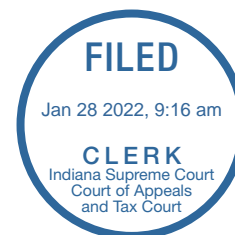


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

John E. Wright,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 28, 2022

Court of Appeals Case No.
21A-CR-2032

Appeal from the Dubois Circuit
Court

The Honorable Nathan A.
Verkamp, Judge

Trial Court Cause No.
19C01-1908-F1-798

Altice, Judge.

Case Summary

[1] John E. Wright appeals, following his convictions for twenty-six counts of child molesting. Wright argues that fourteen of those convictions must be set aside because the State failed to establish venue, inasmuch as the victim could not testify where the acts occurred. Wright also challenges the sufficiency of the evidence regarding five of the convictions, claiming that the State offered no evidence that those alleged crimes occurred.

[2] We affirm.

Facts and Procedural History

[3] E.B., who was born in 2006, lived with her brother and her mother, Michelle, in Huntingburg. At some point, Michelle began dating Wright, and the two subsequently married in December 2014. Wright then moved in with Michelle and the children.

[4] In August 2019, E.B. told a friend that Wright had been molesting her over the course of several years. That revelation followed the most recent incident that occurred on August 2, 2019, when Wright and E.B. stopped at a Walmart near their residence to shop for school supplies. E.B. fell asleep in Wright's vehicle on the way home. At some point, E.B. woke up while the vehicle was parked on a "rock road." *Transcript* at 48. E.B.'s pants were pulled down and Wright was standing outside of the vehicle penetrating E.B.'s vagina with his finger. Wright also "used his mouth [on her vagina] and touched her breasts." *Id.* at 49.

[5] After E.B.'s mother learned of the incidents, Detective Tyler Stivers of the Huntingburg Police Department interviewed E.B. on August 4, 2019. During the interview, E.B. reported that Wright first molested her sometime in 2014 when she was eight years old. The incident occurred on a couch in the living room when Wright touched her breasts and her buttocks. E.B. recounted that when she was between eight and ten years old, Wright would touch her breasts and buttocks and make her rub his penis on many separate occasions. E.B. stated that after she turned ten years old, Wright started touching her vagina with his fingers and mouth. The episodes continued, and the molestations occurred either in Wright's vehicle, at home on a couch, or in E.B.'s bedroom. E.B. maintained that the molestations involved the same acts, in that Wright: a) penetrated E.B.'s vagina with his fingers; b) fondled her breasts and buttocks; and c) would make E.B. rub his penis. During some of the episodes, Wright would also put his mouth on E.B.'s vagina.

[6] E.B. maintained a record of the dates of the molestations beginning July 4, 2019, indicating when and where the incidents occurred. E.B. kept the log because she "wanted to report [Wright] . . . and felt the need to have information." *Id.* at 57. In addition to the molestations that E.B. recounted to her friend, E.B.'s log disclosed that Wright molested her on the following dates and in the following places:

(a) July 4, on a backroad;

(b) July 7, in the evening on a main road and backroad;

- (c) July 10, on a backroad;
- (d) July 18, in her room;
- (e) July 20, in her bedroom;
- (f) July 21, in her bedroom;
- (g) July 21, again, on a backroad;
- (h) July 25, in her bedroom before work;
- (i) July 26, on a backroad;
- (j) July 26, on a backroad

Appendix Vol. II at 14 (Exhibit 1).

[7] After speaking with E.B., Detective Stivers interviewed Wright that same day. Wright admitted to touching E.B.’s vagina and breasts with his hands “on multiple occasions” while “driving on backroads.” *Id.* Wright described the touching as “skin to skin contact” and he told Detective Stivers that he was “teaching [E.B.] what the touching was like.” *Id.*

[8] On August 7, 2019, the State charged Wright with thirty counts of child molesting. The charges included thirteen charges of Level 1 felony child molesting, sixteen counts of Level 4 felony child molesting, and one count of Class C felony child molesting. Fourteen of the offenses were alleged to have occurred in Wright’s vehicle in Dubois County, twelve counts were alleged to

have occurred at the Huntingburg residence, and four of the charged offenses specified only that they were committed in Dubois County.

[9] A bench trial commenced on June 24, 2021, and at some point, the trial court granted the State’s motion to dismiss two counts of Level 1 felony child molesting and two counts of Level 4 felony child molesting. Following the presentation of the State’s evidence, Wright moved for a dismissal of the charges that allegedly occurred in Wright’s vehicle because the State failed to establish venue. Defense counsel argued that E.B. “had no clue . . . where she was” when Wright committed the offenses while she was in Wright’s vehicle. *Transcript* at 120. Thus, Wright maintained that the State failed to present sufficient evidence establishing that the offenses occurred in Dubois County. The trial court denied Wright’s motion, and Wright was found guilty on all remaining counts. Wright was subsequently sentenced to six years on each of the level 4 felony charges, and to thirty years on each of the Level 1 felony charges. The trial court also sentenced Wright to four years on the class C felony child molesting conviction and ordered all sentences to run concurrently for an aggregate term of thirty years.

[10] Wright now appeals.

Discussion and Decision

I. Venue

- [11] Wright argues that fourteen of his convictions must be reversed because the State failed to prove that the charged offenses that allegedly occurred in Wright's vehicle were committed in Dubois County. Wright maintains that the State failed to prove venue because "E.B. had no idea where she was when the incidents happened in the vehicle." *Appellant's Brief* at 12.
- [12] In a criminal case, venue lies in the county where the criminal act is alleged to have occurred. *Strickland v. State*, 29 N.E.2d 950, 952 (Ind. 1940); *see also* Ind. Code § 35-32-2-1(a). Article 1, Section 13 of the Indiana Constitution states, "[i]n all criminal prosecutions, the accused shall have the right to a public trial . . . in the county in which the offense shall have been committed." *See also Buzzard v. State*, 669 N.E.2d 996, 997 (Ind. Ct. App. 1996), *trans. denied*.
- [13] Venue is not an element of the offense, and it does not need to be proven beyond a reasonable doubt. *Perry v. State*, 78 N.E.3d 1, 10-11 (Ind. Ct. App. 2017). Rather, venue must be proved by a preponderance of the evidence and may be established by circumstantial evidence. *Currin v. State*, 497 N.E.2d 1045, 1048 (Ind. 1986); *Buzzard*, 669 N.E.2d at 997. Venue is sufficiently shown if the facts and circumstances "are of a character to permit [the factfinder] to infer that the crime occurred in a given county." *Perry*, 78 N.E.3d at 10. To establish venue, the State need only prove that it is "more likely than not" that the offenses occurred in the county where charges were filed – in this case, Dubois County. *See id.* at 10-11.

[14] A defendant's challenge to venue is treated in the same manner as other sufficiency challenges. *Smith v. State*, 835 N.E.2d 1072, 1074 (Ind. Ct. App. 2005). That is, we neither reweigh the evidence nor assesses witness credibility. *Perry*, 78 N.E.3d at 10. We look "only to the evidence and the reasonable inferences drawn therefrom which support the conclusion of requisite venue." *Id.*

[15] At trial, E.B. testified that she lived in Huntingburg, and that she and Wright lived in the same residence when most of the molestations occurred. E.B. testified that Wright molested her many times, and that he began touching her vagina with his fingers and mouth after she turned ten years old, and that these incidents occurred repeatedly.

[16] As for the incidents that allegedly occurred in Wright's vehicle, Wright admitted that he drove on backroads before stopping to molest E.B. According to E.B., Wright never drove "on a straight line," and would consistently "veer off on different [and curvy] road[s]" and park the vehicle. *Id.* at 92. E.B. indicated that when these incidents occurred, she and Wright departed from the residence and would return home in "maybe an hour." *Id.* at 91.

[17] E.B. also testified that when Wright molested her near the Walmart, they were only about fifteen minutes from their residence. Although it was possible for Wright to have left the county, the trial court could reasonably conclude from the evidence presented that Wright made many turns and drove on the backroads in Dubois County so E.B. could not reconstruct any of the routes

and report precisely where the incidents had occurred. Wright had the opportunity to drive around the county, stop and commit the offenses, and return E.B. to the residence a short time later.

[18] In sum, the evidence supports the reasonable inference and conclusion that it was “more likely than not” that Wright remained in Dubois County when he committed the offenses. *See, e.g., Currin*, 497 N.E.2d at 1048 (holding that venue was properly established in Marion County where the evidence showed that the Indianapolis Police Department investigated the crime, the Marion County Coroner’s Office performed the autopsy on the victim, and testimony about the address where the homicide was committed did not suggest any other city or county). We conclude that the State sufficiently proved that Wright committed the offenses in Dubois County, and we decline to set aside Wright’s convictions on his claim that the State failed to prove venue.

II. Sufficiency of the Evidence

[19] Wright claims that the evidence failed to establish that he committed the offenses alleged in five of the counts. More specifically, Wright asserts that those convictions must be set aside because E.B. did not testify that any sexual conduct or fondling or touching occurred on the dates alleged in those counts.

[20] In sufficiency of the evidence challenges, this court does not reweigh the evidence or judge the credibility of the witnesses and respects the fact-finder’s exclusive province to weigh conflicting evidence. *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). We consider only the probative evidence and reasonable

inferences supporting the verdict. *Id.* 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. *Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020).

[21] The charging informations relating to Wright’s sufficiency of the evidence claims alleged that

Count Nine: On or about July 10, 2019, while in a vehicle in Dubois County, State of Indiana, . . . John E. Wright, a person of at least twenty-one (21) years of age, *did perform or submit to other sexual conduct* as defined in Indiana Code Section 35-31.5-2-221.5 with a child under the age of fourteen years (14), to wit: [Wright] *penetrated the vagina of [E.B.]* whose date of birth is [2006]. I.C. § 35-42-4-3(a)(1).

Count Eleven: On or about July 18, 2019, while in a residence in Dubois County, State of Indiana, . . . John E. Wright, a person of at least twenty-one (21) years of age, *did perform or submit to other sexual conduct* as defined in Indiana Code Section 35-31.5-2-221.5 with a child under the age of fourteen years (14), to wit: [Wright] *penetrated the vagina of [E.B.]*, whose date of birth is [2006]. I.C. §35-42-4-3(a)(1).

Count Twelve: On or about July 18, 2019, while in a residence in Dubois County, State of Indiana, . . . John E. Wright, did *perform or submit to fondling or touching with a child under the age of fourteen years*, with the intent to arouse or satisfy the sexual desires of the child or defendant, to wit: [Wright] *fondled the breasts of [E.B.]*, whose date of birth is [2006], and/or made [E.B.] *fondle his penis*. I.C. § 35-42-4-3(b).

Count Twenty-Three: On or about July 26, 2019, while in a vehicle in Dubois County, State of Indiana, at a time subsequent to that charged in Count 21, . . . John E. Wright, a person of at least twenty-one (21) years of age, *did perform or submit to other sexual conduct* as defined in Indiana Code Section 35-31.5-2-221.5 with a child under the age of fourteen years (14), to wit: [Wright] . . . *penetrated the vagina of [E.B.]*, whose date of birth is [2006]. I.C. § 35-42-4-3(a)(1).

Count Twenty-Four: On or about July 26, 2019, while in a vehicle in Dubois County, State of Indiana, at a time subsequent to that charged in Count 22, . . . John E. Wright, *did perform or submit to fondling or touching* with a child under the age of fourteen years, with the intent to arouse or satisfy the sexual desires of [E.B.] or [Wright] to wit: *[Wright] fondled the breasts of [E.B.]*, whose date of birth is [2006], *and/or made [E.B.] fondle his penis*. I.C. § 35-42-4-3(b).

Appendix Vol. II at 40, 42 (emphases added).

[22] As discussed above, E.B. maintained a notebook documenting the dates and places where Wright had molested her since July 4, 2019, and E.B. testified about those incidents at trial. Although Wright contends that the State failed to prove that he committed the charged conduct alleged in the above counts, E.B. testified that once she turned ten years old, Wright committed the same three acts during *every* episode of molestation. Those acts included fondling E.B.'s breasts and buttocks, penetrating E.B.'s vagina, and rubbing Wright's penis. Wright's routine did not vary in the ongoing and repeated sequence of molestations. Wright also corroborated some of E.B.'s accusations during the

interview with Detective Stivers, admitting that he had touched E.B.'s vagina and breasts "on multiple occasions." *Id.* at 14.

[23] Based on the evidence presented at trial, along with Wright's admissions, it was reasonable for the factfinder to conclude that Wright did not vary his conduct with regard to the acts committed during the molestations. And even though E.B. testified that Wright would place his mouth on her vagina on some of those occasions, it was reasonable to infer that he committed the other three acts noted above on every charged episode.

[24] In sum, Wright is challenging E.B.'s credibility and the weight of the evidence, which we will not reassess. *See McHenry*, 820 N.E.2d at 126. Given E.B.'s records of the dates on which she was molested, along with her testimony that the molestations always involved the same three acts, the State sufficiently proved the allegations set forth in the charging informations that Wright has challenged. Thus, we decline to set aside those convictions.

[25] Judgment affirmed.

Bailey, J. and Mathias, J., concur.