

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jason Doolittle,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 6, 2023

Court of Appeals Case No.
23A-CR-524

Appeal from the Allen Superior
Court

The Honorable Frances C. Gull,
Judge

Trial Court Cause No.
02D05-2204-F4-31

Memorandum Decision by Judge Bradford
Judges Vaidik and Brown concur.

Bradford, Judge.

Case Summary

- [1] Jason Doolittle was charged with and convicted of Level 4 felony child molesting in relation to inappropriate sexual behavior involving his then-twelve-year-old daughter. On appeal, Doolittle challenges the sufficiency of the evidence to sustain his conviction. We affirm.

Facts and Procedural History

- [2] Doolittle is the biological father of A.D., who turned twelve in June of 2021. During the summer of 2021, A.D. lived with her mother in Michigan but visited Doolittle frequently at his home in Fort Wayne.
- [3] On one occasion in June before A.D.'s twelfth birthday, A.D. watched a movie with Doolittle; her twelve-year-old half-brother, J.J.; and their cousin, Cayden, in the living room of Doolittle's apartment. While watching the movie, J.J. and Cayden sat on the floor in front of the television, while A.D. and Doolittle sat on the couch behind them. At some point, A.D. had lain long-ways with her back propped on the arm of the couch, while her feet rested on Doolittle's thighs. Doolittle started to massage A.D.'s bare legs with his hands but the massage eventually progressed to include "a little bit of like harsher squeezes and it moved up the leg to like more of the thighs and a little bit on the inner thighs." Tr. Vol. II p. 152. Although the incident "didn't feel right," A.D. did not report it because she was scared. Tr. Vol. II p. 153. Instead, she "tried to tell [herself] that's something that people do with their daughters, that's just

something that happens, you know, that's like totally normal." Tr. Vol. II p. 153.

[4] A few days after A.D.'s twelfth birthday, A.D. watched a television show with Doolittle and J.J. in Doolittle's bedroom. On this occasion, J.J. sat on the floor with his blanket while A.D. and Doolittle sat on a couch, which doubled as Doolittle's bed. A.D. was positioned as she had been during the prior incident, with her back propped on the arm of the couch and her feet on Doolittle's thighs. Similar to the first incident, Doolittle started to massage A.D.'s legs "but – there was a lot more in – more inside the thighs grabbing and he kind of touched [A.D.'s] sides under [her] shorts ... and then kind of went up to [her] torso and went ... in between [her] chest with his hand." Tr. Vol. II p. 154. Doolittle moved his hand "over [A.D.'s] nipples and passed over each." Tr. Vol. II p. 154. A.D. experienced pain when Doolittle's hand touched each of her nipples because the "callouses on his hands [were] really rough against [her] sensitive skin." Tr. Vol. II p. 155. In an attempt to separate herself from Doolittle, A.D. pulled a blanket from the top of the couch onto her and crossed her arms under her ribcage, but Doolittle "just went in again." Tr. Vol. II p. 155. Doolittle eventually "retracted his hand and fell asleep." Tr. Vol. II p. 55. Throughout the incident Doolittle "never looked at" A.D. Tr. Vol. II p. 156.

[5] A.D. felt betrayed and slept that night as far away from Doolittle as she could, "slumped against the drawers of his wardrobe on the far – on the wall closest to the door." Tr. Vol. II p. 156. A.D. told J.J. about the incident, and he suggested that she talk to Holly, a neighbor that he trusted. A.D., however,

“never ended up” reporting the incident to Holly. Although she saw Doolittle on various occasions in the months that followed, A.D. did not return to Doolittle’s home after the second incident.

[6] On October 27, 2021, A.D. became upset at school after “going to dinner with [Doolittle] after a volleyball game” the night before and overhearing a joke about “algae-bra” in math class. Tr. Vol. II pp. 157, 173. A.D., displaying signs of anxiety, disclosed the incidents involving Doolittle to Amy Mroczek, a school counselor intern. Mroczek reported the disclosure to the Michigan Department of Child Protective Services, which then notified the Indiana Department of Child Services (“DCS”) through DCS’s centralized hotline.

[7] Fort Wayne Police Sergeant Todd Battershell was assigned to investigate A.D.’s claims. During his investigation, while executing a search warrant at Doolittle’s apartment, Sergeant Battershell observed that Doolittle’s hands were “rough and calloused.” Tr. Vol. II p. 185. When A.D. was interviewed about the incidents by Lorrie Frieburger at the “Dr. Bill Lewis Center for Children,” A.D. exhibited signs of being “[a]nxious, withdrawn a little bit, [and] nervous.” Tr. Vol. II pp. 198, 217. A.D.’s mother also testified that since the incidents in June of 2021,

It’s been very, very hard on her. She is in middle school now and so things that may be innocent talking for another kids, maybe about like – maybe you might slap like their butts or something like that, and something like that can throw her into a breakdown, and then she’ll have kids picking on her because she’s crying. So I’ve got her seeing a social worker once a week. She does get bullied and I think that maybe just all the extra

stress makes it a little harder; and so anytime she's feeling like she is on the verge of a breakdown or if she has a breakdown, she's able to go to the counselor, go sit in the office, and there's always someone there for her. Yeah, it's been really hard. The anxiety and depression – for example, when you go to school, a lot of teachers wanted to shake her hand, and she doesn't want to be touched by men, she doesn't want their arm around them or anything like that, and so, you know, I can try to talk to teachers about that, like "Make sure you give her her personal space," but sometimes you just don't catch it, and so then she's put in an uncomfortable situation where she's visibly uncomfortable and then they're really uncomfortable too, 'cause no one wants to make her uncomfortable.

Tr. Vol. II pp. 138–39.

- [8] On April 1, 2022, the State charged Doolittle with Level 4 felony child molesting. Following a jury trial, Doolittle was found guilty as charged. On February 10, 2023, the trial court sentenced Doolittle to an eight-year term of incarceration.

Discussion and Decision

- [9] Doolittle challenges the sufficiency of the evidence to sustain his conviction for Level 4 felony child molesting.

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 factfinder 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) (cleaned up). Stated differently, in reviewing the sufficiency of the evidence, “we consider only the evidence and reasonable inferences most favorable to the convictions, neither reweighing evidence nor reassessing witness credibility” and “affirm the judgment unless no reasonable factfinder could find the defendant guilty.” *Griffith v. State*, 59 N.E.3d 947, 958 (Ind. 2016).

[10] In order to prove that Doolittle committed Level 4 felony child molesting, the State was required to prove that Doolittle “with a child under fourteen (14) years of age, performs or submits to any fondling or touching, of either the child or the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person.” Ind. Code § 35-42-4-3(b). “The intent to arouse or satisfy the sexual desires of the child or the older person may be established by circumstantial evidence and may be inferred from the actor’s conduct and the natural and usual sequence to which such conduct usually points.”

Rodriguez v. State, 868 N.E.2d 551, 553–54 (Ind. Ct. App. 2007) (cleaned up).

[11] In challenging the sufficiency of the evidence to sustain his conviction, “Doolittle does not argue that the State failed to establish any particular

element of the crime charged; rather, that the rule of incredible dubiousity renders the evidence insufficient as a whole.” Appellant’s Br. p. 12.

Under the incredible dubiousity rule, this court may impinge upon the jury’s responsibility to judge the credibility of witnesses when confronted with inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony. If a sole witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence, a defendant’s conviction may be reversed. Application of this rule is rare, though, and the standard to be applied is whether the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it. This incredible dubiousity rule applies only when a witness contradicts himself or herself in a single statement or while testifying, and does not apply to conflicts between multiple statements.

Livers v. State, 994 N.E.2d 1251, 1256 (Ind. Ct. App. 2013) (cleaned up).

[12] Doolittle supports his incredible-dubiousity argument with his claim that “A.D.’s explanation of how her father was able to do these things in a small room with potential witnesses present is inherently improbable.” Appellant’s Br. pp. 15–16. We have previously rejected a similar argument in *Brummett v. State*, 10 N.E.3d 78, 89 (Ind. Ct. App. 2014), *summarily affirmed in Brummett v. State*, 24 N.E.3d 965 (Ind. 2015), concluding that the victim’s testimony that the abuse had occurred in the presence of other individuals “does not run so counter to human experience that no reasonable person could believe it.” Doolittle also claims that “[t]he delay in reporting from June to late October of 2021 is dubious and ... prevented potential exculpatory (and, in theory, inculpatory) evidence to be collected.” Appellant’s Br. p. 16. Doolittle, however, has cited

no authority, and we are aware of none, indicating that a four-month delay in reporting sexual abuse renders a child victim's testimony incredibly dubious.

[13] Doolittle further claims that "A.D.'s testimony on cross examination contradicted her testimony on direct." Appellant's Br. p. 16. In making this claim, Doolittle cited to page 157 of volume two of the transcript and asserted that A.D. had testified that she had not "had contact with her father after the last June 2021 incident." Appellant's Br. p. 15. Doolittle argues that A.D.'s testimony was contradicted on cross-examination when she acknowledged that she had had numerous contacts with Doolittle "after June and before October 27, 2021," including asking him for help with volleyball, playing volleyball and going to dinner with him and other family members, and attending a fall festival with him prior to reporting the sexual touchings. Appellant's Br. p. 15. However, review of the record indicates that Doolittle's representation of A.D.'s testimony is inaccurate as she had only testified that she did not think that she had gone "to his house after that." Tr. Vol. II p. 157. A.D. acknowledged on direct examination that she had had further contact with Doolittle, testifying that "he did come to a parents['] night at a volleyball game." Tr. Vol. II p. 157. Her description of further contact with Doolittle in late summer and early fall of 2021 is not inconsistent with her testimony that she had not returned to Doolittle's residence after June of 2021.

[14] Again, application of the incredible-dubiosity rule "is rare and the standard to be applied is whether the testimony *is so incredibly dubious or inherently improbable that no reasonable person could believe it.*" *Love v. State*, 761 N.E.2d 806, 810 (Ind.

2002) (emphasis added). Such was not the case here. Rather, because A.D.'s testimony regarding the important facts regarding Doolittle's molestation was consistent and straightforward, we conclude that Doolittle cannot avail himself of the incredible-dubiosity rule. *See Smith v. State*, 163 N.E.3d 925, 930 (Ind. Ct. App. 2021) (rejecting Smith's claim that the victim's testimony had been incredibly dubious because the victim's testimony on the important facts regarding the molestation remained consistent).

[15] The judgment of the trial court is affirmed.

Vaidik, J., and Brown, J., concur.