MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Ralph Gardner,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 10, 2023

Court of Appeals Case No. 23A-CR-1178

Appeal from the Marion Superior Court

The Honorable Angela Dow-Davis, Judge

Trial Court Cause No. 49D27-2101-F3-2807

Memorandum Decision by Judge Mathias
Judges Riley and Crone concur.

Mathias, Judge.

[1] Ralph Gardner appeals his conviction for Level 3 felony rape following a bench trial. He presents a single issue for our review, namely, whether the State presented sufficient evidence to support his conviction. We affirm.

Facts and Procedural History

[2] In November 2020, Gardner, who was sixteen years old, was friends with M.T., who was seventeen years old. The two had been friends since middle school, but they were attending different high schools. On November 28, Gardner invited M.T. over to his house to watch a movie. When M.T. arrived, Gardner took her to his bedroom. As Gardner started to play the movie on a television in the bedroom, M.T. sat on the foot of Gardner's bed, cross-legged. Gardner then laid down near the head of the bed. After approximately thirty or forty minutes, Gardner told M.T. that she looked "uncomfortable," and he asked her for a hug. Tr. Vol. 2, p. 122. M.T. hugged Gardner and then returned to her seat at the foot of the bed.

[3] Gardner then asked for another hug, and M.T. complied. The two then "started kissing." *Id.* M.T. was then lying on top of Gardner, and they continued kissing. Gardner then asked M.T. if he could "go down on" her, and she said "no." *Id.* at 124. Gardner asked M.T. if she would "give him head," and she said "no." *Id.* at 125. They continued kissing, but Gardner asked M.T. again whether she would let him perform oral sex on her, and she said "no." *Id.* When Gardner asked M.T. a third time whether he could perform oral sex on

her, she said "sure." *Id.* at 126. M.T. proceeded to remove her pants and underwear.

[4] Gardner then said to M.T., "you said yes," and began to remove his pants. *Id.* at 128. M.T. was confused and said, "no I didn't." *Id.* Gardner said, "yes you did," and M.T. repeated, "I didn't." *Id.* Gardner then got on top of M.T. and put his penis in her vagina. The weight of the "lower half of his body" was on M.T., and he had his hands on either side of her head. *Id.* at 129. M.T. tried to push him off but was unable to do so. M.T. told Gardner that "it hurt" and she told him to "[s]top." *Id.* at 130. Gardner responded that she could either "do this" or she could "give [him] head." *Id.* M.T. refused to give him oral sex, and he continued to have intercourse with her. Ultimately, Gardner removed his penis from M.T.'s vagina and ejaculated on her thigh. Gardner left the room, and M.T. dressed and left the house.

[5] M.T. drove to a nearby shopping center and called her friend N.G. M.T. told her what had happened. N.G. told her mom, and M.T. went to N.G.'s house. N.G.'s mom told M.T. to go home and tell her mom what had happened. On the way home, M.T. stopped by her sister's workplace and told her what had happened. M.T. and her sister then went home and told their mom about the rape. M.T.'s mom took her to a hospital for a sexual assault examination. A nurse examining M.T.'s genitalia observed abrasions consistent with vaginal intercourse and a "red and purple discoloration" to the cervix, which is consistent with a "blunt force trauma . . . directly to the cervix." *Id.* at 184.

Subsequent DNA testing found Gardner's DNA in samples taken from M.T.'s external genitalia and underwear.

[6] The State charged Gardner with Level 3 felony rape. Following a bench trial, the trial court found Gardner guilty as charged and sentenced him to six years, with two years executed on home detention and four years suspended. This appeal ensued.

Discussion and Decision

[7] Gardner contends that the State presented insufficient evidence to support his conviction. Our standard of review is well settled.

> When an appeal raises "a sufficiency of evidence challenge, we do not reweigh the evidence or judge the credibility of the witnesses . . . ." We consider only the probative evidence and the reasonable inferences that support the verdict. "We will 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.'"

Phipps v. State, 90 N.E.3d 1190, 1195 (Ind. 2018) (quoting *Joslyn v. State*, 942 N.E.2d 809, 811 (Ind. 2011)).

[8] To prove that Gardner committed Level 3 felony rape, the State was required to show that he knowingly or intentionally had sexual intercourse with M.T. when she was compelled by force or the imminent threat of force. Ind. Code § 35-42-4-1 (2023). Gardner's sole contention on appeal is that the State did not prove

that M.T. was compelled to have intercourse with him by force or the imminent threat of force. We disagree.

[9] As our Supreme Court has explained, whether force or the threat of force was used "is a subjective test that looks to the victim's perception of the circumstances surrounding the incident in question. The issue is thus whether the victim perceived the aggressor's force or imminent threat of force as compelling her compliance." *Tobias v. State*, 666 N.E.2d 68, 72 (Ind. 1996). "[T]he force necessary to sustain a rape conviction need not be physical," but "it may be inferred from the circumstances." *Bryant v. State*, 644 N.E.2d 859, 860 (Ind. 1994).

[10] Here, M.T. testified that she refused, several times, Gardner's requests to have intercourse, so her consent was unequivocally absent. M.T. also testified that, despite her refusals, Gardner removed his pants and underwear and laid on top of her. With his body weight on hers, M.T. was only able to move her arms. Gardner was 5'10" and 220 pounds, and he played football for his high school. M.T. "kinda pushed his shoulder, a little" in an attempt to "get him off" of her, but she was unsuccessful. Tr. Vol. 2, p. 132. When Gardner was on top of her, his "body weight was preventing [her] from closing" her legs. *Id.* at 148. When M.T. told Gardner that the intercourse was hurting her, he said, "we can do this, or you can give me head." *Id.* at 130. In addition, the nurse who later examined M.T. found evidence of "blunt force trauma" on her cervix. *Id.* at 184.

[11] The State presented sufficient evidence that Gardner compelled M.T. to have intercourse by force. Gardner's argument on appeal amounts to a request that we reweigh the evidence, which we will not do. The State presented sufficient evidence to support Gardner's conviction.

[12] Affirmed.

Riley, J., and Crone, J., concur.