MEMORANDUM DECISION

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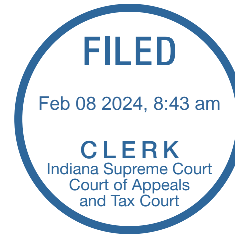

ATTORNEY FOR APPELLANT

Joseph P. Hunter
Quirk and Hunter, P.C.
Muncie, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Courtney Staton
Deputy Attorney General
Indianapolis, Indiana

IN THE

COURT OF APPEALS OF INDIANA

Kevin M. Schoeff,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 8, 2024

Court of Appeals Case No. 23A-CR-1262

Appeal from the Delaware Circuit Court

The Honorable Judi L. Calhoun, Judge

Trial Court Cause No. 18C01-2201-FA-1

Memorandum Decision by Judge Bradford
Chief Judge Altice and Judge Felix concur.

Bradford, Judge.

Case Summary

[1] Over the course of several years, Kevin Schoeff serially molested his son Lo.S. and his daughter La.S. After La.S. reported the molestation to her mother, the State charged Schoeff with three counts of Class A felony and two counts of Class C felony child molesting. A jury convicted Schoeff as charged, and the trial court sentenced him to ninety years of incarceration. Schoeff contends that the State produced insufficient evidence to sustain one of his convictions for Class A felony child molesting. We affirm.

Facts and Procedural History

[2] Melissa Frye and Schoeff were married in 2001 and have two children together, Lo.S. and La.S. Schoeff began molesting Lo.S. when Lo.S. was four years old. Once, when Frye was at the grocery store, Schoeff removed Lo.S. from his bedroom, took him to the living room, removed his pants, and fondled him until Frye returned home from the store. Over time, Schoeff progressed from fondling Lo.S. to performing oral sex on Lo.S. and having Lo.S. perform oral sex on him.

[3] Schoeff began molesting La.S. when she was three or four years old and continued until she was almost fourteen. Schoeff fondled La.S., performed oral sex on her, had her perform oral sex on him, and made Lo.S. and La.S. "do things to each other in front of him." Tr. Vol. II p. 65. Schoeff also molested La.S. in private while watching pornography and touching either himself or La.S. Schoeff once tried to insert his fingers into La.S.'s vagina. Schoeff was

unable to get his fingers "all the way" inside but, at the very least, penetrated La.S.'s outer genitalia. Tr. Vol. II p. 93.

[4] In January of 2022, after La.S. told Frye about Schoeff's molestation, the State charged Schoeff with three counts of Class A felony child molesting and two counts of Class C felony child molesting. The following exchange occurred during La.S.'s trial testimony: "[Prosecutor:] Under Indiana law the slightest of penetration is enough–do you believe that there was in fact a separating of the outside of the vagina–that's enough–are you telling the jury that's what happened? [La.S:] Yes." Tr. Vol. II p. 93. After a jury found Schoeff guilty as charged, the trial court sentenced him to an aggregate sentence of ninety years of incarceration.

Discussion and Decision

[5] Schoeff contends that the State failed to produce sufficient evidence to sustain one of his convictions for Class A felony child molesting, arguing that the State failed to establish that he had penetrated La.S.'s sex organ with his finger. "When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict." *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We will neither assess witness credibility nor "weigh the evidence to determine whether it is sufficient to support a conviction." *Id*. When presented with conflicting evidence, we "must consider it most favorably to the trial court's ruling." *Id*. We will affirm the conviction "unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt."

Id. "It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence." *Id.* "The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict." *Id.*

[6] In order to convict Schoeff of Class A felony child molesting, the State was required to prove, *inter alia*, that he had digitally penetrated La.S.'s sex organ. *See* Ind. Code § 35-42-4-3(a)(1). Our "precedent makes clear that proof of the 'slightest penetration' of the female sex organ, including penetration of the external genitalia, is sufficient to sustain a conviction for child molestation[.]" *Boggs v. State*, 104 N.E.3d 1287, 1288 (Ind. 2018) (citing *Spurlock v. State*, 675 N.E.2d 312, 315 (Ind. 1996)). When the prosecutor asked La.S. if she believed that there had been a separation of "the outside of the vagina[,]" she replied, "[y]es[.]" Tr. Vol. II p. 93. This testimony is sufficient to sustain Schoeff's conviction, because, as mentioned, evidence of penetration of even the external genitalia is sufficient to sustain a conviction for child molesting. *See, e.g.*, *Boggs*, 104 N.E.3d at 1288. La.S.'s testimony was also sufficient to sustain a finding that Schoeff had penetrated her internal genitalia as well; La.S.'s testimony that Schoeff had tried to insert his fingers into her vagina but that he could not get them to go "all the way" in supports a reasonable inference that he had at least partially inserted his fingers into her vaginal canal. Tr. Vol. II p. 93. We conclude that the State produced sufficient evidence to sustain Schoeff's conviction for Class A felony child molesting for digitally penetrating La.S.'s sex organ.

[7] We affirm the judgment of the trial court.

Altice, C.J., and Felix, J., concur.