

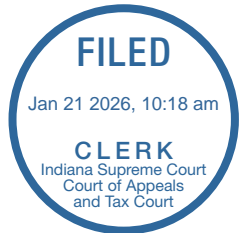


IN THE
Court of Appeals of Indiana

Timothy James Hulbert,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



January 21, 2026

Court of Appeals Case No.
25A-CR-1017

Appeal from the Tippecanoe Circuit Court

The Honorable Sean M. Persin, Judge

Trial Court Cause No.
79C01-2401-F4-4

Opinion on Rehearing by Judge Vaidik
Judges Mathias and Pyle concur.

Vaidik, Judge.

[1] The State has petitioned for rehearing following our memorandum decision reversing Timothy James Hulbert’s habitual-offender enhancement. *Hulbert v. State*, No. 25A-CR-1017, 2025 WL 3214357 (Ind. Ct. App. Nov. 18, 2025) (mem.). The trial court found Hulbert to be a habitual offender based on two prior felony convictions: a 2009 conviction for child molesting and a 2011 conviction for failure to possess identification. On appeal, Hulbert argued that the State failed to present sufficient evidence to support the trial court’s finding. Specifically, Hulbert asserted that the State didn’t prove beyond a reasonable doubt that he was the “Timothy James Hulbert” convicted in the failure-to-possess-identification case. We rejected that argument, but we found, *sua sponte*, that the State’s evidence was insufficient in a different respect: it failed to prove beyond a reasonable doubt that Hulbert committed failure to possess identification **after** he was sentenced for the child-molesting conviction, as required by the habitual-offender statute. *See* Ind. Code § 35-50-2-8(f). The State proved when Hulbert was convicted and sentenced for failure to possess identification but not when he **committed** that offense. We therefore reversed the habitual-offender finding and enhancement and instructed the trial court to revise the sentencing documents accordingly.

[2] In its petition for rehearing, the State makes two arguments. First, it contends that we erred by finding the evidence to be insufficient. The State concedes that it didn’t prove the exact date on which Hulbert committed failure to possess identification, but it argues that he had to have committed that offense after he

was sentenced for the 2009 child-molesting conviction. The State’s argument proceeds as follows: (1) the felony of failure to possess identification exists only for “sex or violent offender[s],” *see* I.C. § 11-8-8-15(c); (2) a “sex or violent offender” is (according to the State) a person who has been convicted of an enumerated sex offense, including child molesting, *see* I.C. § 11-8-8-5; (3) in the sentencing order for the 2009 child-molesting conviction, the trial court found as a mitigating circumstance Hulbert’s “lack of criminal history,” Ex. p. 34; (4) given that Hulbert didn’t have a “criminal history” at the time of the 2009 conviction and sentencing, he couldn’t have been a “sex or violent offender”—required to possess identification—until then; and (5) therefore, Hulbert couldn’t have committed the felony of failure to possess identification until after that sentencing.

[3] The flaw in this argument (which the State didn’t make in the trial court, *see* Tr. Vol. 3 pp. 54-71) is that a person can be a “sex or violent offender” without having been “convicted” of a sex or violent offense and without having a “criminal history.” That is, a person can be a “sex or violent offender” based on a juvenile-delinquency adjudication. *See* I.C. § 11-8-8-5(b)(2). And such an adjudication is neither a “conviction” nor part of a person’s “criminal history.” *See* I.C. § 31-32-2-6(a) (“A child may not be considered a criminal as the result of an adjudication in a juvenile court, nor may an adjudication in juvenile court be considered a conviction of a crime.”); *Jordan v. State*, 512 N.E.2d 407, 408 (Ind. 1987) (“[A] juvenile case is a civil and not a criminal matter. Juvenile adjudications do not constitute criminal convictions.”), *reh’g denied*. As such,

evidence that Hulbert lacked “criminal history” before his 2009 child-molesting conviction is not proof beyond a reasonable doubt that he wasn’t required to possess identification before that conviction. If the State wanted to prove Hulbert’s habitual-offender status in this roundabout way, it also had to show that Hulbert doesn’t have a juvenile adjudication that triggered the identification requirement. It failed to do so. At this point, the State is asking us to stack inferences in its favor to fill the gaps in its evidence, which we will not do.

[4] In the alternative, the State argues that rather than simply vacating the habitual-offender finding and enhancement, we should give the State the option of retrying the habitual-offender allegation with additional evidence. As the State notes, our Supreme Court did so in *Dexter v. State*, 959 N.E.2d 235 (Ind. 2012), after reversing due to insufficient evidence. Based on *Dexter*, we must agree with the State. We therefore remand this matter to the trial court with instructions to allow the State to retry the habitual-offender allegation if it so chooses.

[5] In doing so, however, we ask our Supreme Court to revisit its holding in *Dexter*. There, the Court explained that a retrial on a habitual-offender allegation following a reversal for insufficient evidence is not barred by the double-jeopardy clause of the Fifth Amendment to the U.S. Constitution. *Id.* at 240. But we see a different, more fundamental problem with such a retrial, one that the *Dexter* Court didn’t address. In no other area of law, civil or criminal, do we allow a plaintiff a second chance to prove its case after a reversal for insufficient evidence. Retrial is standard when we reverse judgments on other grounds,

such as a procedural error, evidentiary error, or instructional error by the trial court, but not when we reverse based on the plaintiff's failure to prove its case. Under *Dexter*, the State could try as many times as it needs—not just twice—to prove a habitual-offender allegation.

- [6] With that observation, we grant the State's petition for rehearing and remand this matter to the trial court, where the State will have the option of retrying its habitual-offender allegation against Hulbert.

Mathias, J., and Pyle, J., concur.

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