

## 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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### ATTORNEY FOR APPELLANT

Joshua Vincent  
Marion County Public Defender Agency  
Appellate Division  
Indianapolis, Indiana

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General  
Alexandria Sons  
Deputy Attorney General  
Indianapolis, Indiana

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## IN THE COURT OF APPEALS OF INDIANA

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Andrew L. Dowdell,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

June 2, 2022

Court of Appeals Case No.  
21A-CR-2662

Appeal from the  
Marion Superior Court

The Honorable  
Angela Dow Davis

Trial Court Cause No.  
49D27-2001-F1-2858

**Vaidik, Judge.**

# Case Summary

- [1] Andrew L. Dowdell was convicted of Level 1 felony child molesting and two counts of Level 4 felony child molesting. On appeal, he challenges the Level 1 felony conviction, arguing the evidence is insufficient to support it. We disagree and affirm.

## Facts and Procedural History

- [2] In September 2021, a jury found Dowdell guilty of molesting his wife's granddaughter, A.A., on multiple occasions between 2017 and 2019, when Dowdell was in his late fifties and A.A. was eleven to thirteen years old. Specifically, the jury found Dowdell guilty of Level 1 felony child molesting for having sexual intercourse with A.A. and two counts of Level 4 felony child molesting for fondling or touching A.A. The trial court sentenced Dowdell to thirty-five years for the Level 1 felony, a concurrent term of six years for one Level 4 felony, and a consecutive term of ten years for the other Level 4 felony, for a total sentence of forty-five years in the Department of Correction.
- [3] On appeal, Dowdell challenges only the Level 1 felony conviction, arguing the State failed to prove he had sexual intercourse with A.A. That conviction is based on the following testimony by A.A.:

A.A.: I remember him coming outside and he was like opening the van door and he would grab me out the van and he would take me to this -- well, it's not like a room. There's like a door that we open to go

inside the house and then you got to open another door, so I think it's like -- I don't know like the name of the thing. But that's where he would take me to the little room where we walked inside the house.

STATE: And when he would take you from the van and put you in that room, what happened?

A.A.: He would put me on the floor, and he'll pull his pants down and get on top.

STATE: He would put you on the floor, take his pants down, and get on top of you. And what happened next? What do you see?

A.A.: It was dark (inaudible).

STATE: What do you feel?

A.A.: The pain (inaudible).

STATE: What do you hear?

A.A.: Nothing. It was just like -- it was dark. It was quiet.

STATE: And as you feel pain between your legs, what is happening?<sup>[1]</sup>

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<sup>1</sup> This was a leading question by the prosecutor; A.A. had not previously testified about pain "between her legs."

A.A.: I don't know.

STATE: What do you know at this time that you didn't know at the time, that you think was happening now?

A.A.: I really don't. Like I know what was happening now, but I don't like think about it or think about it to like -- didn't know what was going on.

STATE: Okay.

A.A.: Now that I do, I just never thought about the situation or anything.

STATE: What do you know now?

A.A.: I don't know like everything, but I know like some of the things he was trying to.

STATE: Okay. What do you think he was trying to do?

DEFENSE: Judge, I would object to this line of questioning. She's spoken through her own observations at the time and now the State is asking her to speculate on things that weren't in her knowledge as to the intent of other people. I don't -- I would object.

COURT: And I'll sustain in part, but I'll overrule on part. If she learned something later and it's her own personal knowledge of what was happening at the time, I will allow her to elaborate. But if it's

something somebody told her that she doesn't have personal knowledge of, I will sustain the objection.

STATE: Yes, Your Honor. So A.A., based on what we know now on your own reflection and remembering what happened in that room, what do you think was happening when he pulled his pants down? Can you tell us what pain or are you too nervous? Is it hard to talk about this?

A.A.: Yes. (Inaudible).

STATE: The pain that you felt, and you said it was in between your legs, where in between your legs?

A.A.: My vagina.

STATE: Your vagina? Is it a pain that you've never felt before?

A.A.: No.

STATE: Do you remember how old you were when that happened?

A.A.: Twelve.

STATE: Twelve? Has there been any other times where someone has -- Mr. Dowdell has touched your vagina?

A.A.: That was the only time.

STATE: That was the only time? Has there been a time that he -- do you know what sexual intercourse is?

A.A.: No, not really.

STATE: Okay. Do you know what a penis is? Has there ever been a time where Mr. Dowdell has tried to insert his penis into your vagina?

A.A.: (Inaudible).

DEFENSE: Judge, object. Asked and answered. He already asked her if he ever touched her vagina before.

COURT: I'll overrule the objection. He can ask.

STATE: Thanks. I think you just said yes; is that correct?

A.A.: Yes.

STATE: What was the other time where he tried to insert his penis into your vagina?

A.A.: That was a -- there was only one time, and I was -- you know, what I told you. He tried to -- he took me out of the van.

Tr. Vol. II pp. 168-71.

## Discussion and Decision

- [4] Dowdell contends the above testimony is insufficient to support his conviction for Level 1 felony child molesting. When reviewing sufficiency-of-the-evidence claims, we neither reweigh the evidence nor judge the credibility of witnesses. *Willis v. State*, 27 N.E.3d 1065, 1066 (Ind. 2015). We will only consider the evidence supporting the judgment and any reasonable inferences that can be drawn from the evidence. *Id.* A conviction will be affirmed if there is substantial evidence of probative value to support each element of the offense such that a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id.*
- [5] To convict Dowdell of Level 1 felony child molesting as charged, the State was required to prove beyond a reasonable doubt that he had sexual intercourse with A.A. Ind. Code § 35-42-4-3(a)(1); Appellant’s App. Vol. II p. 25. “Sexual intercourse” is defined as “an act that includes any penetration of the female sex organ by the male sex organ.” I.C. § 35-31.5-2-302.
- [6] Dowdell argues the State failed to prove he penetrated A.A.’s sex organ with his penis because A.A. testified that Dowdell “tried” to insert his penis in her vagina. He acknowledges A.A.’s testimony that she felt vaginal pain but notes “the prosecutor did not ask questions to clarify the cause or location of the pain.” Appellant’s Br. pp. 11-12. In response, the State notes that “penetration can be inferred from circumstantial evidence,” *Cutshall v. State*, 166 N.E.3d 373, 377 (Ind. Ct. App. 2021), and asserts that such evidence exists here because

A.A. testified “she felt pain in her vagina when Dowdell removed his pants and laid on top of her,” Appellee’s Br. p. 9. We agree with the State. A reasonable inference from A.A.’s testimony that she felt vaginal pain is that Dowdell at least partially penetrated A.A.’s sex organ. Under the definition of sexual intercourse, “any penetration” is sufficient.

[7] Affirmed.

Crone, J., and Altice, J., concur.