MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

D.F.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Petitioner.

March 16, 2023

Court of Appeals Case No. 22A-JV-2397

Appeal from the Marion Superior Court

The Honorable Marshelle Broadwell, Judge

The Honorable Pauline A. Beeson, Magistrate

Trial Court Cause No. 49D16-2202-JD-1488

Memorandum Decision by Judge Bailey
Judges Brown and Weissmann concur.

Bailey, Judge.

Case Summary

[1] D.F. challenges the adjudication that he is delinquent, based on a true finding on one count of child molesting, as a Level 4 felony if committed by an adult.[1] The only issue he raises on appeal is whether the State provided sufficient evidence to support the adjudication.

[2] We affirm.

Facts and Procedural History

[3] D.F., born April 21, 2006, resided with his family next door to Lauren Daniel ("Lauren") and her family until November of 2021. One of Lauren's children, V.A.C.—born July 9, 2009—did not live with Lauren full-time but visited Lauren every third weekend of each month. D.F.'s family and Lauren's family were friends and had known each other for about four years. When V.A.C. visited Lauren, V.A.C. and D.F. sometimes played video games together at Lauren's house in either the living room or V.A.C.'s bedroom.

[4] At one point, D.F. gave V.A.C. an older Xbox One video game console that D.F. no longer needed because he had gotten a new one. Sometime after that,

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[1] Ind. Code § 35-42-4-3(b).

D.F. took his pants down, showed V.A.C. his penis, and asked V.A.C. if he wanted to feel D.F.'s penis. V.A.C. said no, and D.F. asked V.A.C. if he would feel D.F.'s penis if D.F. gave V.A.C. "free stuff." Tr. at 89. V.A.C. did not want to touch D.F.'s penis but agreed to do so "because [he] wanted the free stuff." *Id.* V.A.C. subsequently touched D.F.'s penis in this same manner on about four other occasions, and D.F. gave V.A.C. a jacket and an iPhone. D.F. threatened to take away the Xbox he had given to V.A.C. if V.A.C. did not continue to touch D.F.'s penis. V.A.C. did not tell anyone about D.F.'s actions because V.A.C. thought he would not "get any more stuff." *Id.* at 90.

[5] D.F.'s older brother,[2] L.L.D., was born June 8, 2007, and lived with Lauren. In October of 2021, when L.L.D. was sitting on the porch of his house, he looked in the window and saw V.A.C. in the living room, "playing with [D.F.'s] penis" and "[j]erking [D.F.] off." *Id.* at 36. L.L.D. then ran inside the house, into the living room, and said "Ha" because he had "caught them in the act." *Id.* at 38-39. L.L.D. later told Lauren about the activity he had witnessed between D.F. and V.A.C., and Lauren called the police. On October 20, 2021, the police arrived at Lauren's home to investigate the alleged child molestation. In November of 2021, Lauren and her family moved to a new location.

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[2] It appears that L.L.D. began to identify himself as female sometime in between the events described and the trial. *See* Tr. at 25 (referring to L.L.D. as Lauren's "son, now daughter"). We refer to L.L.D. as male because that is how he was identified at the time he witnessed the molestation.

[6] The State alleged D.F., a juvenile, was delinquent for having committed two counts of child molesting, as Level 4 felonies if committed by an adult. Count I alleged an offense that occurred on or about October 20, 2021. Count II alleged an offense that occurred between January 1, 2021, and October 20, 2021. At the August 10, 2022, hearing, both V.A.C. and L.L.D. testified. The trial court found Count I not true but entered a true finding as to Count II and adjudicated D.F. a delinquent. The court entered a dispositional decree that D.F. would be placed on formal probation. This appeal ensued.

Discussion and Decision

[7] D.F. challenges the sufficiency of the evidence to support the adjudication. Our standard of review of the sufficiency of the evidence is well-settled.

> We neither reweigh the evidence nor judge the credibility of witnesses. The State must prove beyond a reasonable doubt that the juvenile committed the charged offense. We examine only the evidence most favorable to the judgment along with all reasonable inferences to be drawn therefrom. We will affirm if there exists substanti[al] evidence of probative value to establish every material element of the offense. Further, it is the function of the trier of fact to resolve conflicts in testimony and to determine the weight of the evidence and the credibility of the witnesses.

J.C. v. State, 131 N.E.3d 610, 612 (Ind. Ct. App. 2019) (citation omitted). We will affirm a juvenile delinquency adjudication unless no reasonable factfinder could have found the respondent guilty beyond a reasonable doubt. *B.T.E. v. State*, 108 N.E.3d 322, 326 (Ind. 2018). Moreover, "[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).

[8] The trial court made a true finding as to Count II, "Child Molesting, a Level 4 Felony I.C. 35-42-4-3(b)," which alleged:

> At some point between January 1, 2021[,] and October 20, 2021, [D.F.] did perform or submit to fondling or touching with [V.A.C.], a child under the age of fourteen years, that is 12 years old, with the intent to arouse or satisfy the sexual desires of the child or defendant.

App. at 22. D.F.'s only challenge to the sufficiency of the evidence is his assertion that the State failed to prove that a molestation happened between January 1 and October 20 of 2021 because V.A.C.'s testimony was about incidents that happened in October and November of 2021.

[9] However, it is not clear from V.A.C.'s testimony that he was only discussing incidents that happened in those two months. V.A.C. testified that D.F. asked V.A.C. to fondle D.F.'s penis in exchange for gifts, and V.A.C. did so approximately "five times … every third weekend" as opposed to five days in a row. Tr. at 88. Thus, there was sufficient evidence that molestation took place in months prior to October 2021, as V.A.C. only visited Lauren the third weekend of each month, not all of the molestations happened "in a row" during the one weekend V.A.C. visited in October of 2021, and no molestations were alleged to have occurred after October 20, 2021. *Id.* That, along with evidence of V.A.C.'s birth date, was sufficient evidence from which the trial court could

reasonably conclude that D.F. molested V.A.C. at some point between January 1, 2021, and October 20, 2021. *See Hoglund*, 962 N.E.2d at 1238. D.F.'s contentions to the contrary are requests that we reweigh the evidence and/or judge witness credibility, which we may not do. *See J.C.*, 131 N.E.3d at 612.

[10] Moreover, "it is well-established that where time is not of the essence of the offense 'the State is not confined to proving the commission on the date alleged ... but may prove the commission at any time within the statutory period of limitations.'"[3] *Cabrera v. State*, 178 N.E.3d 344, 346 (Ind. Ct. App. 2021) (quoting *Love v. State*, 761 N.E.2d 806, 809 (Ind. 2002)). This is true because, in child molestation cases, "'[i]t is difficult for children to remember specific dates,' and an abused child often 'loses any frame of reference in which to compartmentalize the abuse into distinct and separate transactions.'" *Id*. (quoting *Baker v. State*, 948 N.E.2d 1169, 1174 (Ind. 2011)). "The exact date of a molestation "is only important in limited circumstances, such as where the victim's age at the time of the offense falls at or near the dividing line between classes of felonies." *Id*. (citing *Baker v. State*, 948 N.E.2d at 1174).

[11] Here, there is no question that V.A.C. was twelve years old or younger during the period of the child molesting charged in Count II. V.A.C.'s birthday is July 9, 2009, and the molestation was alleged to have happened between January 1

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[3] As the Court noted in *Cabrera v. State*, the limitations period for child molestation ends on the date that the alleged victim of the offense reaches thirty-one years of age. 178 N.E.3d 344, 346 (Ind. Ct. App. 2021) (citing I.C. § 35-41-4-2(e)).

and October 20 of 2021. Thus, V.A.C.'s age was not "at or near" the age applicable to child molesting as a Level 4 felony—i.e., "under fourteen (14) years of age"—such that the precise time of the molestation would be of the essence. I.C. § 35-42-4-3(b). That is, the State was not required to prove the exact date of the molestation in order to support the adjudication. *See Cabrera*, 178 N.E.3d at 346.

[12] The State provided sufficient evidence to support the adjudication on Count II, child molesting, as a Level 4 felony if committed by an adult.

[13] Affirmed.

Brown, J., and Weissmann, J., concur.