UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1731

September Term, 2014

IN RE: NAJEE P.

Krauser, C.J.,
Graeff,
Friedman,

JJ.

Opinion by Krauser, C. J.

Filed: September 16, 2015

Found involved in fourth degree sexual offense and second degree assault by the Circuit Court for Prince George's County, sitting as a juvenile court, Najee P. presents the following question for our review:

> Did the State fail to present sufficient evidence that Najee P. committed fourth degree sexual offense?

For the reasons that follow, we shall affirm.

BACKGROUND

On March 12, 2014, just past noon, fifteen-year-old Faith B. walked two of her neighbor's children, six-year-old Nathan and four-year-old Sammy, down to a creek, near the end of their street, for an outing. There, Faith saw three boys: Chance and Toby, whom she knew, and appellant, whom she had never seen before.

When Faith and her two little companions arrived at the creek, Chance and Toby quickly left the scene, whereupon appellant approached Faith. He asked her about her relationship with Chance. After responding that she and Chance used to date, Faith decided to leave the area as she did not know appellant and he would not leave her alone.

Faith then picked up the younger boy, Sammy, put him on her hip, and grabbed Nathan's hand. As they started to walk away from the area, appellant came up behind Faith and then, as Faith later put it, "he reached around and touched my breasts," with both of his hands. Faith "spun" away from appellant in an effort to get away from him, whereupon appellant "bit" her cheek. Faith did not consent to either of these unwanted touchings.

As Faith walked back towards her home with the two young boys, appellant followed her. After Faith told the boys to run back up the hill to ensure their safety, appellant, in Faith's words, "came around and he put me in a headlock and kissed me, which was not wanted," later adding that, when he kissed her, appellant "stuck his tongue" in her mouth.

When she pushed appellant away from her, appellant grabbed Faith's cellphone from her. Faith, in return, snatched appellant's glasses and told him that if he returned her phone, she would return his glasses. Appellant then gave Faith her cellphone, at which point Faith noticed that appellant had entered his own phone number into the contacts list on her phone. Faith then took flight, running back up the hill, grabbing the two children, and running home with them.

Although Toby W. testified at trial that he never saw appellant touch or kiss Faith and insisted that "nothing, nothing happened," the court found, beyond a reasonable doubt, that appellant committed the acts alleged, specifically, "the touching of the breast and kissing [Faith] against her will." Consequently, the court found appellant involved in the delinquent acts of fourth degree sexual offense and second degree assault.

DISCUSSION

Although appellant does not contest the court's finding on the charge of second degree assault, he does challenge the court's finding that he was involved, beyond a reasonable doubt, in a fourth degree sexual offense. Although appellant concedes that the evidence established that he touched Faith B.'s breasts, he maintains that there was

insufficient evidence to show that the touching was sexually oriented or motivated. The State disagrees, responding that, when appellant touched Faith's breasts, he did so for the purpose of sexual arousal or gratification. The court below agreed with the State, and so do we.

Maryland has adopted "a separate system for juvenile offenders, civil in nature." *In re Victor B.*, 336 Md. 85, 91 (1994); *see also In re Areal B.*, 177 Md. App. 708, 714 (2007) ("Juvenile causes are civil, not criminal proceedings") (citation omitted). The Juvenile Causes Act (the "Act"), codified at Md. Code (1973, 2013 Repl. Vol., 2014 Supp.), §§ 3-8A-01–3-8A-34 of the Courts and Judicial Proceedings Article ("C.J.P."), "grant[s] jurisdiction in juvenile courts over young offenders and establish[es] the process for treating them, to advance its purpose of rehabilitating the juveniles who have transgressed to ensure that they become useful and productive members of society." *Lopez-Sanchez v. State*, 155 Md. App. 580, 598 (2004) (citation omitted), *aff'd*, 388 Md. 214 (2005), *cert. denied*, 546 U.S. 1102 (2006).

Under Maryland law, a "delinquent act" is "an act which would be a crime if committed by an adult." C.J.P. § 3-8A-01 (l). Before a child may be found "involved" in such an act, the State must present evidence, at an adjudicatory hearing, C.J.P. § 3-8A-18; Md. Rule 11-114, that proves beyond a reasonable doubt the commission of the delinquent act charged. C.J.P. § 3-8A-18 (c)(1); Md. Rule 11-114 (e)(1). And the evidence is legally sufficient to meet this standard, if, "after viewing the evidence in the light most favorable to

the [State], *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *In re Timothy F.*, 343 Md. 371, 380 (1996) (quoting *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)); *accord In re Anthony W.*, 388 Md. 251, 261 (2005). Moreover, "[j]udging the weight of evidence and the credibility of witnesses and resolving conflicts in the evidence are matters entrusted to the sound discretion of the trier of fact." *In re Timothy F.*, 343 Md. at 379. Consequently, we will not disturb the judgment of the trial court "unless the trial judge's findings of fact are clearly erroneous" *In re Anthony W.*, 388 Md. at 261 (citing *In re Timothy*, 343 Md. at 380).

Section 3-308 of the Criminal Law Article provides, in pertinent part, that ""(b) A person may not engage in . . . (1) sexual contact with another without the consent of the other;" Md. Code (2002, 2012 Repl. Vol., 2014 Supp.), § 3-308 of the Criminal Law ("CL") Article. "Sexual contact" is defined as follows:

> (f)(1) "Sexual contact," as used in §§ 3-307, 3-308, and 3-314 of this subtitle, means an intentional touching of the victim's or actor's genital, anal, or other intimate area for sexual arousal or gratification, or for the abuse of either party.
>
> (2) "Sexual contact" does not include:
>
> > (I) a common expression of familial or friendly affection; or
> >
> > (ii) an act for an accepted medical purpose.

CL § 3-301.

It is beyond cavil that a female's breasts constitute an "intimate area." *See Travis v. State*, 218 Md. App. 410, 465 (2014) (recognizing that the breasts of a female victim constitute an intimate area for purposes of fourth degree sexual offense). Nor is there any dispute that the lips and mouth are "intimate areas," especially when those areas are touched by another's lips, mouth, and, as in this case, tongue. *See People v. Rondon*, 579 N.Y.S.2d 319, 320-21 (N.Y. Crim. Ct. 1992) (recognizing that kissing someone, with or without insertion of the tongue, "can be considered a touching of an intimate part, constituting the essential element of sexual abuse").

Because neither appellant nor the State suggest that appellant's touching of appellant's lips and breasts was "for the abuse of either party," as set forth in Section 3-301(f) (1) of the Criminal Law Article, the issue we are asked to determine is whether the evidence was sufficient to show, beyond a reasonable doubt, that appellant's actions were for purposes of "sexual arousal or gratification." A determination that there was sufficient evidence requires proof of specific intent:

> The phrase in CL § 3-301(f)(1) that prohibits contact "for sexual arousal or gratification, or for the abuse of either party" establishes a specific intent requirement. Thus, the State must prove two elements beyond a reasonable doubt: (1) the fact of the touching, and (2) the intent to do so for sexual arousal or gratification.

Bible v. State, 411 Md. 138, 157 (2009).

First of all, there is no dispute that appellant touched Faith's breasts, and thus, the first element is proved. As for the second element, we note that the Court of Appeals

addressed in *Bible v. State* the issue of whether a touching was for sexual gratification was sufficient to support a fourth degree sexual offense conviction. In that case, a seven-year-old female claimed that, while shopping in a Goodwill store, Bible touched her twice on her behind, but on top of her clothes. *Bible*, 411 Md. at 146-47. The victim subsequently identified the culprit as Bible from a photograph and that identification was corroborated when the police, using a recorded surveillance video tape, confirmed that not only was Bible in the store at around the time of the alleged incident, but also that he had been in the same area of the store as the victim. *Id.* at 144. But, that recording did not show any evidence of the actual touching as claimed. *Id.* at 145. Following a trial, Bible was convicted of third and fourth degree sexual offense.

On appeal, Bible challenged those convictions on the grounds that the victim's testimony alone was insufficient, and because there was no evidence suggesting that any touching was intentional. *Bible*, 411 Md. at 147-48. After concluding that a person's buttocks are an intimate area under the statute, *id.* at 156, the Court of Appeals agreed with Bible that the State failed to show, beyond a reasonable doubt, that he had a specific intent to touch the victim for purposes of sexual arousal or gratification. *Id.* at 160. However, the Court discussed other situations where that purpose could be found:

> *Evidence sufficient to support a finding that a touching was done with the purpose of sexual arousal or gratification may be deduced from the circumstances surrounding the touching, or from the character of the touching itself.* Circumstances surrounding the touching that would aid in the determination of whether it was for the purpose of sexual gratification might

> include whether the defendant and victim were strangers or knew each other; whether either party was undressed; whether anything was spoken between them; whether the touching occurred in public or in a secluded area; whether the defendant showed any signs of sexual arousal; or whether the defendant behaved in a nervous or guilty manner when another person came upon the scene. With respect to the touching, the motion, the duration, and the frequence are all important. This list is not exhaustive, but merely descriptive of the type of circumstantial evidence that would be relevant.

Bible, 411 Md. at 158 (emphasis added).

Therefore, *Bible* instructs that sexual intent may be inferred from the surrounding circumstances. We next turn to *LaPin v. State*, 188 Md. App. 57 (2009), a case decided just two weeks before *Bible* was reported, which addressed a similar situation. LaPin was convicted of sexual abuse of a minor, second degree assault and fourth degree sexual offense. The charges stemmed from an incident involving his 14-year-old niece at a family member's home. Although LaPin and the victim gave conflicting accounts of the underlying events, LaPin admitted to grabbing the victim's breasts and to possibly touching her legs on the outside of her clothing. But, he claimed that it was just "fun and games" and not for purposes of sexual gratification. *Id.* at 64.

On appeal, LaPin maintained that the evidence was insufficient to sustain his conviction for fourth degree sexual offense because there was insufficient evidence presented showing that the touching in question was for sexual or gratification, or for the abuse of either party. *LaPin*, 188 Md. App. at 75-76. After explaining that, although LaPin claimed he did not touch the victim for sexual gratification, the jury was free to disbelieve

his testimony. *Id.* at 77. *See Pryor v. State*, 195 Md. App. 311, 329 (2010) ("A fact-finder is free to believe part of a witness's testimony, disbelieve other part's of a witness's testimony, or to completely discount a witness's testimony"). We agreed "that a jury properly could infer that the touching of a girl's breasts was for the purpose of sexual gratification without specific proof that it was so motivated." *LaPin*, 188 Md. App. at 77 (citing *Holloway v. State*, 849 S.W.2d 473, 476 (Ark. 1993)).

Then, in holding that the evidence was sufficient to sustain LaPin's convictions, we observe that, in addition to touching the victim between her legs, LaPin repeatedly touched the victim's breasts despite her requests to stop. *LaPin*, 188 Md. App. at 77-78. We further noted that LaPin made several statements supporting an inference that his intent was sexual in nature, including, but not limited to, stating "Ooooh baby," when the victim hit him back and asked how he liked it, and, at another point, stating "Oooh, these [the victim's breasts] are nice, I need to mount these on the wall." *Id.* In addition, when appellant and the victim were in what was described as a "computer room," appellant was viewing a half-naked woman in a leather suit, and then stated, in the victim's presence, "I'm going to whip you with a whip and put you in this suit." We therefore concluded that "[t]hese statements, in conjunction with appellant's repeated touching of the victim, were sufficient to establish, beyond a reasonable doubt, that appellant touched the victim for the purpose of sexual arousal or gratification, or for abuse." *LaPin*, 188 Md. App. at 77-78.

In this case, Faith was babysitting two young boys when she encountered appellant and several of his companions, at a creek, near the end of the road on which she lived. After appellant's companions left the area, appellant, a person whom Faith did not know, started asking her about her prior romantic relationship with Chance, one of the individuals who had just left the scene. Feeling uncomfortable, Faith put one of the children she was babysitting on her hip, and then started to lead the other boy away from the area by hand. At that point, appellant came up behind Faith and touched her breasts with both hands, without her consent. This act alone arguably was sufficient to show that appellant did so for his own sexual arousal and gratification.

Then, appellant continued to pursue Faith in a sexual and unwanted manner. He "bit" her on the cheek, without her consent. And, when Faith directed the children she was with to run to safety, appellant approached her from behind, put her in a headlock, turned her around, kissed her, and "stuck" his tongue in her mouth. After Faith pushed him away, appellant snatched her phone and entered his own phone number into her contacts list on her cellphone.

We conclude that a fair and rational inference can be made that appellant touched Faith's intimate areas to further his own sexual arousal and gratification. Accordingly, the evidence was sufficient for the juvenile court to find appellant involved in the delinquent act of fourth degree sexual offense, beyond a reasonable doubt.

JUDGMENTS AFFIRMED.
COSTS TO BE PAID BY APPELLANT.