

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Reuben W. Ginns,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 31, 2023

Court of Appeals Case No.
22A-CR-2011

Appeal from the Marion Superior
Court

The Honorable Sheila A. Carlisle,
Judge

Trial Court Cause No.
42D29-2105-F1-15993

Memorandum Decision by Judge Brown
Judges Bailey and Weissmann concur.

Brown, Judge.

- [1] Reuben W. Ginns appeals his convictions for two counts of child molesting as level 1 felonies and criminal confinement as a level 5 felony. We affirm.

Facts and Procedural History

- [2] At about 2:10 p.m. on May 19, 2021, S.F., who was thirteen years old and in the eighth grade, left school and began to walk home. A vehicle with tinted windows and a paper plate stopped next to him. The driver, Ginns, called S.F. over to the vehicle, and he ultimately entered the vehicle. Ginns locked the doors, drove for about two minutes to another area and parked, and “made [S.F.] suck his penis.” Transcript Volume II at 101. Ginns held S.F.’s head, his mouth touched Ginns’s penis, and “[i]t went inside [his] mouth.” *Id.* at 102. Ginns said “[l]et me see your butt,” and S.F. “said no.” *Id.* at 98-99. Ginns took off his pants and S.F.’s clothes. Ginns “[p]ut his penis inside [S.F.’s] butt,” it hurt, S.F. said “[c]an you stop,” and Ginns “just kept going.” *Id.* at 100-101. S.F. saw his brother walking on the street, said “look that way, there’s the police,” and “hurried up and grabbed [his] stuff, and pulled up [his] pants and stuff and ran towards [his] brother.”¹ *Id.* at 103. S.F. ran to his house, and his great aunt called the police.

¹ When asked “[w]ere you able to get out of the car before that,” S.F. answered “[n]o,” and when asked “why is that,” he replied “[b]ecause he locked the doors.” Transcript Volume II at 103. When asked “[d]o you remember when that happened,” S.F. replied “[a]bout when he got to the first place.” *Id.* On cross-examination, S.F. testified “[h]e did lock the car,” and when asked how Ginns locked the car, S.F. stated “[w]ith his door. With the door.” *Id.* at 113. Ginns’s counsel asked “[w]ith the door?” *Id.* S.F. replied “The thing – whatever you call it. The lock.” *Id.*

- [3] Indianapolis Metropolitan Police Detective Alisha Bernhardt responded and spoke with S.F. and S.F. identified Ginns in a photo array. A family case manager with the Department of Child Services (“DCS”) transported S.F. to the hospital for a forensic examination. The family case manager “notice[d] that [S.F.] looked kind of young for his age.” *Id.* at 163. Forensic testing of the anal swab showed “the sperm fraction was . . . a mixture of two individuals,” “[t]he major contributor matche[d] Reuben Ginns, and it was estimated to occur once in more than 330 billion unrelated individuals,” and “[t]he minor contributor was inconclusive.” Transcript Volume III at 25.
- [4] Detective Bernhardt interviewed Ginns. Ginns stated he was born in February 1995 and was twenty-six years old. Ginns stated “[t]here was a young man that I’d known . . . way before and I worked for a restaurant” who asked “[y]ou still got jobs available,” he asked him “[a]re you at least 16 years of age,” and the person said “[y]eah I’m [inaudible – mumbling].” State’s Exhibit 16 at 17-18. Ginns stated “[h]e needed a ride . . . he had bags too.” *Id.* at 18. He stated “I remember seeing him and then he got in my car,” he gave him a ride, and “I do remember . . . I did give him some money. Five dollars, but we never had any sexual anything.” *Id.* at 19-20. When asked “who is this person,” Ginns stated:

I don’t know. . . . [H]e remembered me for some reason. And so, a lot of times um, ya know, a lot of them be younger. Ya know what I mean? And so, I have boys. . . . And kids lie. So, my, ya know, uh ya know . . . one, two . . . no, you look young, ya know at that point in time. Ya know?

Id. at 21. Detective Bernhardt asked “[h]ow young does this boy look,” and Ginns answered “he looks about seventeen.” *Id.* He stated “[h]e wasn’t in my car long. Like five minutes” and “he had bags and books.” *Id.* at 22. When asked “[d]o you just let strangers in your car all the time,” he answered “[n]o, but, he ain’t gonna’ do nothing to me,” and when asked “why do you think he’s not gonna’ do anything,” Ginns replied: “he said take me down the street . . . [n]ot a problem. . . . And then on top of that, I was interested, you know? But then I’m like, hmmm, mm-hmm, you look young. Like . . . that’s how I was like mm-hmm.” *Id.* at 22-23. Detective Bernhardt stated “he’s saying that things were forced.” *Id.* at 24. Ginns stated: “That’s not even in my character. Um, now people lie [] about their ages and things, so . . . , again he did look young. So, I was like, okay. But this time, no. Absolutely not. I have three boys that look bigger than him.” *Id.* at 25. Detective Bernhardt told Ginns “[t]here’s DNA and stuff too.” *Id.* Ginns said “I’m thinking like this though. Like, how old is he?” *Id.* at 27. Detective Bernhardt stated “[y]ou said he looks seventeen to you,” Ginns said “[y]eah,” Detective Bernhardt stated “[o]kay,” and Ginns said: “He looked young so. To me.” *Id.* at 27-28.

[5] Later, Detective Bernhardt stated “[p]lease be real with me,” and Ginns said “me and [] the guy did . . . I mean, it wasn’t for him . . . we didn’t even . . . go all the way through with anything. Um, never left the front seat.” *Id.* at 33. He stated “[s]o, he needed some money” and “he said, well, ya know, I’ll do whatever.” *Id.* Ginns stated “we tried the anal, um, and it, it didn’t work for him and he was like, [inaudible]. Okay. That’s fine.” *Id.* at 34. When asked

“[w]hat do you mean,” Ginns answered: “Like cause, he got tighten up and . . . I mean it’s . . . a little painful.” *Id.* at 35. Detective Bernhardt asked “how did it start? Like how was the conversation before? Like you don’t just get in the car and talk about KFC and then . . . ,” and Ginns stated: “the conversation was mainly that the fact that he knew who I was . . . I’m like okay, we met before. . . . And I said how old are you? He said, I’m of age. I said, oh okay. Ya know? Believed him.” *Id.* at 37. He also stated: “He did have a Swisher. So, I’m like . . . you gotta’ be at least, ya know, if you’re trying to smoke. . . . I didn’t really think nothing twice with that.” *Id.* at 38. Ginns said: “I have a sixteen-year old, a thirteen and twelve-year old.” *Id.* at 40.

- [6] The State charged Ginns with two counts of child molesting as level 1 felonies and two counts of criminal confinement as level 5 felonies. The court held a jury trial in June 2022 at which S.F., his great aunt, his brother, Detective Bernhardt, the DCS family case manager, a nurse who performed the forensic examination, a forensic scientist with the crime lab, and Ginns testified. The court admitted a photograph depicting S.F. standing next to Detective Bernhardt. Detective Bernhardt indicated the photograph accurately depicted how S.F. looked in May 2021. When asked why she had the photograph taken, Detective Bernhardt testified “kids grow so fast,” “he looks so young here,” and “I just wanted to make sure that I got a picture of what he looks like so if this case came three years down and he comes here and he’s -- say he was like six foot tall, he’s not going to look the same here as he did the day when the

incident happened.” Transcript Volume II at 245-246. The court also admitted Ginns’s police interview.

[7] S.F. testified to the events above and that he was born on August 30, 2007. On cross-examination, Ginns’s counsel referred to S.F.’s deposition and stated “you said, ‘He . . . hurried up and got out of his car, grabbed me. And then that’s when I tried to fight him off,’ when he put you in the car. Do you remember that?” *Id.* at 120. S.F. replied affirmatively. When asked “[s]o did you try to fight him off when he put you in the car,” S.F. stated “[n]o,” and when asked “why did you say that,” he replied “[b]ecause I was scared” and “I ain’t never been to court.” *Id.* When asked “what’s that got to do with you going to court,” S.F. replied “I don’t know.” *Id.*

[8] Ginns testified there was nothing which would prevent S.F. from opening the door to exit the car, that S.F. indicated he needed some money, and “i[t] was just paying for sex.” Transcript Volume III at 42. He indicated that S.F. never told him how old he was, he did not have any indication of S.F.’s age, and he did not believe that S.F. was under the age of fourteen. When asked “once he got out of your car, did you ever have occasion to call him back to your car,” Ginns testified “I did. . . . Because he forgot his soda in my front seat.” *Id.* at 45-46. When asked “how does your car unlock? How do you open your car doors,” he testified “my car, when you put the car in drive, it automatically locks. But then when you put it in park, you can lock it or unlock it.” *Id.* at 47. On cross-examination, when asked “when you put it into park, do the doors automatically unlock, or do you have to do it yourself,” Ginns answered “[y]ou

have to do it yourself.” *Id.* at 50. When asked “[d]oes your car have a child lock option,” he answered “[i]t does,” and when asked “you can press that from the driver’s side of the vehicle,” he replied “[c]orrect.” *Id.* Ginns indicated that he never asked S.F. how old he was. The prosecutor asked “your foster children were bigger than him; correct,” Ginns stated “[c]orrect.” *Id.* at 51. When asked “your foster children at the time are three males,” he answered affirmatively, and when asked “[s]o you have experience with children within S.F.’s age range,” he replied “[c]orrect.” *Id.* The prosecutor asked “did he leave any of his belongings behind,” Ginns replied affirmatively. *Id.* at 53. He indicated that S.F. had books with him, and when asked “[d]id he ever retrieve the books,” he answered “[h]e did. Took them with him.” *Id.*

- [9] The jury found Ginns guilty as charged. The court vacated one of Ginns’s criminal confinement convictions due to double jeopardy concerns and sentenced him to thirty years for each of his child molesting convictions and three years for his criminal confinement conviction to be served concurrently.

Discussion

- [10] When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. *Jordan v. State*, 656 N.E.2d 816, 817 (Ind. 1995), *reh’g denied*. We look to the evidence and the reasonable inferences therefrom that support the verdict. *Id.* The conviction will be affirmed if there exists evidence of probative value from which a reasonable jury could find the defendant guilty beyond a reasonable doubt. *Id.*

A. *Child Molesting*

- [11] Ind. Code § 35-42-4-3(a) provides a person who, with a child under fourteen years of age, knowingly or intentionally performs or submits to other sexual conduct commits child molesting and the offense is a level 1 felony if it is committed by a person at least twenty-one years of age. Other sexual conduct includes an act involving a sex organ of one person and the mouth or anus of another person. Ind. Code § 35-31.5-2-221.5.
- [12] Ind. Code § 35-42-4-3(d) provides it is a defense “that the accused person reasonably believed that the child was sixteen (16) years of age or older at the time of the conduct.” “For the defense to prevail it is clear that the statute requires both the subjective element of actual belief by the accused and the objective element that such belief be reasonable under the circumstances.” *Fenix v. State*, 438 N.E.2d 1005, 1006 (Ind. Ct. App. 1982). “Moreover, while the state must prove the accused guilty beyond a reasonable doubt, it need not introduce evidence to specifically negate the defense. It is sufficient that the evidence in its entirety establishes guilt.” *Id.*
- [13] In *Lechner v. State*, this Court held that we “decline to limit the availability of the statutory mistake of fact defense to those defendants whose reasonable belief was that the victim was at least 16 years old and hold that the defense is available to any defendant who reasonably believes the victim to be of such an age that the activity engaged in was not criminally prohibited.” 715 N.E.2d 1285, 1288 (Ind. Ct. App. 1999), *trans. denied*. See also *T.M. v. State*, 804 N.E.2d

773, 775-776 (Ind. Ct. App. 2004) (discussing *Lechner*), *trans. denied*. Here, the trial court instructed the jury that it was a defense that Ginns reasonably believed that S.F. was fourteen years of age or older.

[14] Ginns acknowledges he “admitted to engaging in oral and anal sexual activity with S.F.” but argues “he was adamant [sic] that he believed S.F. was older than 14.” Appellant’s Brief at 12. He points to his statement that S.F. told him that he was “of age” and that S.F. knew him from long before their encounter, argues “a fast food job seeker would not be 13,” and states he “admitted he thought S.F. was young, but S.F. never told him his actual age.” *Id.* at 12-13 (citations to record omitted).

[15] The record reveals Ginns stated that S.F. appeared to be young, S.F. had bags and books, and his own boys, who were twelve, thirteen, and sixteen years old, looked bigger than S.F. Also, the jury had the opportunity to view S.F.’s appearance at the trial approximately thirteen months after the offense. Moreover, the court admitted a photograph of S.F. standing next to Detective Bernhardt, S.F. testified he was thirteen years old when the photograph was taken, and Detective Bernhardt indicated the photograph accurately depicted how S.F. looked in May 2021. The jury was able to consider the evidence including the photograph, Ginns’s interview statements, and the testimony. We may not reweigh the evidence. The jury could have reasonably determined that Ginns did not satisfy the requirements of the defense under Ind. Code § 35-42-4-3(d). *See Fenix*, 438 N.E.2d at 1006 (noting “the jury had opportunity to view the girl’s appearance at the trial approximately five months after the date

of the offense” and finding that, “despite [the defendant’s] asserted evidence that the girl might have reasonably appeared to be sixteen and his in-trial assertion that he thought she was about his own age, the jury could reasonably have determined that his subjective belief was that the girl was under sixteen”).

B. *Criminal Confinement*

[16] Ginns asserts, “[b]ecause [he] did not snatch S.F. off the street or restrain him there was insufficient evidence to sustain conviction.” Appellant’s Brief at 10. He argues his car “could be unlocked in park,” S.F. “even returned to the car for his stuff after he left,” S.F. initially claimed that he grabbed him and put him in the car, and “the fabricated abduction and fight impacts the credibility of the locked car doors and the confinement allegation.” *Id.* at 14.

[17] Ind. Code § 35-42-3-3 provides in part that a person who knowingly or intentionally confines another person without the other person’s consent commits criminal confinement and that the offense is a level 5 felony if the person confined is less than fourteen years of age and is not the confining person’s child or it is committed by using a vehicle.

[18] The jury was able to assess S.F. and Ginns’s credibility and consider their testimony regarding the events which occurred after S.F. entered Ginns’s vehicle, including S.F.’s testimony that Ginns locked the doors and that he was not able to exit the vehicle before he saw his brother. We will not reweigh the evidence. We conclude that evidence of probative value was presented from

which a reasonable jury could find beyond a reasonable doubt that Ginns committed criminal confinement as a level 5 felony.

[19] For the foregoing reasons, we affirm Ginns's convictions.

[20] Affirmed.

Bailey, J., and Weissmann, J., concur.