Riddle pulled her hand back onto his penis while squeezing it. E.R. also stated that Riddle subsequently instructed her to not tell anyone what had happened.

[8] Riddle suggests that this evidence proves only that a “touching” occurred and that there was no evidence of probative value that he engaged in conduct with “the intent to arouse his sexual desires.” Appellant’s Br. at 14. We disagree. Contrary to Riddle’s claim, E.R.’s testimony regarding Riddle’s actions of forcing her to keep her hand on his penis as she repeatedly tried to pull it away, as well as instructing her to not tell anyone what happened, indicates that Riddle’s behavior was no accident. This evidence lends itself to a reasonable inference that Riddle acted with the requisite intent to arouse. Sufficient evidence supports Riddle’s conviction.

Section 2 – The trial court did not abuse its discretion when instructing the jury.

[9] Riddle next asserts that the trial court abused its discretion in refusing to give his proposed instruction regarding criminal intent. The trial court has broad discretion in instructing the jury, and as a result, we review the trial court’s decision to give or refuse a party’s tendered instruction for an abuse of discretion. *New v. State*, 135 N.E.3d 619, 622 (Ind. Ct. App. 2019). On review, we consider “(1) whether the tendered instruction correctly states the law; (2) whether there was evidence presented at trial to support giving the instruction; and, (3) whether the substance of the instruction was covered by other instructions that were given.” *Id.* (citation omitted). We consider jury instructions as a whole and in reference to each other and will not reverse unless the instructions as a whole misstate the law or otherwise mislead the jury. *Yeary v. State*, 186 N.E.3d 662, 679 (Ind. Ct. App. 2022). Moreover, the

preferred practice in Indiana is to use pattern jury instructions. *Santiago v. State*, 985 N.E.2d 760, 763 (Ind. Ct. App. 2013), *trans. denied*.

[10] Here, Riddle’s proposed jury instruction provided as follows:

For there to be a criminal offense there must be a criminal act accompanied by criminal intent. The two must coincide and exist at the same time for there to be a criminal offense. An act that would be criminal without any criminal intent is not a criminal offense. Criminal intent, likewise, with no act, is not a criminal offense.

Appellant’s App. Vol. 2 at 185; *see Gebhard v. State*, 484 N.E.2d 45, 48 (Ind. Ct. App. 1985) (citing black-letter law that in order to constitute a crime, criminal intent must “unite” with overt act).

[11] Although this instruction is technically a correct statement of the law, the trial court denied the instruction. Specifically, the record reveals that the substance and purpose of the instruction, namely, to instruct the jury regarding the requirement that a defendant act with the requisite criminal intent, was already covered by other instructions that were given. Instruction number 3 informed the jury that to convict Riddle of level 4 felony child molesting, the jury would need to find that the State proved that he acted with the intent “to arouse or satisfy the sexual desires of the child or the Defendant.” Appellant’s App. Vol. 2 at 92. Instruction number 4 instructed that for Riddle to have acted “knowingly” he must have engaged in conduct while aware of a high probability that he was doing so. *Id.* at 93. The trial court further instructed that the State was required to prove each element of Riddle’s crime, including the

intent element, beyond a reasonable doubt. *Id.* at 97. These instructions adequately covered the law regarding criminal intent.

[12] Moreover, in denying the instruction, the trial court explained that its practice was to stick with pattern jury instructions. As stated above, this is a preferred practice in Indiana. *Santiago*, 985 N.E.2d at 763. Because the instructions as a whole did not misstate the law or otherwise mislead the jury, Riddle has not presented us with a compelling argument that would lead us to conclude that the trial court abused its discretion by failing to give his proffered jury instruction on criminal intent.

[13] Moreover, we agree with the State that any error in failing to give the proffered instruction was harmless. In determining whether the refusal to give a tendered instruction warrants reversal, we must assess whether the defendant was prejudiced by the trial court's failure to give the instruction. *Hernandez v. State*, 45 N.E.3d 373, 378 (Ind. 2015). "A conviction must be reversed if instructions are inconsistent and calculated to mislead the jury or leave it in doubt as to the law." *Id.* (citation omitted). Here, the failure to give Riddle's proffered instruction on criminal intent did not impact the jury's decision on Riddle's guilt or innocence. The jury was sufficiently instructed that the State was required to prove the intent element beyond a reasonable doubt. In other words, we are confident that the jury did not base its verdict simply on the overt act of touching without regard to the requirement that Riddle possessed the requisite criminal intent. His conviction is affirmed.

[14] **Affirmed.**

May, J., and Weissmann, J., concur.