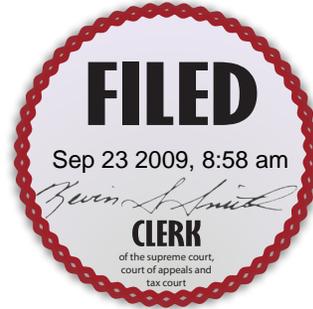


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

DAVID SHORE,)

Appellant-Defendant,)

vs.)

No. 71A03-0903-CR-98)

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable John M. Marnocha, Judge
Cause No. 71D02-0807-FC-223

September 23, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant David Shore appeals his conviction for Class C felony Child Molesting,¹ alleging that there is insufficient evidence. We affirm.

Facts and Procedural History

Between November 2003 and November 2004, E.S., who was eight at the time, lived with her parents and brother in their home. Shore is the father of E.S. E.S. is moderately mentally handicapped, requiring extra attention as compared to other children her age. E.S. testified that during this time period Shore touched her bottom, vaginal area and her breasts² with his hand. During these incidents, Shore asked E.S., “Do you want to touch my body?” to which E.S. said no. Trial Transcript at 213.

In December 2007, E.S. was removed from her home and placed in a therapeutic foster home based on allegations that her brother had touched her inappropriately. In July of 2008, E.S. saw a commercial on the television that encouraged parents to talk to their children about sex. E.S. then walked into the kitchen and stood very close to her foster mother, looking at her. Her foster mother asked E.S. if she was okay, and E.S. asked whether parents are supposed to show their kids about sex. The foster mother explained that the commercial meant that parents should provide information to their children about sex, not show them. Later that day, the foster mother noticed that E.S. was unusually quiet when they were riding in the car. When prompted as to what was bothering her, E.S. began talking

¹ Ind. Code § 35-42-4-3(b).

² E.S. referred to her bottom as “butt,” her vaginal area as her “private” and her breasts as “boobs.” Trial Transcript at 212.

about the commercial. Based on the conversation, the foster mother made a report to the St. Joseph County Department of Child Services.

On July 30, 2008, the State charged Shore with Child Molesting, as a Class C felony. After a jury trial in January of 2009, Shore was found guilty as charged and sentenced to six years imprisonment at the Indiana Department of Correction.

Shore now appeals.

Discussion and Decision

Shore contends that his actions were mere touching and that the State did not prove that he touched E.S. with intent to arouse or satisfy his sexual desires. Our standard of review for insufficiency claims is as follows:

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. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (citations and quotations omitted) (emphasis in original).

To obtain a conviction for Class C felony Child Molesting as charged, the State was required to prove that Shore knowingly fondled or touched E.S., a child under the age of

fourteen, with the intent to arouse or satisfy his sexual desire. See Ind. Code § 35-42-4-3(b).

Shore argues that the mere touching that occurred was not sufficient to prove that there was the requisite intent to arouse or satisfy sexual desire. However, he does acknowledge that such intent may be established through circumstantial evidence. See Rodriguez v. State, 868 N.E.2d 551, 553 (Ind. Ct. App. 2007). Furthermore, intentional touching of the genital area can be circumstantial evidence of intent to arouse or satisfy sexual desires. Sanchez v. State, 675 N.E.2d 306, 311 (Ind. 1996).

Here, E.S. indicated that Shore touched her bottom, her vaginal area and her breasts with his hand. She described the touching as a “bad touch.” Trial Transcript at 222. During most of the incidents, neither she nor Shore was wearing clothes. She also said that Shore, during at least one incident of touching, nicely asked her whether E.S. wanted to touch his body to which E.S. replied negatively. E.S. said that there were five times when Shore touched her inappropriately and that each occurred in her mother’s room in her home. She said that these incidents made her sad. Furthermore, in his second interview with Detective Sergeant Tim Lancaster, Shore admitted to intentionally touching the vaginal area of E.S. He also admitted to having urges and that he would stay away from his home as a way to keep his children safe. When Detective Lancaster stated that Shore intentionally touched the vaginal area of E.S. and that it was wrong to touch her in a sexual way, Shore nodded his head and said, “Uh-huh.” State’s Ex. 4. This evidence is sufficient to establish that Shore touched E.S. with the intent to arouse or satisfy his sexual desires.

Affirmed.

VAIDIK, J., and BRADFORD, J., concur.