

## MEMORANDUM DECISION

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.



---

### ATTORNEY FOR APPELLANT

Jennifer L. Koethe  
Navarre, Florida

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana

Catherine E. Brizzi  
Deputy Attorney General  
Indianapolis, Indiana

---

## IN THE COURT OF APPEALS OF INDIANA

---

Timothy R. Hale,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

November 1, 2021

Court of Appeals Case No.  
19A-CR-2826

Appeal from the LaPorte Circuit  
Court

The Honorable Thomas Alevizos,  
Judge

Trial Court Cause No.  
46C01-1810-F1-1131

### Shepard, Senior Judge.

- [1] Timothy Hale appeals his convictions of several counts of child molesting as well as a count of child solicitation. We affirm.

## Facts and Procedural History

- [2] Hale dated Tabitha Willoughby on and off for many years. M.B. is Willoughby's daughter, and it was during her childhood that her mother dated Hale. When M.B. was in the seventh grade, she confided in a school counselor that Hale had been touching her inappropriately. Based on M.B.'s allegations of Hale touching her and showing her pornographic material, the State charged Hale with child molesting as a Class A felony,<sup>1</sup> child molesting as a Class C felony,<sup>2</sup> child molesting as a Level 1 felony,<sup>3</sup> two counts of child molesting as a Level 4 felony,<sup>4</sup> child solicitation as a Level 5 felony,<sup>5</sup> and dissemination of matter harmful to minors as a Class D felony.<sup>6</sup>
- [3] A jury found Hale not guilty of the disseminating charge but was hung on the remaining counts. The court declared a mistrial.
- [4] A second jury found Hale guilty of Class A felony child molesting, Level 1 felony child molesting, both counts of Level 4 felony child molesting, and child solicitation. The court imposed an aggregate thirty-year sentence.

---

<sup>1</sup> Ind. Code § 35-42-4-3 (2007).

<sup>2</sup> *Id.*

<sup>3</sup> Ind. Code § 35-42-4-3 (2014), (2015).

<sup>4</sup> *Id.*

<sup>5</sup> Ind. Code § 35-42-4-6 (2014).

<sup>6</sup> Ind. Code § 35-49-3-3 (2006).

## Issues

- [5] Hale presents two issues, which we restate as:
- I. Whether the evidence is sufficient to support Hale's convictions; and
  - II. Whether Hale's sentence is inappropriate.

## Discussion and Decision

### I. Sufficiency of the Evidence

[6] Hale's challenge to the sufficiency of the evidence rests on his contention that M.B.'s trial testimony was incredibly dubious.

[7] In reviewing challenges to the sufficiency of the evidence, we neither reweigh the evidence nor judge the credibility of the witnesses. *Sandleben v. State*, 29 N.E.3d 126 (Ind. Ct. App. 2015), *trans. denied*. Instead, we consider only the evidence most favorable to the verdict and any reasonable inferences drawn therefrom. *Id.* If there is substantial evidence of probative value from which a reasonable factfinder could have found the defendant guilty beyond a reasonable doubt, the verdict will not be disturbed. *Labarr v. State*, 36 N.E.3d 501 (Ind. Ct. App. 2015).

[8] The incredible dubiousity rule has a very limited scope, such that appellate courts may apply it to impinge upon the factfinder's function to judge the credibility of a witness only when confronted with inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiousity.

*Whatley v. State*, 908 N.E.2d 276 (Ind. Ct. App. 2009), *trans. denied*. Stated another way, a defendant's conviction may be reversed only where 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 guilt. *Id.* Application of this rule is rare and is limited to cases where the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it. *Fajardo v. State*, 859 N.E.2d 1201 (Ind. 2007).

[9] Here, Hale asserts that M.B.'s trial testimony was incredibly dubious due to inconsistencies between it and her prior statements. Particularly, Hale alleges discrepancies concerning the number of times he touched M.B.; the terms M.B. used to describe his position when he touched her the first time; M.B.'s description of her position when Hale first touched her; her description of a pole in the basement of his mother's home; her description of where Willoughby was seated during a movie at Hale's trailer; and the number of times M.B. told her cousin about Hale touching her.

[10] Discrepancies between pretrial statements and trial testimony pertain to the weight of the testimony and the credibility of the witness, but they do not render the testimony incredibly dubious. *Chambless v. State*, 119 N.E.3d 182 (Ind. Ct. App. 2019), *trans. denied*. In support of his argument, Hale cites not to the prior statements themselves or M.B.'s direct testimony but to defense counsel's cross-exam and re-cross of M.B. where counsel questions M.B.'s credibility and confronts her about the inconsistencies. While M.B.'s prior

inconsistent statements were appropriately used to attack her credibility, they did not render her trial testimony incredibly dubious.<sup>7</sup>

[11] Hale also contends that M.B. gave inconsistent testimony about whether seven hours spent with her counselor were for trial preparation or unrelated to trial. However, this alleged discrepancy is not germane to evidence of Hale’s guilt and proof of the offenses. *See Rose v. State*, 36 N.E.3d 1055 (Ind. Ct. App. 2015) (affirming that incredible dubiousity involves single witness that is so equivocal about *act charged* that her uncorroborated and coerced testimony was riddled with doubt about its trustworthiness). Thus, this testimony of M.B. is not incredibly dubious but instead bears on her overall credibility and the weight to be given to her testimony.

[12] Finally, to the extent that Hale claims M.B.’s testimony is implausible, we disagree. The rule of incredible dubiousity is extraordinary, and we invoke its use only when faced with testimony that “runs counter to human experience” and which “no reasonable person could believe.” *Campbell v. State*, 732 N.E.2d 197, 207 (Ind. Ct. App. 2000). Having reviewed the trial transcript, we find that the testimony of the fifteen-year-old witness was not so incredibly dubious or inherently improbable that no reasonable person could believe it. There is clear, unequivocal testimony from M.B. that establishes the necessary elements

---

<sup>7</sup> Hale additionally refers to the testimony of two other witnesses concerning the basement pole and the number of times M.B. talked to her cousin, but this evidence cannot support his allegation of incredible dubiousity. *See Whatley*, 908 N.E.2d 276 (application of rule of incredible dubiousity is limited to cases where *single witness* presents inherently contradictory testimony).

of the charged offenses. And, while uncertainties and inconsistencies appear, her testimony on all essential points remained consistent. Accordingly, we decline to invoke the incredible dubiousity rule, and we conclude there was sufficient evidence from which a reasonable trier of fact could find Hale guilty beyond a reasonable doubt.

## II. Inappropriate Sentence

[13] Lastly, Hale claims his sentence is inappropriate given the nature of his offenses and his character. Indiana Appellate Rule 7(B) provides that we may revise a sentence authorized by statute if, after due consideration of the trial court's decision, we determine that the sentence is inappropriate in light of the nature of the offense and the character of the offender. *Thompson v. State*, 5 N.E.3d 383 (Ind. Ct. App. 2014). However, "we must and should exercise deference to a trial court's sentencing decision, both because Rule 7(B) requires us to give 'due consideration' to that decision and because we understand and recognize the unique perspective a trial court brings to its sentencing decisions." *Stewart v. State*, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The principal role of appellate review under Rule 7(B) is to attempt to leaven the outliers, not to achieve a perceived "correct" result in each case. *Garner v. State*, 7 N.E.3d 1012 (Ind. Ct. App. 2014). The defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073 (Ind. 2006).

- [14] To assess whether the sentence is inappropriate, we look first to the statutory range established for the offenses. The advisory sentence for a Class A felony was thirty years, with a minimum of twenty and a maximum of fifty. Ind. Code § 35-50-2-4 (a) (2014). Similarly, the advisory sentence for a Level 1 felony is thirty years, with a minimum of twenty and a maximum of forty years. Ind. Code § 35-50-2-4 (b). The advisory sentence for a Level 4 felony is six years, with a minimum of two and a maximum of twelve years. Ind. Code § 35-50-2-5.5 (2014). Finally, the advisory sentence for a Level 5 felony is three years, with a minimum of one and a maximum of six years. Ind. Code § 35-50-2-6 (2014).
- [15] The court sentenced Hale to the advisory sentence on every count and ordered that the sentences be served concurrently for an aggregate sentence of thirty years.
- [16] As for the nature of the offenses, Hale molested the young daughter of his girlfriend on several occasions over a span of several years.
- [17] As to the character of the offender, Hale has just one prior misdemeanor conviction for disorderly conduct. On appeal, he points to his grandfather's testimony at sentencing concerning his education and early employment.
- [18] In sentencing Hale to concurrent, advisory sentences, the court found Hale's position with regard to the care, custody, and/or control of M.B. to be an aggravating factor. The deference shown to a trial court's sentencing discretion should prevail unless overcome by compelling evidence portraying in a positive

light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality) and the defendant's character (such as substantial virtuous traits or persistent examples of good character). *Stephenson v. State*, 29 N.E.3d 111 (Ind. 2015). Hale has not met this burden.

## Conclusion

[19] We conclude the incredible dubiousity rule does not apply to M.B.'s testimony, and the evidence was sufficient to support Hale's convictions. Furthermore, Hale's sentence is not inappropriate.

[20] Affirmed.

Bailey, J., and Pyle, J., concur.