MEMORANDUM DECISION

ATTORNEYS FOR APPELLANT

Cara Schaefer Wieneke
Wieneke Law Office, LLC
Brooklyn, Indiana

Ivan A. Arnaez
Evansville, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Nicole D. Wiggins
Deputy Attorney General

Joseph M. Ross
Certified Legal Intern
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Blake Schaefer,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 17, 2022

Court of Appeals Case No. 22A-CR-1426

Appeal from the Warrick Superior Court

The Honorable J. Zack Winsett, Judge

Trial Court Cause No. 87D01-2104-F1-180

Brown, Judge.

[1] Blake Schaefer appeals his convictions for child molesting as a class A felony and as a level 1 felony. We affirm.

Facts and Procedural History

[2] Blake Schaefer, who was born in 1967, and Jeanie Schaefer ("Jeanie") are the parents of A.S., who was born in 2005. When A.S. was five years old, Schaefer pulled down her pants and placed his penis inside her vagina. When she was around ten years old, Schaefer again placed his penis inside A.S. In February 2021, A.S. told her oldest brother and mother, and they confronted Schaefer. Schaefer initially said that he would never hurt A.S., he "paced back and forth like he normally always did when he was nervous," "then it dawned on him," and he said: "I'm going to jail." Transcript Volume II at 249. Schaefer also said "it was true." *Id.* at 250. He "admitted that it had only happened a few times, and it was a few times when [A.S.] was younger and here in the past couple years." Transcript Volume III at 4.

[3] The State charged Schaefer in an amended information with Count I, child molesting as a class A felony; Count II, child molesting as a level 1 felony; and Count III, sexual misconduct with a minor as a level 5 felony.

[4] In April 2022, the court held a jury trial. A.S. testified that she did not feel comfortable around Schaefer because she thought "something was going to happen." Transcript Volume II at 211. She stated that, when she was five years old and sleeping, Schaefer pulled down her pants, and she "was touched." *Id.* When asked when she woke up, she answered: "Whenever . . . his dick was

going inside me." *Id.* at 212. The prosecutor asked: "Did it go in your vagina?" *Id.* A.S. answered affirmatively. When asked if the incident where Schaefer "put his dick inside" her was the only time that happened, she answered in the negative and stated that it happened again when she was around ten years old. *Id.* When asked how many times Schaefer "put his dick inside of" her, she answered: "Twice." *Id.* at 214.

[5] On cross-examination, A.S. confirmed that she told the jury that Schaefer "put his dick inside" her and that she said "inside" her vagina. *Id.* at 241. She indicated that she went to Holly's House on February 19, 2021, and gave a statement to a child forensic interviewer. When asked if she made a statement that Schaefer did "not put his dick in [her], but like he put it on" her, she stated that she was not sure what she said. *Id.* A portion of the recording of A.S.'s statement to the forensic interviewer was played in which the following statement was made: "He didn't put his dick in me, but like he put it on me." *Id.* at 241-242. A.S. acknowledged that she made that statement. On redirect examination, A.S. indicated that the interview at Holly House was the first time she told a stranger what happened and she was nervous and did not "know what to think" during the interview. *Id.* at 242.

[6] The State also presented the testimony of Jeanie, A.S.'s oldest brother, and Warrick County Sheriff's Detective Kyle Tevault. The jury found Schaefer guilty of Count I, child molesting as a class A felony, and Count II, child molesting as a level 1 felony, and not guilty of Count III. The court sentenced

Schaefer to consecutive sentences of thirty years on each count for an aggregate sentence of sixty years.

Discussion

[7] Schaefer argues that A.S.'s statements to the forensic interviewer and her testimony at trial were contradictory. He contends that "[i]nherently contradictory statements from the sole witness to the incidents were not enough, without more, to establish the element of penetration for a Class A felony and Level 1 felony." Appellant's Brief at 9.

[8] When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. *Jordan v. State*, 656 N.E.2d 816, 817 (Ind. 1995), *reh'g denied*. Rather, we look to the evidence and the reasonable inferences therefrom that support the verdict. *Id.* We will affirm the conviction if there exists evidence of probative value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. *Id.* The uncorroborated testimony of one witness is sufficient to sustain a conviction, even if the witness is the victim. *Ferrell v. State*, 565 N.E.2d 1070, 1072-1073 (Ind. 1991). Generally, "[i]nconsistencies in testimony go to its weight and credibility, the resolution of which is the jury's province." *Taylor v. State*, 681 N.E.2d 1105, 1111 (Ind. 1997). "A reviewing court will overturn a conviction if 'a sole witness presents inherently contradictory testimony which is equivocal or the result of coercion and there is a complete lack of circumstantial evidence of the appellant's guilt.'" *Id.* (quoting *Tillman v. State,* 642 N.E.2d 221, 223 (Ind. 1994)). "However, 'in essence, when faced with a claim of inherently

improbable or incredibly dubious testimony, the court on review will reverse only when no reasonable person could believe it.'" *Id.* (quoting *Davis v. State*, 658 N.E.2d 896, 897 (Ind. 1995), *cert. denied*, 516 U.S. 1178, 116 S. Ct. 1275 (1996)).

[9] Count I alleged that between December 2, 2010, and December 1, 2012, Schaefer, a person at least twenty-one years old, "did perform sexual intercourse or deviate sexual conduct with Victim 1[], a child under the age of fourteen years, to-wit: 5-6 years old . . . ." Appellant's Appendix Volume II at 72. Count II alleged that between December 2, 2015, and December 1, 2016, Schaefer, a person at least twenty-one years old, "did perform sexual intercourse or other sexual conduct . . . with Victim 1, a child under the age of fourteen years (14), that is, 10 years old . . . ." *Id.* at 15.

[10] During the time period alleged in Count I, Ind. Code § 35-42-4-3(a) provided that "[a] person who, with a child under fourteen (14) years of age, performs or submits to sexual intercourse . . . commits child molesting" and "the offense is a Class A felony if . . . it is committed by a person at least twenty-one (21) years of age."[1] At that time, Ind. Code § 35-41-1-26 provided that "'[s]exual intercourse' means an act that includes any penetration of the female sex organ

[1] Subsequently amended by Pub. L. No. 158-2013, § 439 (eff. July 1, 2014); Pub. L. No. 247-2013, § 6 (eff. July 1, 2014); Pub. L. No. 168-2014, § 68 (eff. July 1, 2014); Pub. L. No. 187-2015, § 48 (eff. July 1, 2015); Pub. L. No. 190-2021, § 12 (eff. July 1, 2021); Pub. L. No. 78-2022, § 9 (eff. July 1, 2022).

by the male sex organ."[2] During the time period alleged in Count II, Ind. Code § 35-42-4-3(a) provided that "[a] person who, with a child under fourteen (14) years of age, knowingly or intentionally performs or submits to sexual intercourse . . . commits child molesting" and "the offense is a Level 1 felony if . . . it is committed by a person at least twenty-one (21) years of age."[3] Ind. Code § 35-31.5-2-302 provides that "'[s]exual intercourse' means an act that includes any penetration of the female sex organ by the male sex organ."[4] "Precedent makes clear that proof of the 'slightest penetration' of the female sex organ, including penetration of the external genitalia, is sufficient to sustain a conviction for child molestation based on sexual intercourse." *Boggs v. State*, 104 N.E.3d 1287, 1288 (Ind. 2018) (citing *Spurlock v. State*, 675 N.E.2d 312, 315 (Ind. 1996), *on reh'g* (1997); *Dinger v. State*, 540 N.E.2d 39, 40 (Ind. 1989)).

[11] Schaefer fails to show that A.S.'s testimony was so inherently improbable that no reasonable person could believe it. The jury was able to assess A.S.'s credibility and consider her testimony at trial as well as her statement during the forensic interview. During redirect examination, A.S. indicated that the forensic interview was the first time she told a stranger what happened and she was nervous and did not "know what to think" during the interview. Transcript Volume II at 242. We note that, when asked whether he would say,

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[2] Repealed by Pub. L. No. 114-2012, §§ 103 to 132 (eff. July 1, 2012).

[3] Subsequently amended by Pub. L. No. 190-2021, § 12 (eff. July 1, 2021); Pub. L. No. 78-2022, § 9 (eff. July 1, 2022).

[4] Ind. Code § 35-31.5-2-302 was added by Pub. L. No. 114-2012, § 67.

based on his experiences and the cases he had investigated, that disclosures are "a static event" and "happen[] all at once, or is a disclosure a process over time," Detective Tevault answered: "It's a process more. Normally it's a process." Transcript Volume III at 13. He also indicated that delayed disclosure in these types of cases is more common. Further, Jeanie testified that "it dawned on" Schaefer after she confronted him and he said: "I'm going to jail" and "it was true." Transcript Volume II at 249-250. A.S.'s oldest brother testified that Schaefer "admitted that it had only happened a few times, and it was a few times when [A.S.] was younger and here in the past couple years." Transcript Volume III at 4.

[12] Based upon our review of the evidence as set forth above and in the record, we conclude the State presented evidence of a probative nature from which the jury could find beyond a reasonable doubt that Schaefer committed child molesting as a class A felony and as a level 1 felony.[5]

[13] For the foregoing reasons, we affirm Schaefer's convictions.

[14] Affirmed.

Altice, J., and Tavitas, J., concur.

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[5] To the extent Schaefer cites *Spurlock*, we find that case distinguishable. In *Spurlock*, the Court observed "[t]he victim repeatedly testified that Spurlock only 'tried' to have intercourse with her" and "[m]ore importantly, when specifically questioned about penetration, the twelve-year-old victim did not know if penetration had occurred." 675 N.E.2d at 315. Unlike in *Spurlock*, A.S. indicated that Schaefer "put his dick inside of" her twice. Transcript Volume II at 214.