



ATTORNEY FOR APPELLANT

Elizabeth M. Smith
EMS Legal, LLC
Mooresville, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Caryn Nieman-Szyper
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

William C. Smith,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 11, 2021

Court of Appeals Case No.
20A-CR-842

Appeal from the Morgan Superior
Court

The Honorable Brian H. Williams,
Judge

Trial Court Cause No.
55D02-1802-F4-161

Darden, Senior Judge.

Statement of the Case

- [1] A jury found William Smith guilty of child molesting as a Level 4 felony,¹ and he was sentenced to 1,825 days executed in the Indiana Department of Correction (“DOC”). He appeals his conviction. We affirm.

Issue

- [2] The sole issue Smith raises for review is whether the evidence is sufficient to support his conviction.

Facts and Procedural History

- [3] In January 2018, C.N. was twelve years old and in the sixth grade. She lived with her mother, her stepfather, and her two siblings. At that time, C.N.’s mother was best friends with Smith’s wife, Ashley. C.N. and her siblings would spend time with Smith and Ashley, and sometimes they spent the night at the Smiths’ residence.
- [4] On the day the incident occurred, in early January 2018, C.N. was on Christmas break from school. That day, Smith offered to pick up C.N. so that she could spend the day with Smith, Ashley, and their two children, one of

¹ Ind. Code § 35-42-4-3(b) (2015).

whom is close in age to C.N. C.N. testified that Smith's wife and their two children were with him when he picked up C.N.²

[5] Smith drove Ashley, their children, and C.N. to some local businesses and then drove to the Smiths' home which was located in Morgan County. Shortly thereafter, the group left the home, and Smith dropped off Ashley at her place of employment. Smith then returned to his home with the children. Once there, Smith, C.N., and Smith's younger son sat together on the living room couch. Smith was seated next to C.N., and the younger son sat at the far end of the couch. Smith and C.N. began to watch a movie while the younger son colored in a coloring book. Smith's older son was in his bedroom.

[6] C.N. began to doze off because she had already seen the movie before. As she dozed, Smith began to rub her thigh outside of her clothing which caused C.N. to stir from the doze and attempt to sit up. As she did so, Smith put his finger inside her vagina. C.N. immediately left the couch and went to the bathroom. She was very upset, in shock, and crying. She wanted to send a text message to her mother but realized that she had left her cell phone at her home. Smith tried to convince C.N. to return to the couch. However, she refused and repeatedly asked to go home. Smith eventually agreed to drive C.N. to her home, but made several stops on the way. Upon exiting the vehicle, Smith kissed the palm of C.N.'s hand and stated to her, "your brother is next." Tr.

² C.N.'s mother testified that Smith was alone when he picked up C.N. that day.

Vol. 2, p. 238. Startled by the remarks, C.N. quickly exited Smith's vehicle and ran toward her home. Due to the icy conditions she slipped and fell before entering her home.

[7] After C.N. entered her home, she sat quietly in her bedroom. That night, she did not tell her mother what Smith had done to her. The next day, C.N. went to visit at her biological father's home for the weekend. Per a visitation schedule, C.N. spent time with her biological father every other weekend and on certain days of each week. Sometime over that weekend, C.N. sent text messages to her mother about what Smith had done to her. C.N.'s mother filed a report with the Martinsville Police Department.

[8] On February 1, 2018, Smith was charged with Level 4 felony child molesting. A two-day jury trial was held on February 4-5, 2020, and the jury found Smith guilty as charged. On March 13, 2020, the trial court sentenced Smith to 1,825 days executed in the DOC. Smith appeals.

Discussion and Decision

[9] Smith's sole argument on appeal is that the evidence is insufficient to support his conviction. When reviewing a claim of insufficient evidence, it is well established that our court does not reweigh evidence or assess the credibility of witnesses. *Walker v. State*, 998 N.E.2d 724, 726 (Ind. 2013). Instead, we consider all of the evidence, and any reasonable inferences that may be drawn therefrom, in a light most favorable to the verdict. *Id.* We will uphold the conviction "if there is substantial evidence of probative value supporting each

element of the crime from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt.” *Id.* (quoting *Davis v. State*, 813 N.E.2d 1176, 1178 (Ind. 2004)).

[10] To convict Smith of Level 4 felony child molesting as charged, the State was required to prove beyond a reasonable doubt that he: (1) being at least eighteen years of age (2) performed or submitted to any fondling or touching (3) of either C.N. (a child under fourteen years of age) or himself (4) with the intent to arouse or to satisfy the sexual desires of C.N. or himself. *See* Ind. Code § 35-42-4-3(b); Appellant’s App. Vol. 2, p. 22. Smith does not argue that specific elements are unsupported by sufficient evidence; instead, he argues that the rule of incredible dubiousity renders the evidence insufficient as a whole.

[11] In general, the uncorroborated testimony of the victim is sufficient to sustain a conviction. *Bailey v. State*, 979 N.E.2d 133, 135 (Ind. 2012). We may make an exception, however, when that testimony is incredibly dubious. The incredible dubiousity rule allows the reviewing court to impinge upon the factfinder’s responsibility to judge the credibility of witnesses when confronted with evidence that is “so unbelievable, incredible, or improbable that no reasonable person could ever reach a guilty verdict based upon that evidence alone.” *Moore v. State*, 27 N.E.3d 749, 751 (Ind. 2015). The rule is applied in limited circumstances, namely where there is “[(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.” *Id.* at 756.

Application of the incredible dubiousity 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). “[W]hile incredible dubiousity provides a standard that is ‘not impossible’ to meet, it is a ‘difficult standard to meet, [and] one that requires great ambiguity and inconsistency in the evidence.’” *Moore*, 27 N.E.3d at 756 (quoting *Edwards v. State*, 753 N.E.2d 618, 622 (Ind. 2001)).

[12] Smith makes an argument for each of the three *Moore* factors of the incredible dubiousity rule. We address each argument in turn.

1. Sole Testifying Witness

[13] The State presented three witnesses at Smith’s trial: C.N., C.N.’s mother, and the detective assigned to the case. Nevertheless, Smith argues that the incredible dubiousity rule, which generally only applies in cases with a sole testifying witness, should apply to the instant case because “the jury could only have relied on the testimony of C.N. to reach a verdict.” Appellant’s Br. p. 7.

[14] In *Moore*, our Supreme Court found that the first factor, a sole testifying witness, was not met because “there were multiple testifying witnesses that the jury *could have relied upon* in reaching its verdict,” and their analysis of the case could have ended there. 27 N.E.3d at 757-58 (emphasis added). However, upon reviewing the testimony and evidence and applying this standard to the instant case, we find that the first factor is met or has been satisfied by Smith.

[15] C.N.’s testimony was critical to the state’s case in-chief. The testimony of the two other witnesses is lacking in specificity to establish the necessary factual

basis of the crime. Neither C.N.'s mother nor the detective assigned to the case were eyewitnesses to the incident, leaving only C.N.'s testimony to prove or establish the elements of the crime. *See Smith v. State*, 34 N.E.3d 1211, 1221-22 (Ind. 2015) (noting that although three witnesses testified, without the allegedly incredibly dubious testimony of the one witness, the remaining witnesses' testimony would have been insufficient to establish a legal factual basis for the jury to even consider). Therefore, with the first factor having been met or satisfied our analysis continues.

[16] Our Supreme Court ruled that each of the three factors must be satisfied in order to invoke the incredible dubiousity rule. *See Moore*, 27 N.E.3d at 758. As a result, we find that even if the first factor is satisfied when multiple witnesses testify but only one is an eyewitness, Smith must still show the remaining *Moore* factors are met or satisfied. As we discuss below, Smith has failed to do so.

2. Testimony Inherently Improbable, Equivocal, or Coerced

[17] Next, Smith argues that C.N.'s testimony was inherently contradictory and equivocal because "C.N. [wa]s unsure about the actual events that occurred[.]" Appellant's Br. p. 8. Smith directs our attention to C.N.'s uncertainty regarding whether on the day the incident occurred, Smith was alone or with his family when he picked her up from her home, and whether one of the stops Smith made while driving the group to various locations around town was at a relative's home. Smith complains of inconsistencies between C.N.'s testimony provided during a deposition and her testimony provided at trial. However,

“witness testimony that contradicts [a] witness’s earlier statements does not make such testimony ‘incredibly dubious.’” *Stephenson v. State*, 742 N.E.2d 463, 498 (Ind. 2001).

[18] Moreover, C.N. unequivocally testified that while she was seated on the couch next to Smith watching a movie, she began to doze off. As she did so, Smith began to rub her thigh. She shifted her position because the thigh rub felt uncomfortable, and suddenly she felt Smith put his finger inside her vagina.

[19] C.N.’s testimony on the important facts regarding Smith’s molestation remained consistent. Therefore, we conclude that C.N.’s testimony was not inherently contradictory or equivocal, and thus, the second *Moore* element has not been established.

3. Circumstantial Evidence

[20] Finally, Smith argues that there was a “complete absence of circumstantial evidence”—specifically, there was “no physical evidence, . . . no recording of the events, [and] . . . no eyewitness testimony.” Appellant’s Br. p. 9. Nevertheless, incredible dubiousity is not available to invalidate C.N.’s testimony as we have determined that her testimony is not inherently contradictory or equivocal. *See Whedon v. State*, 765 N.E.2d 1276, 1278 (Ind. 2002) (explaining that the incredible dubiousity rule applies only “where a sole witness presents inherently contradictory testimony that is equivocal or coerced *and* there is a lack of circumstantial evidence of guilt”) (emphasis added).

[21] Furthermore, the fact that there was no physical evidence to corroborate C.N.'s testimony regarding Smith's actions against her does not render her testimony incredibly dubious. *Cardwell v. State*, 516 N.E.2d 1083, 1087 (Ind. Ct. App. 1987) (explaining that the "lack of corroborating medical or physical evidence . . . does not, of itself, render the uncorroborated testimony of the victims insufficient to sustain a child molesting conviction"), *trans. denied*. Indeed, "[a] conviction can be sustained on only the uncorroborated testimony of a single witness, even when that witness is the victim." *Bailey*, 979 N.E.2d at 135; *see also Hoglund v. State*, 962 N.E.2d 1230, 1238 (Ind. 2012) ("The testimony of a sole child witness is sufficient to sustain a conviction for molestation."). The type of criminal conduct that Smith was accused of committing seldom leaves outward physical scars that can be corroborated by medical testimony and is seldom committed in the presence of eye-witnesses.

[22] Smith's argument is nothing more than an invitation for this Court to reweigh the evidence and judge the credibility of the witness, which we decline to do. *See Walker*, 998 N.E.2d at 726. The jury heard and believed C.N.'s testimony, which was sufficient to support the guilty verdict, and we decline to impinge on the jury's credibility determinations. *See Ferrell v. State*, 746 N.E.2d 48, 51 (Ind. 2001) ("If the testimony believed by the trier of fact is enough to support the verdict, then the reviewing court will not disturb it."). Because Smith has failed to show that C.N.'s testimony was so inherently improbable that no reasonable trier of fact could believe it and because there is probative evidence from which the jury could have found Smith guilty beyond a

reasonable doubt, we find that the incredible dubiousity rule is inapplicable and that sufficient evidence was presented to support Smith's conviction.

Conclusion

[23] Based on the foregoing, and because the second and third factors of the incredible dubiousity rule are not met or satisfied in this case, we conclude that the "incredible dubiousity rule" does not apply, and C.N.'s testimony was sufficient to support Smith's Level 4 felony child molesting conviction beyond a reasonable doubt.

[24] Affirmed.

Najam, J., and Crone, J., concur.