MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Stacy R. Uliana
Bargersville, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Kelly A. Loy
Assistant Section Chief,
Criminal Appeals

Nicole D. Wiggins
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Carl M. Hendrickson,

Appellant-Defendant,

v.

State of Indiana,

Appellee-Plaintiff.

February 5, 2024

Court of Appeals Case No.
23A-CR-999

Appeal from the
Johnson Superior Court

The Honorable
Peter Nugent, Judge

Trial Court Cause No.
41D02-2103-F4-19

Memorandum Decision by Senior Judge Baker
Judges May and Weissmann concur.

Baker, Senior Judge.

Statement of the Case

[1] Carl M. Hendrickson appeals from his conviction after a jury trial of one count of Level 4 felony child molesting.[1] Hendrickson later admitted he was a repeat sex offender. Hendrickson challenges two things: (1) the admission of a witness' testimony about his interactions with the victim and her sister; and (2) whether there is sufficient evidence that Hendrickson acted with the intent to arouse or satisfy his or the child's sexual desires. Concluding that (1) the admission of the witness' testimony was proper; and (2) the evidence is sufficient; we affirm Hendrickson's conviction.

Facts and Procedural History

[2] In March 2021, Hendrickson, who was fifty-two years old at the time, was living with and caring for an elderly couple in Trafalgar, Indiana. His seven-year-old son, his fiancée Rachel, her two daughters, nine-year-old Ma.D. and six-year-old Mac.D., Rachel's nineteen-year-old son Jason, and his girlfriend Kaylie Hixon, moved into the home later. Ma.D. and Mac.D. shared an upstairs bedroom, Hendrickson, Rachel and his son shared another bedroom,

[1] Ind. Code §35-42-4-3(b) (2015).

the elderly couple shared a room, and Jason and Hixon lived in the converted garage. In addition to caring for the couple, Hendrickson would help the children with their homework, supervise them, and would wrestle with and tickle them.

[3] On March 18, 2021, Ma.D. disclosed information to a school counselor which triggered an investigation by the Department of Child Services (DCS) and the Trafalgar Police Department (TPD). DCS caseworker Satwinder Kalirai met Ma.D. at school and later went to Ma.D.'s home and met with Hendrickson. Kalirai arranged for Rachel to come to the school where Kalirai conducted a forensic interview with Ma.D. That same day, TPD officers interviewed Hendrickson at home, which led to a forensic interview with Mac.D.

[4] When TPD officers arrived at the house to interview Hendrickson, they observed that he was surprised to see them there. And during his interview, he seemed nervous and uncomfortable, and his emotions rapidly changed. He admitted that he wrestled with the children and claimed to love the girls as if they were his own children. He admitted that he pulled down Ma.D.'s pants during the "Mountain Dew incident," but that he did so to prepare her to defend herself in a fight. He further admitted that he accidentally hit both children's breasts during the tickling and wrestling, and that Ma.D. told him that he was touching her in an inappropriate place. He was uncertain that he did it, but said it was possible that his hand slipped and went down the girls' pants.

[5] As a result of that investigation, the State charged Hendrickson with one count of Level 4 felony child molesting by touching and fondling with the intent to arouse his or the children's sexual desires as to each of the girls.

[6] The matter proceeded to jury trial in 2023 during which now eleven-year-old Ma.D. testified that Hendrickson would wrestle with her and the other children and play "a tickle game." Tr. Vol. III, p. 4. She said that she did not like to wrestle with Hendrickson "[w]hen he would touch me inappropriately." *Id.* She described "normal tickles" as ones "where you tickle in like the armpit or something like that." *Id.* She said that there were times when she wrestled alone with Hendrickson, and he would tickle her "titties", "butt", and her "no-no square", which she identified as the area between her legs. *Id.* at 7. All of the good tickles and bad tickles were over her clothes. However, the bad tickles occurred in her room or her mother's room.

[7] Ma.D. further testified about an occasion where she teased Hendrickson by taking a Mountain Dew bottle. After she jokingly said he could not have it back, he chased her and tickled her, including on her no-no square. He then pulled down her pants, exposing her underwear. Ma.D. became angry, hit Hendrickson, and pulled her pants up. She also testified about an occasion where she wanted something to drink and Hendrickson told her she had to earn it. She followed him into the living room where he started tickling her under her armpits. He then tickled her over the clothes in her "no-no square." When she asked him to stop, he quit and got her something to drink. Although her

mother was not home during each of the occasions she and Hendrickson wrestled or played the tickling game, others were present in the house.

[8] Hixon testified about her observations of Hendrickson's interactions with Ma.D. and Mac.D. She corroborated Hendrickson's account that he would play with the children in the living room and at the kitchen table, that he sat with them when they played on their tablets, and that he helped them with their homework. However, Hixon testified that he treated Ma.D. and Mac.D. "a little more rough" and "like he [did not want] to care for them." Tr. Vol. II, 231.

[9] Hixon also testified that on one occasion she was walking toward the upstairs bathroom when she saw Hendrickson rapidly exiting the girls' bedroom. She testified that he said "oh[,] I didn't know that was you. I was just telling the girls goodnight." *Id.* at 240. He walked into his bedroom while Hixon proceeded to the bathroom. She turned back because she had forgotten something and saw that Hendrickson had returned to the girls' bedroom and was sitting on one of the beds.

[10] Hixon testified over objection about two specific incidents involving Hendrickson and the girls. In the first incident, Mac.D. was sitting on the stairs with Hendrickson standing over her. Hixon said she "couldn't make out what he was saying, but I'm pretty sure he said, shh, you need to be quiet." *Id.* at 239. In the second incident, Hendrickson was sitting between the girls on the short sofa. She testified that "the way the girls were sitting was unusual to me

because they never sat like that." *Id.* However, on cross-examination, she admitted she did not know the context for either of those incidents.

[11] The jury found Hendrickson guilty of one count of Level 4 felony child molesting as to Ma.D. and acquitted him of the child molesting allegation as to Mac.D. He admitted his status as a repeat sex offender. The trial court sentenced Hendrickson to an aggregate sentence of fourteen years executed. He now appeals.

Discussion and Decision

I. Hixon's Testimony

[12] Hendrickson contends that the trial court committed reversible error by allowing Hixon to testify about her observations of his interactions with Ma.D. and Mac.D.

[13] "Our standard of review of a trial court's admission of evidence is an abuse of discretion." *Mack v. State*, 23 N.E.3d 742, 750 (Ind. Ct. App. 2014), *trans. denied*. "A trial court abuses its discretion if its decision is clearly against the logic and effect of the facts and circumstances before the court or if the court misapplies the law." *Id.*

[14] First, Hendrickson claims the trial court's admission of Hixon's testimony about the exchange on the stairs, and the seating on the sofa, misapplied the law and violated Indiana Evidence Rule 404(b). That rule provides in part: "Evidence of a crime, wrong, or other act is not admissible to prove a person's

character in order to show that on a particular occasion the person acted in accordance with the character." Evid. Rule 404(b)(1). However, it "may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or lack of accident. . . ." Evid. Rule 404(b)(2).

[15] The State contends the challenged evidence is not evidence of uncharged prior bad acts. At trial, the State said that its "purpose is to elicit testimony in regards to the relationship of the girls with the defendant." Tr. Vol. II, p. 236. The State noted, "Counsel in opening had indicated that he was a [father] figure to them. I think it's important to also highlight the interactions that were witnessed by other people in the home, between [Hendrickson] and the girls." *Id.* We agree that the testimony did not pertain to prior uncharged bad acts.

[16] During the offer of proof, Hixon testified about the staircase and couch incident as follows:

> Mac.D. was sitting on the stairs, and Carl was leaning over her relatively close. There was maybe like one or two inches between both of their faces. And the way he was leaning towards her, he had one hand on the stair rail, and one hand was on the wall. And that's how he was leaning towards her. And as I was walking around the corner, I'm pretty sure I heard him tell her to shh, you need to be quiet.
>
> . . . .
>
> There was one where I walked out of the bathroom from using the downstairs bathroom, and all of the kids and Carl were in the

> living room And [Hendrickson's son] was sitting on the long couch, and the two girls were on the short couch, and Carl was sitting between them. And both of the girls had their legs closed relatively tight as if they were wearing a skirt or a dress. . . . They never sat like that.

Id. at 233-34. Hixon admitted that she had no context for what she had observed either time.

[17] Hendrickson argued that the State was "trying to imply a bad act" and that the charges alleged incidents occurring "in the bedroom" and not on the stairs or couch. *Id.* at 236. The trial court ruled that the testimony was admissible, however, "the opinion that it was unusual because of the way they were seated will not come in. She can talk about that he was seated there next to them . . . but the opinion that it was unusual because they never sat that way I will strike." *Id.*

[18] When the trial resumed, Hixon's testimony about the stair incident amounted to the statement that she "couldn't make out what he was saying, but I'm pretty sure he said, shh, you need to be quiet." *Id.* at 239. And regarding the incident on the couch, Hixon testified, "the way the girls were sitting was unusual to me because they never sat like that. . . . They were sitting with their legs closed really tight, as if they were wearing a dress or a skirt." *Id.* Hendrickson objected to Hixon's characterization about the way the girls were sitting, and the trial court instructed the jury to disregard that characterization. On cross-examination, Hixon agreed that she did not know the context for either of her observations.

[19] We conclude that the testimony did not violate Evidence Rule 404(b). "Evidence Rule 404(b) is designed to prevent the jury from making the 'forbidden inference' that prior wrongful conduct suggests present guilt." *Laird v. State*, 103 N.E.3d 1171, 1176 (Ind. Ct. App. 2018), *trans. denied*. "The effect of Rule 404(b) is that evidence is excluded only when it is introduced to prove the forbidden inference of demonstrating the defendant's propensity to commit the charged crime." *Id.* at 1177. Here, the charged crime was child molesting by fondling with the intent to arouse and/or satisfy the sexual desires of Ma.D. or Hendrickson. Appellant's App. Conf. Vol. II, p. 25. Neither of the incidents Hixon described involve fondling, and, beyond speculation, could be interpreted as common parent-child interactions. The trial court did not abuse its discretion by admitting this testimony.

[20] The third incident Hixon testified about was her observation of Hendrickson traveling back and forth between his bedroom and the girls' bedroom on one occasion. She testified that he said "oh[,] I didn't know that was you. I was just telling the girls goodnight." Tr. Vol. II, p. 240. Hendrickson lodged a relevancy objection to this testimony.

[21] "'[T]he standard for relevant evidence is a liberal one under Rule 401 and we review a trial court's ruling as to relevance for an abuse of discretion.'" *Jackson v. State*, 712 N.E.2d 986, 988 (Ind. 1999) (quoting *Willsey v. State*, 698 N.E.2d 784, 793 (Ind. 1988)). "Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." Evid. R. 401. However,

relevant evidence "may [be] exclude[]d if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusion of issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence." Evid. R. 403.

[22] Hendrickson established the relevancy of his father-like relationship with Ma.D. and her sister in his opening argument. And the jury heard Hendrickson's interview with police where he referred to Ma.D. as his daughter and stated that Ma.D. frequently referred to him as dad. He also discussed the dynamics within the family and family activities.

[23] Although the testimony about this incident involved the bedrooms, which was the basis for the allegations, there was no testimony about observing him play the tickle game with the girls. And unlike in the charged incidents, the girls' mother was present at that time. Moreover, Hixon testified that she did not know why Hendrickson was moving between the two bedrooms. We conclude the trial court did not abuse its discretion by allowing Hixon to testify about her observations of Hendrickson traveling back and forth between the bedrooms and his comments to her.

[24] In sum, the trial court did not abuse its discretion by admitting Hixon's testimony.

II. Sufficiency of the Evidence

[25] Next, Hendrickson challenges whether the State sufficiently proved beyond a reasonable doubt his intent to arouse or satisfy his own sexual desires or that of Ma.D. We conclude that the evidence is sufficient.

[26] Our standard of review for the sufficiency of evidence is well settled. We examine only the evidence most favorable to the judgment along with all reasonable inferences to be drawn therefrom. *McLean v. State*, 638 N.E.2d 1344, 1348 (Ind. Ct. App. 1994). If substantial evidence of probative value exists to establish every material element of an offense beyond a reasonable doubt, we will affirm. *Id.* "We will reverse a conviction, however, if the record does not reveal substantial evidence of probative value and there is a reasonable doubt in the minds of reasonably prudent persons." *Ferrell v. State*, 656 N.E.2d 839, 841 (Ind. Ct. App. 1995).

[27] To convict Hendrickson of Level 4 felony child molesting, the State must have proved beyond a reasonable doubt that (1) Hendrickson, (2) with Ma.D. (3) who was under the age of fourteen, (4) performed or submitted to fondling or touching of either himself or Ma.D., (5) with intent to arouse or to satisfy the sexual desires of himself or Ma.D. *See* Appellant's App. Conf. Vol. II, p. 25; *see also* Ind. Code § 35-42-4-3(b). Here, Hendrickson challenges the State's evidence only as to the element of intent.

[28] "Mere touching alone is not sufficient to constitute the crime of child molesting." *Clark v. State*, 695 N.E.2d 999, 1002 (Ind. Ct. App. 1998), *trans.*

denied. "The State must also prove beyond a reasonable doubt that the act of touching was accompanied by the specific intent to arouse or satisfy sexual desires." *Id.* "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." *Id.*

[29] Here, Ma.D. testified that when Hendrickson would engage in good tickles, he would tickle her armpits. She described Hendrickson's bad tickles as involving her privates over her clothes and that she felt uncomfortable. Thus, Ma.D.'s testimony clearly established that she was *not* sexually aroused by the tickling. Accordingly, the issue is the sufficiency of the evidence that Hendrickson tickled Ma.D. to arouse or to satisfy *his own* sexual desires.

[30] "An intent to arouse or to satisfy sexual desires may be inferred from evidence that the defendant intentionally touched the child's genitals." *Holden v. State*, 149 N.E.3d 612, 616 (Ind. Ct. App. 2020), *trans. denied*. Ma.D. testified that Hendrickson's bad tickles were over her clothes in her "no-no square," which she identified as the area between her legs (i.e., her genital area). She also testified that Hendrickson tickled her "butt" and "titties." Tr. Vol. III, p. 7. And the bad tickles occurred on multiple occasions. The evidence is sufficient to establish that Hendrickson had the requisite intent to arouse or satisfy his sexual desires.

[31] Hendrickson cites *Clark* in support of his argument that his conduct amounted to innocent tickling without the requisite intent to commit the offense. In *Clark*,

we reversed the defendant's conviction for child molesting due to insufficient evidence of intent. 695 N.E.2d at 1002. A witness heard a child screaming and, upon entering the defendant's workshop, observed a partially clothed female child hanging upside down from a nail. The defendant was not near the child at the time and said nothing to the witness. The child testified that her father, the defendant, had removed all of her clothing except for her shirt, placed her upside down on a nail, and tickled her under her arms. The defendant testified that he hung his daughter upside down from the nail and tickled her under her arms and on her ribs but denied that he undressed her or that he was sexually gratified by the act. We concluded that "[a]lthough the foregoing facts clearly raise questions concerning the propriety of [the defendant's] behavior, standing alone, they do not constitute substantial evidence of probative value on the element of intent." *Id.*

[32] *Clark*, however, is easily distinguishable from the present case. Here, Ma.D. testified that Hendrickson touched her over her clothes in the area of her genitals, her chest, and her buttocks. But in *Clark*, there was no evidence that the defendant touched the child's genitalia while tickling her.

[33] In *Markiton v. State*, 139 N.E.2d 440 (Ind. 1957), the defendant faced charges, which at the time constituted the offense of "assault and battery—sex." The evidence established that the defendant would tuck his daughters in bed at night and that he would do so in a playful way. The defendant sat on the side of the bed when he did so, and on one occasion, the defendant while joking and teasing the girls "touched and came in contact with" one of his twelve-year-old

daughter's breasts. *Id.* at 441. The defendant was acquitted of the charges against one daughter but found guilty of assault and battery—sex involving his other daughter. Our Supreme Court reversed the trial court's judgment and held that there was no evidence of intent "making the touching of [the daughter] by her father a crime." *Id.* at 442. The Court concluded that "from the limited evidence to which we are confined [we do not find] that any reasonable inference may be drawn as to intent other than that of innocence and playfulness as stated by the daughters." *Id.*

[34] Here, unlike in *Markiton*, Ma.D. testified that Hendrickson touched her in her "no-no square" during "bad tickles." Ma.D. testified that she felt uncomfortable during the bad tickles and would ask Hendrickson to stop. In *Markiton*, the daughters testified that the incidental touching occurred during a time involving innocent play. So, although Hendrickson's "good tickles" during innocent play would not support the inference of criminal intent, the testimony about the "bad tickles" in Ma.D.'s "no-no square" does.

[35] We conclude that the evidence is sufficient to support Hendrickson's conviction.

Conclusion

[36] In light of the foregoing, we affirm Hendrickson's conviction.

[37] Affirmed.

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