

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

James Robert Ward,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 8, 2022

Court of Appeals Case No.
22A-CR-676

Appeal from the Daviess Superior
Court

The Honorable Dean A. Sobecki,
Judge

Trial Court Cause No.
14D01-1907-FB-1147

Weissmann, Judge.

- [1] James Ward seeks to overturn his convictions for sexual misconduct with a minor, claiming that the minor’s testimony was incredibly dubious. We disagree and therefore affirm.

Facts

- [2] After being released from a Florida prison, Ward, then around 30 years old, moved in with his girlfriend, S.S. with whom he shared young children. S.S.’s younger sister, 14-year-old T.Z. lived in the same home for about two weeks. Almost immediately, Ward began sexually abusing T.Z. To keep her from talking about the abuse, Ward manipulated T.Z. into believing that her family would “disown her” and that they would “never believe” her if she came forward. Tr. Vol. II, p. 20.
- [3] Despite these attempts at subterfuge, several people confronted T.Z. about her inappropriate relationship with Ward. At least one of T.Z.’s childhood friends asked if her relationship with Ward was inappropriate. And T.Z.’s sister testified that she thought something was off between Ward and T.Z. To anyone who asked, T.Z. denied that anything was wrong.
- [4] Throughout her childhood, T.Z. was in and out of mental institutions and juvenile facilities for her substance abuse and mental health problems. While in one of those facilities, a different man sexually abused her. As part of her testimony in that case, she denied having been sexually abused by Ward.
- [5] When she was 20 years old, T.Z. filed a police report alleging Ward sexually abused her. But her memory of the timing of the incidents was blurred. After

receiving the report, the police did several investigations into its veracity. First, they looked to see if they could corroborate T.Z.'s timeframe for when the abuse began. To do this, they matched up Ward's release from the Florida prison with when T.Z. alleged the abuse first started.

- [6] The State ultimately charged Ward with two counts of sexual misconduct with a minor, a Class B felony. Indiana Code § 35-42-4-9(a)(1) (2014). At the bench trial, the State presented three witnesses, T.Z., S.S, and the police officer who investigated the report. The judge found Ward guilty as charged and sentenced him to 14 years imprisonment.

Discussion and Analysis

- [7] Ward makes only a sufficiency of the evidence argument. He alleges that T.Z.'s testimony was incredibly dubious, and that if this court agrees, his conviction will be overturned on insufficient evidence grounds. On this claim, appellate courts consider "only the evidence and reasonable inferences supporting the verdict." *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). "Convictions should be affirmed unless 'no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.'" *Moore v. State*, 27 N.E.3d 749, 754 (Ind. 2015) (quoting *Drane v. State*, 867 N.E.2d 144, 146-47 (Ind. 2007)). Here, T.Z.'s testimony must satisfactorily prove: (1) Ward, an adult above the age of twenty-one, (2) knowingly or intentionally, (3) had sexual intercourse or deviant sexual conduct with her, (4) a minor between the ages of fourteen and sixteen. Indiana Code § 35-42-4-9(a)(1) (2014).

Incredible Dubiosity

- [8] Generally, “[a] conviction can be sustained on only the uncorroborated testimony of a single witness, even when that witness is the victim.” *Bailey v. State*, 979 N.E.2d 133, 135 (Ind. 2012) (citing *Ferrell v. State*, 565 N.E.2d 1070, 1072-73 (Ind. 1991)). The incredible dubiosity rule works as an exception to this norm. It allows a court to find the evidence insufficient when the testimony from that sole witness 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 at 751
- [9] The incredible dubiosity rule has three requirements. There must be “(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. Ward fails to meet two of the three requirements.¹

Inherently Improbable, Equivocal, or Coerced Testimony

- [10] It is not enough for Ward to show that “the witness’s testimony had been inconsistent with pre-trial statements and was at odds with the testimony of corroborating witnesses.” *Id.* at 755. He must prove that T.Z.’s “testimony [is] so convoluted and/or contrary to human experience that no reasonable person

¹ Though two witnesses besides T.Z. testified at trial, only T.Z.’s testimony, as the eyewitness and victim, had the “specificity to establish the necessary factual basis of the crime.” *Smith v. State*, 163 N.E.3d 925, 929 (Ind. Ct. App. 2021). This satisfies the sole witness requirement of the incredible dubiosity rule. *Smith v. State*, 34 N.E.3d 1211, 1221 (Ind. 2015).

could believe it.” *Edwards v. State*, 753 N.E.2d 618, 622 (Ind. 2001). Ward fails at this task.

[11] T.Z.’s testimony is believable. She testified that within a few weeks of Ward arriving at her home, he kissed her. Tr. Vol. II, p. 9. She gave details of the event leading up to the kiss which occurred around her fourteenth birthday. *Id.* A week later, T.Z. awakened on her sister’s couch to Ward rubbing her thighs and hips. *Id.* at 11. He then fingered her before moving her to the loveseat and engaging in intercourse with her. *Id.* at 12. She recalled him thrusting inside her three times before ejaculating on her stomach which scared her because she had never seen a man ejaculate before. *Id.* at 12-13.

[12] T.Z. testified to other sexual encounters with Ward, including a time when the two had a pregnancy scare. *Id.* at 16. Because T.Z. had only ever had intercourse with Ward, he encouraged her to have sex with someone else to cover if she were indeed pregnant. *Id.* at 16-17. After the pregnancy scare, Ward kept engaging in intercourse with T.Z. who would sneak out to join him in a gravel area by a nearby river. *Id.* at 20.

[13] At some point, T.Z.’s sister confronted her and explained that the relationship was “very wrong, that he’s an adult and you’re a child.” *Id.* at 21. Though T.Z. denied then that Ward had been sexually abusing her, she later admitted to her sister that the abuse had occurred. *Id.*

[14] Rather than explain what exactly is inherently improbable or convoluted about T.Z.’s story, Ward instead focuses on the contradictions between T.Z.’s

testimony and the other witnesses who testified. Appellant's Br., pp. 13-17. Though T.Z.'s older sister admitted "[T.Z.'s] story [about her relationship with Ward] has changed . . . at least four times," this testimony does not aid Ward's claim. Tr. Vol. II, p. 87; Appellant's Br., p. 15. The only relevant testimony for incredible dubiousity purposes is that "*within* a witness's testimony" and "not in the context of other [corroborating] evidence." *Reynolds v. State*, 142 N.E.3d 928, 943 (Ind. Ct. App. 2020) (emphasis added) (citing *Carter v. State*, 31 N.E.3d 17, 31 (Ind. Ct. App. 2015)); *see also Smith*, 34 N.E.3d at 1221 ("[T]he second factor . . . [is] satisfied only when the witness's trial testimony was inconsistent within itself, not that it was inconsistent with other evidence or prior testimony.").

- [15] T.Z.'s detailed testimony at trial was neither convoluted nor contrary to human experience such that no reasonable person could believe it. Ward has failed to meet the second part of the test for incredible dubiousity.

Circumstantial Evidence

- [16] Ward also fails to show a lack of circumstantial evidence in his case. "Circumstantial evidence is 'evidence based on inference and not on personal knowledge or observation.'" *Hampton v. State*, 961 N.E.2d 480, 489, (Ind. 2012) (quoting Black's Law Dictionary 636 (9th ed. 2009)). As in many sexual assault cases against a minor, T.Z.'s testimony is the only direct evidence against him. Indeed, "the type of criminal conduct" involved here "seldom leaves outward physical scars that can be corroborated by medical testimony and is seldom

committed in the presence of eye-witnesses.” *Smith*, 163 N.E.3d at 930; *see also Cardwell v. State*, 516 N.E.2d 1083, 1087 (Ind. Ct. App. 1987) (upholding child molestation conviction despite a lack of “corroborating medical or physical evidence”). But while Ward acknowledges that this evidence may be sufficient to support a conviction, Appellant’s Br., p. 12, he still argues that since “there is no evidence that anyone ever observed anything unusual or suspicious,” the evidence convicting him is incredibly dubious. *Id.* at 18. Ward ignores at least two pieces of circumstantial evidence.

[17] First, T.Z. testified that both her sister and a friend confronted her about having an inappropriate relationship with Ward. Tr. Vol. II, p. 69. That people surrounding T.Z. would ask questions about the appropriateness of her relationship with Ward is circumstantial evidence of his guilt. And second, despite Ward’s claims that the timeline of this case is “full of contradictions,” the police confirmed that his release from incarceration matched up closely to the time T.Z. said the abuse began. Appellant’s Br., p. 9. Moreover, T.Z. testified that at the time of the abuse, her sister lived in an apartment on Jefferson Street in Washington, Indiana where she no longer resides. Tr. Vol. II, p. 14. These details corroborate T.Z.’s testimony concerning the crime.

[18] Finally, Ward tries to argue that “T.Z.’s character indicates that she is not credible” because of her “history of addiction and substance abuse.” Appellant’s Br., p. 18. This argument is simply a request to reweigh the evidence and T.Z.’s credibility, which we will not do. *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.”).

[19] Because Ward fails to establish that T.Z.’s testimony was incredibly dubious, we affirm his convictions.

Robb, J., and Pyle, J., concur.