MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

M.W.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Petitioner.

August 31, 2023

Court of Appeals Case No. 22A-JV-2952

Appeal from the Marion Superior Court

The Honorable Ryan Gardner, Judge

The Honorable Regina Tidwell, Magistrate

Trial Court Cause No. 49D10-2206-JD-4431

Memorandum Decision by Judge Kenworthy
Judges Bailey and Tavitas concur.

Kenworthy, Judge.

Case Summary

[1] M.W. appeals his delinquency adjudication for rape, a Level 3 felony if committed by an adult.[1] M.W. raises for our review the sole issue of whether the State presented sufficient evidence D.T. was sufficiently intoxicated to be unable to consent to sexual intercourse with M.W. Concluding the State presented sufficient evidence, we affirm.

Facts and Procedural History

[2] D.T. and M.W. met at a birthday party hosted by D.T.'s mother, Acacia Cushingberry. At some point during the party, D.T. began drinking an alcoholic beverage her mother had hidden. D.T.—then sixteen years old—had never drunk alcohol before and did not know how it would affect her. After having two drinks, D.T. "didn't feel good" and Cushingberry noticed D.T. was "kinda wobbly" and acting "a little different." *Tr. Vol. 2* at 7, 29. All of the kids at the party knew D.T. was drinking, but the parents did not. Once Cushingberry learned of D.T.'s drinking, she immediately shut down the party. D.T. was taken upstairs to her bedroom where she fell asleep with all her clothes on.

[3] Less than an hour later, D.T. woke up and M.W.—who was still at the house waiting for his Uber—walked her across the hallway to her brother's bedroom. Once in the bedroom, D.T. tried to leave but "blacked out" and lost

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[1] Ind. Code § 35-42-4-1(a)(3) (2014).

consciousness. *Id.* at 47. When D.T. woke up, her pants were off and M.W.'s penis was inside her. D.T. tried to scream, but M.W. covered her mouth. Then, one of M.W.'s friends knocked on the door. M.W. stopped, got off D.T., put his pants back on, and ran out of the house. After learning what happened, Cushingberry called the police and took D.T. to the hospital.

[4] The State filed a petition alleging M.W. was delinquent for committing three acts: rape when the victim is compelled by force or imminent threat of force; rape when the victim is unaware of the defendant's conduct; and rape when the victim is mentally disabled or deficient. Following an evidentiary hearing, the trial court entered a true finding against M.W. on the allegation of rape when the victim is mentally disabled or deficient and entered not true findings on the other two allegations. The court placed M.W. on probation. M.W. now appeals.

The State Presented Sufficient Evidence D.T. was Unable to Consent to Sexual Intercourse Due to Her Intoxication

[5] M.W. does not claim he never had sexual intercourse with D.T. Instead, M.W. argues the State failed to present sufficient evidence D.T. was so intoxicated she was unable to consent to intercourse with M.W. When we review a juvenile adjudication, we apply the same sufficiency standard used in criminal cases. *E.S. v. State*, 198 N.E.3d 701, 703 (Ind. Ct. App. 2022). A sufficiency-of-the-evidence claim warrants a "deferential standard of appellate review, in which we 'neither reweigh the evidence nor judge witness credibility[.]'" *Owen v. State*,

210 N.E.3d 256, 264 (Ind. 2023) (quoting *Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018), *cert. denied*). Rather, "we consider only probative evidence and reasonable inferences that support the judgment of the trier of fact." *Hall v. State*, 177 N.E.3d 1183, 1191 (Ind. 2021). "We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Id.* It is "not necessary that the evidence 'overcome every reasonable hypothesis of innocence.'" *Drane v. State*, 867 N.E.2d 144, 147 (Ind. 2007) (quoting *Moore v. State*, 652 N.E.2d 53, 55 (Ind. 1995)). "The uncorroborated testimony of one witness may be sufficient by itself to sustain an adjudication of delinquency on appeal." *D.W. v. State*, 903 N.E.2d 966, 968 (Ind. Ct. App. 2009), *trans. denied*.

[6] The relevant portion of Indiana Code Section 35-42-4-1 provides: "[A] person who knowingly or intentionally has sexual intercourse with another person . . . when . . . the other person is so mentally disabled or deficient that consent to sexual intercourse . . . cannot be given . . . commits rape, a Level 3 felony." I.C. § 35-42-4-1(a)(3). Our courts have interpreted the phrase "mentally disabled or deficient" to encompass more than victims with lower-than-normal intelligence. *See, e.g., Gale v. State*, 882 N.E.2d 808, 818 (Ind. Ct. App. 2008) (determining highly intoxicated victim was so mentally disabled or deficient she could not give consent to sexual intercourse); *see also Hancock v. State*, 758 N.E.2d 995, 1004 (Ind. Ct. App. 2001) (concluding victim was unable to consent to sexual intercourse after unknowingly ingesting eight Xanax), *aff'd in relevant part*, 768 N.E.2d 880 (Ind. 2002). "The *lack* of consent is not an element

of the offense; it is the *inability* to give consent that is required to show mental disability or deficiency." *Ball v. State*, 945 N.E.2d 252, 257 (Ind. Ct. App. 2011), *trans. denied*.

[7] Here, the State presented sufficient evidence D.T. was intoxicated to the point she was unable to consent to sexual intercourse with M.W. During the evidentiary hearing, the trial court heard evidence D.T. had never drunk alcohol before and did not know how it would affect her. Further, Cushingberry noticed D.T. was "kinda wobbly" and acting "a little different." *Tr. Vol. 2* at 7, 29. And D.T. testified she "blacked out" and lost consciousness in her brother's bedroom. *Id.* at 47. At bottom, M.W. requests we reweigh the evidence; a task we will not undertake. Sufficient evidence exists from which a reasonable fact-finder could find beyond a reasonable doubt D.T. was so intoxicated she was unable to consent to sexual intercourse with M.W.

Conclusion

[8] Because the State presented sufficient evidence showing D.T. was so intoxicated she was unable to consent to sexual intercourse with M.W., we affirm.

[9] Affirmed.

Bailey, J., and Tavitas, J., concur.