## MEMORANDUM DECISION





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# IN THE COURT OF APPEALS OF INDIANA

Joshua Adamson,
*Appellant-Defendant,*

v.

State of Indiana,
*Appellee-Plaintiff*

December 18, 2023

Court of Appeals Case No. 23A-CR-1314

Appeal from the Kosciusko Superior Court

The Honorable Karin A. McGrath, Judge

Trial Court Cause No. 43D01-2202-FA-100

**Memorandum Decision by Judge May**
Judges Bailey and Felix concur.

**May, Judge.**

[1] Joshua Adamson appeals his conviction of Level 3 felony rape[1] and the enhanced sentence imposed for that conviction because Adamson is a habitual offender.[2] Adamson argues:

> 1. The evidence was insufficient to support his conviction of rape because his victim's testimony was incredibly dubious; and
>
> 2. The 22-year sentence imposed is inappropriate for his offense and his character.

Because Adamson's arguments fail, we affirm his conviction and sentence.

# Facts and Procedural History

[2] In May of 2021, Adamson lived with his wife of nearly twelve years, E.A., and her sixteen-year-old daughter from a prior relationship, A.A. Late on May 7, 2021, while E.A. was asleep in her bedroom, Adamson entered A.A.'s bedroom without warning while A.A. was on a Facetime video call with her boyfriend, M.M. A.A. was wearing no pants at the time and was showing her genitalia to M.M. by video. A.A. attempted to quickly cover herself with a blanket, as Adamson angrily told A.A. to hang up the phone. A.A. ended the call, tossed her phone to the side, and "tried to play it off" by saying she thought she had cut herself while shaving. (Tr. Vol. 2 a 68.) Adamson did not believe A.A.'s

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[1] Ind. Code § 35-42-4-1(a).

[2] Ind. Code § 35-50-2-8(b).

story and insisted she show him so he could look for the cut. A.A. refused, but Adamson pulled away the blanket covering A.A. A.A. tried to cover herself with her hands, but Adamson pushed her hands away and began touching inside the outer lips of her vagina with his fingers. A.A. was telling him to stop, but he kept telling her to be quiet. A.A. kept fighting back, so Adamson stopped touching her and said, "You can go ahead and tell anybody about this but I'll tell your mom what you and [M.M.] have been doing." (*Id*. at 70.) On May 8, 2021, A.A. wrote a letter on her cell phone to E.A. explaining that A.A. wanted E.A. to divorce Adamson because he had touched her vagina, but A.A. did not share that letter with E.A. at that time.

[3] In January of 2022, A.A. went with her mother and maternal grandfather to her maternal grandfather's doctor appointment. During that outing, A.A. overheard E.A. tell the grandfather that she was going to divorce Adamson. A.A. asked E.A. if she was serious, and after E.A. confirmed that she was, A.A. told E.A. about what happened in May. E.A. immediately took A.A. to the police station to give a report. A.A. reported the incident in May and two times that Adamson had touched A.A. inappropriately when A.A. was younger. A.A. explained that she had not revealed the molestations sooner because, each time he molested her, Adamson had threatened to kill A.A. and E.A. if A.A. told anyone what Adamson had done.

[4] Based on A.A.'s reports, the State charged Adamson with two counts of Class A felony child molesting,[3] one count of Level 3 felony rape, and two counts of Class D felony intimidation.[4] The first set of child molesting and intimidation charges was alleged to have occurred between January 13, 2012, and November 5, 2012, while the second set was alleged to have occurred between April 2013 and January 1, 2014. The State also alleged Adamson was a habitual offender. Following presentation of evidence, a jury found Adamson not guilty of child molesting or intimidation, but guilty of rape and being a habitual offender. The court entered those convictions and ordered the Probation Department to prepare a Pre-Sentence Investigation Report.

[5] Following a sentencing hearing, the trial court found aggravators in Adamson's criminal history, which the court found included crimes of violence, and his "position of care, custody and control of the victim of this offense." (Tr. Vol. 3 at 9.) The court declined to find a mitigator in Adamson's diagnosis of Type 1 diabetes, and the court also noted the aggravators would "significantly outweigh any mitigators even if I was to give some minimal mitigating weight to the medical condition[.]" (*Id.*) For the Level 3 felony rape, the trial court imposed a twelve-year sentence, which the court then enhanced by ten years

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[3] Ind. Code § 35-42-4-3(a) (2007).

[4] Ind. Code § 35-45-2-1 (2006 & 2013).

because of the habitual offender finding. Thus, Adamson's sentence is twenty-two years.

# Discussion and Decision

## 1. Sufficiency of Evidence

[6] We apply a well-settled standard of review when evaluating claims of insufficient evidence:

> Sufficiency-of-the-evidence claims . . . warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility. Rather, we consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt.

*Powell v. State*, 151 N.E.3d 256, 262-63 (Ind. 2020) (internal citations omitted). "The State must prove every element of the crime charged beyond a reasonable doubt." *Willis v. State*, 983 N.E.2d 670, 672 (Ind. Ct. App. 2013).

[7] In support of his assertion the evidence was insufficient to convict him of rape, Adamson argues the testimony of A.A. was incredibly dubious. The incredible dubiosity rule "allows an appellate court to impinge upon the fact-finder's assessment of witness credibility when the testimony at trial was so 'unbelievable, incredible, or improbable that no reasonable person could ever reach a guilty verdict based upon that evidence alone.'" *Carter v. State*, 44

N.E.3d 47, 52 (Ind. Ct. App. 2015) (quoting *Moore v. State*, 27 N.E.3d 749, 751 (Ind. 2015)). Incredible dubiosity is a difficult standard to meet, and we will not interfere with the fact-finder's role unless the testimony runs counter to human experience. *Edwards v. State*, 753 N.E.2d 618, 622 (Ind. 2001). Three requirements must be met for the rule to apply: (1) a sole testifying witness; (2) testimony that is inherently contradictory, equivocal, or the result of coercion; and (3) a complete absence of circumstantial evidence. *Moore*, 27 N.E.3d at 756.

[8] As Adamson notes, his conviction rests on allegations witnessed only by A.A. Nevertheless, to be declared incredibly dubious, A.A.'s testimony would also need to be "inherently contradictory, equivocal, or the result of coercion[.]" *Moore*, 27 N.E.3d at 756. Adamson asserts A.A.'s testimony was contradictory because the letter A.A. wrote to E.A. on her phone on May 8, 2021, indicated Adamson licked her vagina and put his fingers in her vagina, but on the witness stand in May 2023, A.A. recounted only that Adamson placed his fingers in her vagina. While these two recitations of the events by A.A. are not identical, neither are they completely contradictory – in both versions, A.A. reported Adamson placed his fingers in her vagina. Moreover, A.A. did not contradict herself while on the witness stand testifying, which is the focus of an incredible dubiosity analysis. *See Murray v. State*, 761 N.E.2d 406, 409 (Ind. 2002) ("The fact that a witness gives trial testimony that contradicts earlier pre-trial statements does not necessarily render the trial testimony incredibly dubious.").

[9] Nor is there a complete lack of circumstantial evidence. Adamson argues M.M.'s testimony was "merely recounting what A.A. alleged." (Appellant's Br. at 15.) However, while M.M. recounted that A.A. revealed Adamson "had violated her" and "touched her . . . [i]n her private areas[,]" (Tr. Vol. 2 at 155), M.M. also remembered details about A.A. crying and her breathing being shaky around the time when Adamson raped her. These emotional details are circumstantial evidence that A.A. was in distress after Adamson interrupted the video call between A.A. and M.M. While we might be able to imagine reasons A.A. could have been in distress that would not support a conviction of rape, our task is to determine whether the record contains evidence from which a reasonable jury could have found Adamson guilty. *See Powell*, 151 N.E.3d at 262 ("we consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence").

[10] Finally, Adamson claims the jury's finding Adamson not guilty of the charges of child molesting is "significant to this discussion" about the sufficiency of the evidence supporting the rape conviction because the "source of the evidence" was the same for all the charges. (Appellant's Br. at 16.) While Adamson is correct that A.A. was the only witness who was present during the alleged and proven events underlying the crimes charged against Adamson and while Adamson is correct that the jury chose to find Adamson not guilty of child molesting and intimidation, a jury's finding of not-guilty on some charges cannot be used to impugn the veracity of the jury's finding of guilt on another charge. *See*, e.g., *Beattie v. State*, 924 N.E.2d 643, 649 (Ind. 2010) ("Jury

verdicts in criminal cases are not subject to appellate review on grounds that they are inconsistent, contradictory, or irreconcilable."). If anything, the differences in result suggest the jury took seriously the task of weighing separately the evidence as to each crime alleged.

[11] When she testified, A.A. was not equivocal about what Adamson had done to her in May 2021. The events she described, sadly, are not incredible, unbelievable, or improbable. Adamson has not demonstrated A.A.'s testimony was incredibly dubious, and we accordingly affirm his conviction of rape. *See*, *e.g.*, *Smith v. State*, 163 N.E.3d 925, 931 (Ind. Ct. App. 2021) (affirming conviction of child molesting because testimony of sole witness was not incredibly dubious based on inconsistencies between pre-trial statements and trial testimony, given that witness testified unequivocally at trial).

## 2. Inappropriateness of Sentence

[12] Adamson contends his twenty-two-year sentence is inappropriate. Our standard of review regarding such claims is well-settled:

> Indiana Appellate Rule 7(B) gives us the authority to revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Our review is deferential to the trial court's decision, and our goal is to determine whether the appellant's sentence is inappropriate, not whether some other sentence would be more appropriate. We consider not only the aggravators and mitigators found by the trial court, but also any other factors appearing in the record. The appellant bears the burden of demonstrating his sentence [is] inappropriate.

*George v. State*, 141 N.E.3d 68, 73-74 (Ind. Ct. App. 2020) (internal citations omitted).

[13] "Our analysis of the nature of the offense requires us to look at the nature, extent, heinousness, and brutality of the offense." *Pritcher v. State*, 208 N.E.3d 656, 668 (Ind. Ct. App. 2023). As our Indiana Supreme Court has explained, "compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality)" may lead to a downward revision of the defendant's sentence. *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). "When considering the nature of the offense, we first look to the advisory sentence for the crime." *McHenry v. State*, 152 N.E.3d 41, 46 (Ind. Ct. App. 2020). When a sentence deviates from the advisory sentence, "we consider whether there is anything more or less egregious about the offense as committed by the defendant that distinguishes it from the typical offense accounted for by our legislature when it set the advisory sentence." *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021).

[14] The sentencing range for a Level 3 felony is three to sixteen years, with an advisory sentence of nine years. Ind. Code § 35-50-2-5(b) (2014). When a habitual offender finding is attached to a Level 3 felony, a trial court is permitted to sentence the defendant to an additional fixed term between six and twenty years. Ind. Code § 35-50-2-8(i) (2017). Herein, the trial court found aggravators in Adamson's criminal history and his position of care over A.A., and it imposed twelve years for the Level 3 felony, which it enhanced by ten years for the habitual offender finding. Thus, from a sentencing range of nine

to thirty-six years, the court imposed a twenty-two-year sentence. In light of the fact that A.A. was Adamson's sixteen-year-old step-daughter, whom he had lived with since she was about four years old, we see nothing inappropriate about Adamson's crime receiving a sentence near the middle of the possible sentencing range.

[15] Nor do we find his sentence inappropriate for his character. "When considering the character of the offender, one relevant fact is the defendant's criminal history." *Johnson v. State*, 986 N.E.2d 852, 857 (Ind. Ct. App. 2013). An offender's continued criminal behavior after judicial intervention reveals a disregard for the law that reflects poorly on his character. *Kayser v. State*, 131 N.E.3d 717, 724 (Ind. Ct. App. 2019).

[16] Adamson's engagement with the juvenile justice system began when he was eleven years old. In 1994, he was adjudicated a delinquent for an act that would be theft and placed on probation for three months. In 1996, Adamson was again adjudicated a delinquent[5] and ordered to serve a year of probation, which Adamson violated at least twice – one resulting in a stay at the detention center and another resulting in placement at Kinsey Youth Center. Following two separate delinquent acts of conversion in 1999, the juvenile court placed Adamson in White's Institute for nine months, after which Adamson served

[5] The Presentence Investigation Report indicates allegations of theft, burglary, and criminal trespass, but does not indicate which of those were found true by the juvenile court.

probation, which he violated. In 2001, following new allegations of theft, the juvenile court committed Adamson to the Department of Correction.

[17] After reaching adulthood, Adamson continued his pattern of unlawful behavior. In 2002, following allegations of residential entry, criminal trespass, and theft, the trial court imposed a one-year sentence suspended to probation. Adamson violated that probation and spent eleven months in the DOC. Because of another theft in 2002, Adamson received a two-year sentence, with one year suspended to probation, which Adamson violated. In 2003, Adamson was convicted of robbery, which resulted in a four-year sentence, with two years suspended to probation. Adamson again violated probation. In 2006, Adamson pled guilty to criminal recklessness while armed with a deadly weapon and received a suspended sentence, but he violated probation, which caused the court to execute his suspended sentence. In 2008, Adamson again committed conversion, for which he received a suspended sentence. In 2012, Adamson received a three-year sentence for committing domestic battery and intimidation, with E.A. being the victim of those crimes. In 2019, Adamson received a one-year suspended sentence for theft.

[18] Adamson asserts the "overwhelming bulk of [his] criminal history consists of theft related misdemeanors and low-level felonies." (Appellant's Br. at 21.) While theft may have been a consistent presence throughout Adamson's history with the justice system, his record reflects that his crimes have more frequently begun to involve crimes against persons – robbery, battery, and intimidation being examples before the current crime of rape. Adamson points to evidence

of his volunteer and non-profit work, of his diabetes, and of his care for E.A., who is losing her eyesight, but none of these positive qualities render a middle-of-the-road sentence inappropriate for a person with a criminal history as lengthy as Adamson's history. Adamson's sentence is not inappropriate. *See*, *e.g.*, *McCain v. State*, 88 N.E.3d 1066, 1067 (Ind. 2018) (finding forty-year sentence not inappropriate for mother with no criminal history who placed her mouth on the penis of her one-year-old son).

# Conclusion

[19] A.A.'s testimony was not incredibly dubious and, thus, we will not invade the province of the jury and reweigh the evidence. In light of Adamson's character and offense, his sentence is not inappropriate. Accordingly, we affirm.

[20] Affirmed.

Bailey, J., and Felix, J., concur.