

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Devon Aaron Moore,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 20, 2023

Court of Appeals Case No.
22A-CR-1959

Appeal from the Hamilton Circuit
Court

The Honorable Paul A. Felix,
Judge

Trial Court Cause No.
29C01-2007-F3-4380

Memorandum Decision by Judge Robb

Judges Mathias and Foley concur.

Robb, Judge.

Case Summary and Issues

- [1] Following a jury trial, Devon Moore was convicted of two counts of child molesting as Level 3 felonies. Moore now appeals raising multiple issues for our review, which we restate as: (1) whether the trial court abused its discretion in instructing the jury; and (2) whether there was sufficient evidence to support Moore’s convictions. Concluding the trial court did not abuse its discretion in instructing the jury and the State presented sufficient evidence to support Moore’s convictions, we affirm.

Facts and Procedural History

- [2] In the summer of 2017, eight-year-old A.P. spent time at her grandmother’s - Darlene Petry’s - house while her parents worked. Moore lived with Petry. During that summer, Moore asked A.P. to sit on his lap while he was seated in a recliner. A.P. complied and Moore covered them both with a blue blanket that had “footballs and volley balls or soccer balls” on it. Transcript of Evidence, Volume 3 at 32. Moore then “went into [A.P.’s] pants and touched [her] vagina.” *Id.* at 27. Moore stopped once his father came into the room. About a week later, Moore touched A.P.’s vagina again, “the same thing as the first time on the recliner with [the] blanket.” *Id.* at 32. Around a month after the second incident, Moore told A.P. not to tell anyone what had happened. In January 2020, A.P. told a school counselor that she had been molested.

[3] On July 24, 2020, the State charged Moore with two counts of child molesting, both Level 3 felonies. A jury trial was held. At trial, A.P. testified regarding the sexual encounters, stating that Moore touched her inside her underwear, “[b]etween the line” where she “wipe[s]” with two of his fingers. *Id.* at 27-28. Officer Alex Petty of the Hamilton County Sheriff’s Office testified that while executing a search warrant at Petry’s home, he located an “Indianapolis Colts blanket” that “had some helmets, [and] I believe some footballs on it.” *Id.* at 101.

[4] Moore objected to State’s Proposed Final Instruction No. 2 which defined penetration. The written jury instruction included in the record stated the following:

~~Proof of the slightest penetration of the female sex organ by a finger is sufficient to demonstrate “other sexual conduct” for the purposes of child molesting.~~ “Penetration” does not require that the vagina be penetrated, only that the female sex organ, including the external genitalia, be penetrated.

* * *

Authority: I.C. 35-31.5-2-221.5[;] *Boggs v. State*, 104 N.E.3d 1287, 1288 (Ind. 2018) (quoting *Spurlock v. State*, 675 N.E.2d 312, 315 (Ind. 1996)[;] *Hale v. State*, 128 N.E.3d 456, 461 (Ind. Ct. App. 2019), *trans. denied*.

Appellant’s Appendix, Volume II at 107. Moore conceded the jury instruction was a correct statement of law but argued the instruction’s inclusion of caselaw “gives the statement more gravitas, more weight, [which is] inappropriate.” Tr.,

Vol. 3 at 60. The trial court read the second sentence of the proposed instruction to the jury as part of its final instructions.

- [5] The jury found Moore guilty on both counts. The trial court then sentenced Moore to an aggregate of sixteen years with seven years suspended. Moore now appeals. Additional facts will be provided as necessary.

Discussion and Decision

I. Jury Instruction

A. Standard of Review

- [6] “The purpose of a jury instruction is to inform the jury of the law applicable to the facts without misleading the jury and to enable it to comprehend the case clearly and arrive at a just, fair, and correct verdict.” *Dill v. State*, 741 N.E.2d 1230, 1232 (Ind. 2001) (internal quotation omitted). We review a trial court’s jury instructions for an abuse of discretion. *Isom v. State*, 31 N.E.3d 469, 484 (Ind. 2015), *cert. denied*, 577 U.S. 1137 (2016).

B. Proposed Jury Instruction

- [7] Moore challenges the trial court’s decision to give State’s Proposed Final Instruction No. 2 to the jury. Generally on appeal, we review whether a tendered instruction correctly states the law, whether there is evidence in the record to support giving the instruction, and whether the substance of the instruction is covered by other instructions. *Id.* at 485. However, Moore does not challenge the text of the jury instruction. Instead, Moore contends that

“[t]he trial court erred by allowing the State’s Proposed Jury Instructions to contain case law and statutory citations, which misled the jury in their deliberations.” Brief of Appellant at 8.

[8] However, Moore provides no case law to support his contention that the inclusion of legal authority in a proposed jury instruction would have the propensity to mislead the jury.¹ Further, we note State’s Proposed Final Instruction No. 1 also contains legal authority, yet Moore does not challenge it. Appellant’s App., Vol. II at 106. We conclude Moore has failed to show the trial court abused its discretion by giving the challenged instruction.

II. Sufficiency of the Evidence

A. Standard of Review

[9] Our standard of review for sufficiency claims is well settled. When evaluating a sufficiency of the evidence claim, we consider only the probative evidence and reasonable inferences most favorable to the verdict. *Love v. State*, 73 N.E.3d 693, 696 (Ind. 2017). We do not assess the credibility of the witnesses and we do not reweigh the evidence. *Id.* We will only reverse if no reasonable factfinder could find the elements of the crimes proven beyond a reasonable doubt. *Id.* The evidence need not overcome every reasonable hypothesis of innocence; it is

¹ It is not clear whether a physical copy of State’s Proposed Jury Instruction No. 2 was given to the jury to take with them into deliberations. We assume it was. Further, it is also unclear whether the redacted language was completely removed from any physical copy given to the jury. However, Moore only challenges that the proposed instruction contained legal authority and we limit our discussion accordingly.

sufficient if an inference may reasonably be drawn from the evidence to support the verdict. *Silvers v. State*, 114 N.E.3d 931, 936 (Ind. Ct. App. 2018).

B. Child Molesting

- [10] Moore challenges the sufficiency of the evidence supporting his child molesting convictions. The State bears the burden of proving all elements of the charged crime beyond a reasonable doubt. *Taylor v. State*, 587 N.E.2d 1293, 1301 (Ind. 1992); *see also* Ind. Code § 35-41-4-1(a).
- [11] To convict Moore of child molesting as a Level 3 felony, the State was required to prove that Moore knowingly or intentionally performed or submitted to other sexual conduct with a child under fourteen years of age. Ind. Code § 35-42-4-3(a). “Other sexual conduct” includes any act involving “the penetration of the sex organ or anus of a person by an object.” Ind. Code § 35-31.5-2-221.5. A finger is an “object” for purposes of establishing other sexual conduct. *Carranza v. State*, 184 N.E.3d 712, 715 (Ind. Ct. App. 2022). Our supreme court has held that “proof of the slightest penetration of the sex organ, including penetration of the external genitalia, is sufficient to demonstrate a person performed other sexual []conduct with a child.” *Boggs v. State*, 104 N.E.3d 1287, 1289 (Ind. 2018).
- [12] Here, A.P. testified regarding the sexual encounters with Moore. “A conviction for child molesting may rest solely upon the uncorroborated testimony of the victim.” *Reyburn v. State*, 737 N.E.2d 1169, 1171 (Ind. Ct. App. 2000). However, Moore argues the evidence presented by the State and the

reasonable inferences therefrom cannot lead to the verdict delivered. Moore contends the evidence presented here “only tends to support the conclusion of guilt” but does not “support the conclusion beyond a reasonable doubt.” Br. of Appellant at 11. Moore’s only support for this contention is that A.P.’s description of the blanket used during the sexual acts does not match the blanket found in the home and Petry’s testimony about A.P.’s truthfulness.

[13] A.P. testified the blanket used during the sexual encounter was a blue blanket that had “footballs and volley balls or soccer balls” on it. Tr., Vol. 3 at 32. Police did not find a blanket that matched this exact description; however, Officer Petty located a “Indianapolis Colts blanket” that “had some helmets, [and he] believe[d] some footballs on it.”² *Id.* at 101. Further, Moore points to Petry’s testimony that she believed A.P. to be untruthful. *See id.* at 122.

[14] Moore’s argument merely asks us to reassess A.P.’s credibility and to reweigh the evidence, an argument which is unpersuasive, given our standard of review. *See Hall v. State*, 177 N.E.3d 1183, 1191 (Ind. 2021). Therefore, we conclude the State presented sufficient evidence to support Moore’s child molesting convictions.

Conclusion

² We note that the Indianapolis Colts’ colors are white and blue.

[15] We conclude the trial court did not abuse its discretion in instructing the jury and the State presented sufficient evidence to support Moore's convictions. Accordingly, we affirm.

[16] Affirmed.

Mathias, J., and Foley, J., concur.