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IN THE
COURT OF APPEALS OF INDIANA

Jerald Allen Hutton III,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 15, 2022

Court of Appeals Case No.
21A-CR-2524

Appeal from the
Marion Superior Court

The Honorable Mark F.
Renner, Magistrate

Trial Court Cause No.
49D18-1910-F6-41052

Molter, Judge.

[1] Following a bench trial, Jerald Allen Hutton III was convicted of sexual battery as a Level 6 felony and battery as a Class B misdemeanor based on the victim's testimony that he entered the women's restroom in a college dormitory, pinned her against a sink, and groped her. Hutton now appeals his conviction for

felony sexual battery, which was merged with the misdemeanor conviction. He argues there is insufficient evidence to support his conviction because (1) the State did not introduce evidence that he compelled the victim to submit to touching through force or the threat of force, and (2) the trial court relied on incredibly dubious testimony from a single witness. Because we find there was sufficient evidence to sustain Hutton's conviction and the incredible dubiosity rule does not apply, we affirm.

Facts and Procedural History

[2] For several days in October 2019, Hutton was staying with his friend Starla Biggs in Crowe Hall at the University of Indianapolis. One morning, Hutton used the women's restroom on the third floor where he encountered the victim, C.J., who had never seen him before. While she was washing her hands at the restroom sink, she saw Hutton through the reflection in the mirror as he left one of the stalls. Hutton then walked up behind her, grabbed her by the hips with both hands, and pulled her into him. After that, he moved his hands to her pubic region and pressed her against the sink, where she was initially unable to get away. C.J. eventually freed herself and told Hutton to get off her. He then ran out of the restroom and back to Biggs's dormitory suite.

[3] C.J. went back to her room, locking the door behind her, and began to cry. She notified her resident assistant of what had happened, as well as the resident supervisor, who called the police. C.J. described the perpetrator to the resident supervisor, and the supervisor recalled seeing a similar person enter Crowe Hall

earlier with Biggs. C.J. gave a statement to a detective, and she identified Hutton through a photograph.

[4] The State charged Hutton with Level 6 felony sexual battery and Class B misdemeanor battery. A bench trial was held on August 12, 2021, where Hutton moved to dismiss the sexual battery count, arguing that his conduct was not sexual battery because he did not compel C.J. to submit to touching through force or the threat of force. Immediately following his motion to dismiss, Hutton requested that the trial court bifurcate his trial so that he could show that the touching was continuous and did not fall under the category of sexual battery. The trial court denied his request for bifurcation and concluded that two separate incidents of touching occurred, not one continuous act. Based on that conclusion, the trial court denied the motion to dismiss, and after the conclusion of the evidence, the trial court found Hutton guilty of both sexual battery and battery. The court decided to wait until sentencing to enter a conviction so that Hutton could make a more detailed argument on sexual battery.

[5] Hutton filed a Motion to Correct Error, arguing that he did not commit sexual battery because his touching of C.J. was a continuous act and she was not compelled through force or the imminent threat of force. The trial court denied the motion, entered a conviction on sexual battery as a Level 6 felony, and merged the sexual battery conviction with the battery conviction. The court then sentenced Hutton to 545 days with 180 days served on home detention

and 351 days suspended to probation, and it ordered him to register as a sex offender. Hutton now appeals.

Discussion and Decision

[6] When we review the sufficiency of the evidence to support a conviction, we do not reweigh the evidence or assess the credibility of the witnesses. *Peppers v. State*, 152 N.E.3d 678, 682 (Ind. Ct. App. 2020). We consider only the evidence most favorable to the trial court's ruling and the reasonable inferences that can be drawn from that evidence. *Lock v. State*, 971 N.E.2d 71, 74 (Ind. 2012). We also consider conflicting evidence in the light most favorable to the trial court's ruling. *Oster v. State,* 992 N.E.2d 871, 875 (Ind. Ct. App. 2013), *trans. denied*. A conviction will be affirmed if there is substantial evidence of probative value that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt. *Wolf v. State*, 76 N.E.3d 911, 915 (Ind. Ct. App. 2017).

[7] To convict Hutton of Level 6 felony sexual battery, the State had to prove that he touched C.J. when she was "compelled to submit to the touching by force or the imminent threat of force," and he did so "with intent to arouse or satisfy [his] own sexual desires or the sexual desires of another person." Ind. Code § 35-42-4-8(a). He does not deny the State introduced sufficient evidence regarding his intent. Instead, he argues the State failed to introduce evidence that he compelled C.J. to submit to the touching by force or the threat of force.

[8] This argument fails because C.J. testified that Hutton grabbed her by the hips and held her in place by using his body to pin her against the restroom sink. Tr. Vol. 2 at 44–46. She also testified she was unable to initially free herself from Hutton's grasp. *Id*. at 46. While C.J. was being restrained, Hutton touched her pubic area without her consent, and it was only after he groped her that she was able to break free. *Id*. at 45–46. This was substantial evidence supporting the trial court's conclusion that C.J. used force.

[9] Hutton does not argue that pinning someone against a sink falls outside the definition of "force" as that term is typically understood. Instead, he relies on a line of cases that conclude mere unwanted touching is not sufficient to satisfy the sexual battery statute's force element. In *Scott-Gordon v. State*, 579 N.E.2d 602 (Ind. 1991), our Supreme Court concluded the defendant did not compel an unwanted touching by force when he approached a victim from behind, grabbed the victim's buttocks, and told the victim he received "a free feel." In *Perry v. State*, 962 N.E.2d 154 (Ind. Ct. App. 2012), a panel of our court concluded there was no force when the defendant fondled the victim in her sleep (and although he continued when she awoke, she froze in fear without resisting). In *McCarter v. State*, 961 N.E.2d 43 (Ind. Ct. App. 2012), another panel of our court concluded the defendant did not compel by force an unwanted touching when he pulled the victim close and tried to kiss her but released her from his grip when she told him to get away.

[10] That line of cases does not apply here. The key distinction is that before grabbing C.J.'s pubic area, Hutton pinned her to the sink, using force to make

her submit to his unwanted touching. There was no such force to neutralize resistance in the cases on which Hutton relies.

[11] Finally, Hutton argues that even if there was sufficient evidence that C.J. was compelled by force to submit to the touching, the trial court should not have relied on C.J.'s testimony that he was the assailant. Generally, the uncorroborated testimony of the victim is sufficient to sustain a conviction. Bailey v. State, 979 N.E.2d 133, 135 (Ind. 2012). But the "incredible dubiosity rule" allows our court to set aside a conviction when the factfinder relies on the testimony of a sole witness which is "so unbelievable, incredible, or improbable that no reasonable person could ever reach a guilty verdict based upon that evidence alone." *Smith v. State*, 34 N.E.3d 1211, 1221 (Ind. 2015). The rule applies only 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." *Moore v. State*, 27 N.E.3d 749, 756 (Ind. 2015).

[12] The incredible dubiosity rule does not apply here. The restroom where this incident occurred was a shared restroom with two doors for entry, and it was surrounded by dormitory suites. Hutton argues that C.J.'s "testimony was contradictory because she testified both that the back door would have been locked and that Hutton entered through that door." Appellant's Br. at 10. But that was not her testimony, and there was no contradiction in her testimony. Instead, she testified that one of the doors was connected to a suite and could be locked or unlocked from the suite, and the other door, which was not connected

to a suite, could not be locked. She explained that while she was in the stall, one door was propped open and she heard the other door open as someone came through. Tr. at 39–40. There is nothing contradictory about that testimony.

[13] Hutton also states C.J.'s testimony is undermined by the testimony of other witnesses who were within earshot but testified they did not hear anything. Again, there is no contradiction. That some noises and conversations could sometimes be heard from the restroom does not mean that all noises could or would be heard in the dormitory suites by everyone there all the time.

[14] Hutton's last argument is that C.J. was the only one to identify him, and that this occurred after police showed C.J. a picture of only him. This argument fails because Hutton simply ignores the evidence corroborating C.J.'s testimony. The Crowe Hall residence supervisor testified that after C.J. described her assailant, the supervisor recalled seeing the man later identified as Hutton enter the dormitory earlier in the week with Biggs. Hutton had also been spending the night in Bigg's room the previous three nights, and Biggs testified that he left her room to use the restroom on the morning C.J. alleges she was assaulted. After receiving Hutton's description, the police found surveillance footage of him from the dormitory building. We therefore cannot say C.J.'s testimony was inherently contradictory, equivocal, or the result of coercion.

[15] Because we conclude the State presented sufficient evidence to support Hutton's sexual battery conviction and because we do not find C.J.'s testimony to be incredibly dubious, we affirm Hutton's conviction for sexual battery.

[16] Affirmed.

Mathias, J., and Brown, J., concur.