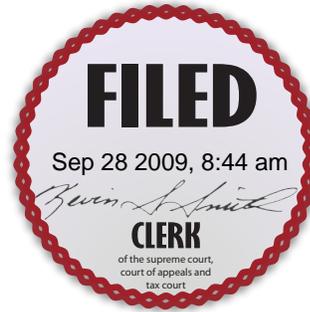


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

DAVID SKILES,)
)
Appellant-Defendant,)
)
vs.) No. 49A02-0903-CR-212
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Lisa Borges, Judge
The Honorable Stanley E. Kroh, Master Commissioner
Cause No. 49G04-0711-FC-234739

September 28, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

David Skiles appeals his conviction for Child Molesting, as a Class C felony, following a jury trial. Skiles presents three issues for review, which we consolidate and restate as:

1. Whether the trial court abused its discretion when it limited the cross-examination of the victim's mother.
2. Whether sufficient evidence supports his conviction.

We affirm.

FACTS AND PROCEDURAL HISTORY

H.G. is the mother of J.D., born June 11, 1999. J.D. and her siblings often spent time with Skiles, H.G.'s uncle. Skiles occasionally babysat the children, and the family occasionally resided at the home Skiles shared with his mother and teenage son. Sometime between June 11, 2005, and June 11, 2006, J.D. and her family were spending the night in Skiles' home. One night during that period, J.D. and Skiles were on the couch, where J.D. had fallen asleep. J.D., then six years old, was wearing a Dora the Explorer nightshirt, socks, and underpants. She awoke late that night to find Skiles sitting on the couch near her feet, with his hand inside her panties, moving and touching her "no-no." Transcript at 52-53.¹ J.D. told him to stop, and Skiles complied and went to bed.

J.D. told only her sister about the incident until 2007. On September 16, 2007, J.D. and her mother were watching a television program about child molesting. J.D. then told H.G. for the first time that Skiles had molested her. H.G. and Jo.D. called the police

¹ J.D. testified that her "no-no" is for "[u]sing the restroom" and is what she calls her vagina. Transcript at 53.

the following day. On October 31, Detective Shawn Looper of the Indianapolis Metropolitan Police Department child abuse unit interviewed Skiles, who said that he had fallen asleep on the couch with J.D. with his arm resting on the back of the couch. He further stated that he had wakened to find that his arm had fallen down onto J.D. with his hand cupped on her crotch, “skin to skin.” Exhibits at 17. Skiles also stated that his hand might have been moving while he slept.

On November 5, 2007, the State charged Skiles with one count of child molesting, as a Class C felony. A jury trial commenced on January 8, 2009. During the trial, Skiles attempted to cross-examine H.G. about a time when H.G. lived with Skiles and Skiles asked her to move out of his home. The State objected, and the court disallowed cross-examination on that subject. At the conclusion of the trial, the jury found Skiles guilty. The trial court entered judgment of conviction and sentenced Skiles to four years, with two years executed, and two years suspended to probation. Skiles now appeals.

DISCUSSION AND DECISION

Issue One: Cross-Examination

Skiles contends that the trial court abused its discretion because it limited his cross-examination of H.G., which was intended to show H.G.’s bias against Skiles. We review decisions concerning the admissibility of evidence for an abuse of discretion. Walker v. Cuppett, 808 N.E.2d 85, 92 (Ind. Ct. App. 2004). An abuse of discretion occurs if the trial court’s action is clearly erroneous and against the logic and effect of the facts and circumstances before the court. Id. (citation omitted). A trial court may also abuse its discretion if its decision is without reason or is based upon impermissible

considerations. Id. (citation omitted). “Even if a trial court errs in a ruling on the admissibility of evidence, this court will only reverse if the error is inconsistent with substantial justice.” Id. (quoting Fairfield Dev., Inc. v. Georgetown Woods Sr. Apartments Ltd. P’ship, 768 N.E.2d 463, 466-67 (Ind. Ct. App. 2002), trans. denied); see also Ind. Evid. R. 103(A)(2).

Similarly, the trial court has discretion to determine the scope of cross-examination, and only an abuse of that discretion warrants reversal. Id. (citing Lowry v. Lanning, 712 N.E.2d 1000, 1001 (Ind. Ct. App. 1999)). ““Cross-examination is permissible as to the subject matter covered on direct examination, including any matter which tends to elucidate, modify, explain, contradict or rebut testimony given during direct examination by the witness.”” Id. (quoting Hicks v. State, 510 N.E.2d 676, 679 (Ind. 1987)).

Here, Skiles contends that the trial court prevented him from cross-examining H.G. to show her bias against him.² Specifically, he argues that H.G. resented him because he had asked her to move out of his house after accusing her of stealing checks from him. H.G. testified about the allegations as follows:

Q [Defense attorney]: Okay. Prior to the September disclosure date here in '07, within a few weeks before that date, you had actually been living in David's home, hadn't you?

A: It was actually months before that.

Q: It was months before that?

A: Yes.

² In his brief, Skiles also contends that the trial court abused its discretion by admitting into evidence a redacted version of his recorded statement. But Skiles does not develop that argument. As such, that issue is waived. See Ind. Appellate Rule 46(A)(8)(a).

Q: Okay. So, and it was only you, it wasn't the kids and your husband.

A: That's right.

Q: And at some point in time, my client asked you to leave the house, isn't that correct?

A: No. That is not correct.

Q: So, your testimony here today is that you left on [sic] your volition?

A: That's right.

Q: And that you weren't upset about having to leave.

A: No.

Q: That you had a place to go.

A: Yes.

Transcript at 81-82. Skiles then cross-examined H.G. about J.D.'s disclosure of the molestation in September 2007. During that line of questioning, Skiles asked:

Q: And you're saying here today that you were never forced to leave my client's home.

A: No, not at the time that you were talking about. Not at that time.

Q: So, there was another time when my client,

Id. at 86. The State objected and, following a sidebar, Skiles cross-examined H.G. outside the presence of the jury:

Q: What time was that?

A: That was when we all lived with him.

Q: Do you recall what year that was in?

A: That was 2006.

Q: And you were the only person he asked to leave?

A: No. He asked us all to leave.

Q: And was that because that [sic] he discovered that there were some checks and cash that became missing?

A: No, because my grandma was moving in and she didn't want us there. So, he made us leave.

Q: Well, isn't it true though that um, that my client accused you of taking some checks and cash from him, from his home?

A: Yeah, I heard that.

Q: Okay. In fact, my client even went as far as to go through some of your personal belongings that you had stored at a friend's house, isn't that correct?

A: Yes, that's correct.

Q: This was upsetting to you to say the least.

A: Yes.

Q: And it was shortly after he confronted you about this and went through your belongings that,

A: He never confronted me.

Q: Well, then if he didn't confront you then, it was shortly after you learned of these allegations that you called the police in September, isn't that correct?

A: That has nothing to do with it.

Q: I'm not asking if it had nothing to do with it, I'm asking you the time period, that it was a short period of time after you,

A: No, that's not correct.

Q: discovered,

A: That's not correct. That's not correct.

Q: Okay. What was the time period in your mind then?

A: In my mind, I lived, I didn't live with him or anybody. As a matter of fact, I was moving out of his house when . . . I took my stuff from his house to my friend's house. I left, I went on a road trip and when I come [sic] back to find out that he had went [sic] through all my stuff.

Q: And this was in the fall of '07.

A: No, this is summer.

Q: August/September of '07.

A: This was summer. Thus was June '07.

Id. at 91-92. The trial court sustained the State's objection to testimony regarding Skiles' theft allegation, finding that that allegation was "far enough removed" from the date of J.D.'s disclosure of the molestation that the theft allegation was not admissible. Id. at 95.

Skiles argues that he should have been allowed to cross-examine H.G. about the reason he had asked her to move out. He alleges that such evidence would have shown H.G.'s bias and that the failure to allow such cross-examination prevented him from exercising his Sixth Amendment right to confront the witness. A defendant's Sixth Amendment right of confrontation requires that the defendant be afforded an opportunity to conduct effective cross-examination of State witnesses to test their believability. Kirk v. State, 797 N.E.2d 837, 740 (Ind. Ct. App. 2008), trans. denied. Further, Indiana Evidence Rule 616 provides that, "for the purpose of attacking the credibility of a witness, evidence of bias, prejudice, or interest of the witness for or against any party to the case is admissible." As this Court has recognized, evidence of bias, prejudice, or

ulterior motives, on the part of a witness, is relevant at trial because it may discredit the witness or affect the weight of the witness's testimony. Id.

Here, H.G. testified outside the presence of the jury that, in June of 2007, Skiles had gone “through all [of her] stuff,” purportedly because Skiles suspected her of taking checks from him. Transcript at 92. That incident occurred three months before J.D. told her mother about the molestation. The trial court found that the June 2007 theft allegation was “far enough removed” from J.D.’s disclosure to make the allegation inadmissible to show bias. Id. at 95. But Skiles was allowed to ask H.G. whether she was upset that she was asked to move out of Skiles’ home, both in 2006 and 2007. Skiles has not shown that the trial court’s decision was clearly erroneous, without reason, or based upon impermissible considerations. See Walker, 808 N.E.2d at 92.

As for his Sixth Amendment right to confrontation, we observe that the Sixth Amendment only guarantees ““an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.”” Rubalcada v. State, 731 N.E.2d 1015, 1021 (Ind. 2000) (quoting Pennsylvania v. Ritchie, 480 U.S. 39, 53 (1987), overruled in part on other grounds) (emphasis in original). Except for the mere allegation, Skiles also has not shown that the trial court’s refusal to admit evidence of his theft allegation impinged on his Sixth Amendment right to confront H.G. As such, we cannot say that the trial court abused its discretion when it limited his cross-examination of H.G. regarding the theft allegation.

Issue Two: Sufficiency of Evidence

Skiles also contends that the evidence is insufficient to support his conviction. When reviewing a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the judgment and the reasonable inferences that may be drawn from that evidence to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

To prove that Skiles committed child molesting, as a Class C felony, the State was required to show beyond a reasonable doubt that he performed or submitted to any fondling or touching with J.D., a child who was then under the age of fourteen years, with the intent to arouse or satisfy the sexual desires of J.D. and/or the sexual desires of Skiles. See Ind. Code § 35-42-4-3. Skiles argues that the State did not prove that he intended to arouse or satisfy his sexual desires. But Skiles ignores that the offense was charged in the disjunctive, alleging that he intended to arouse or satisfy his or J.D.'s sexual desires. He does not argue that the evidence is insufficient to show that he intended to arouse or satisfy the sexual desires of his victim. Therefore, his argument must fail.

Even if we consider whether the evidence shows that Skiles intended to arouse or satisfy his own sexual desires, his argument again fails. The element of intent of child molesting may be established by circumstantial evidence and inferred from the actor's conduct and the natural and usual sequence to which such conduct usually points. Wise v. State, 763 N.E.2d 472, 475 (Ind. Ct. App. 2002), trans. denied. ““The intent to arouse

or satisfy sexual desires may be inferred from evidence that the accused intentionally touched a child's genitals.'" Id. (quoting Lockhart v. State, 671 N.E.2d 893, 903 (Ind. Ct. App. 1996)). Here, Skiles admitted that he touched J.D.'s vaginal area under her underclothes. While he claimed that he was asleep and that his hand may have been moving as he slept, the jury rejected that scenario. We believe that the evidence is sufficient for a jury to find Skiles guilty.

Skiles also makes a general argument regarding the sufficiency of evidence, as follows:

It defies all sense of logic and reason that David Skiles would have spent a great deal of time over a span of years with the alleged victim and her siblings with absolutely no incidents and suddenly decide to molest the alleged victim under the circumstances presented. . . . Yet on the night this supposedly happened, not only were the alleged victim and Mr. Skiles on the couch in the living room, but the alleged victim's brother and sister were also in the same room, her parents were in the house, and Mr. Skiles' mother and son were also there.

Appellant's Brief at 15. Skiles also argues that he was

well aware that the alleged victim and her siblings were taught continually about good touch/bad touch by their parents since they were young. She had been taught to immediately tell an adult and not keep it to themselves [sic] and not to blame themselves [sic] for it. It defies standard logic that he would molest her knowing this. Further, the child did not do what she had been taught for so long to do if the molestation in fact took place, because she testified she did not tell her mother for [sic] approximately two years after it happened.

Id. at 15-16. But Skiles' argument amounts to a request that we reweigh the evidence, which we cannot do. See Jones, 783 N.E.2d 1139. The evidence is sufficient to support Skiles' conviction.

Affirmed.

KIRSCH, J., and BARNES, J., concur.