

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

James Fletcher,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

June 10, 2022

Court of Appeals Case No.  
21A-CR-2604

Appeal from the Johnson Superior  
Court

The Honorable Lance D. Hamner,  
Judge

Trial Court Cause No.  
41D03-2011-FA-17

**Brown, Judge.**

[1] James Fletcher appeals his conviction for child molesting as a class A felony and asserts the evidence is insufficient to sustain his conviction. We affirm.

### *Facts and Procedural History*

[2] M.H. was born in July 1996. In approximately December 2006, M.H. moved with her mother and siblings to a home on Graham Street. Fletcher and M.H.'s mother were in a relationship. At some point, Fletcher began to stay the night frequently. On one occasion, M.H. was in the bathroom, and Fletcher entered the bathroom, picked her up and sat her on the bathroom counter, pulled down her pants, and placed his mouth on her vagina. M.H. indicated that she did not say anything to anyone because she did not think anyone would believe a child. When she was a sophomore in high school, M.H. told B., who was her boyfriend at the time, what had happened. M.H. and B. had a child in 2014. In February 2020, M.H. told her mother what had happened, and M.H. filed a police report. When a law enforcement officer first encountered Fletcher and asked his name, Fletcher provided a fake name.

[3] On November 2, 2020, the State charged Fletcher with three counts of child molesting as class A felonies and three counts of sexual misconduct with a minor as class B felonies.<sup>1</sup> In September 2021, the court held a jury trial at

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<sup>1</sup> The State alleged, under Count II, that, “on, about, or between April 3, 2007 and August 31, 2008 . . . , James Franklin Fletcher, person of at least twenty-one (21) years of age, did knowingly and/or intentionally perform and/or submit to deviate sexual conduct with Victim 1, a child under the age of fourteen years, to-wit: 10 - 12 years old.” Appellant’s Appendix Volume II at 17.

which M.H. testified as to the facts above and regarding other alleged actions by Fletcher. M.H. indicated that, in February 2020, Fletcher was “still around the house.” Transcript Volume II at 170. She indicated that her child was almost six years old at the time, and when asked why that concerned her, she replied that her child “was getting closer to being ten” and “[t]hat’s how old I was.” *Id.* She further testified that she and B. had a custody agreement, B. filed a Verified Petition for Modification of Custody, Parenting Time and Child Support in March 2021, and the petition alleged that M.H. and B.’s child “is believed to be in an unsafe environment” as evidenced by the fact that “Fletcher lives with [M.H.] and minor child and has had criminal charges filed for molesting [M.H.]”<sup>2</sup> *Id.* at 173. On cross-examination, M.H. indicated she told B. about Fletcher’s actions before their child was born, she continued to live with Fletcher even after her child was born, Fletcher helped raise her child and taught her child how to walk, and she continued to live with Fletcher for almost seven years after her child was born. On redirect examination, M.H. testified the last time she recalled Fletcher living with her was in March 2020, her child slept in the room with her and not anywhere else in the house, and she did not speak to B. about the police report. The jury found Fletcher guilty of one count of child molesting as a class A felony under Count II and not guilty of the other counts.

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<sup>2</sup> A copy, with certain portions redacted, of the Verified Petition for Modification of Custody, Parenting Time and Child Support was admitted into evidence.

## *Discussion*

[4] The issue is whether the evidence is insufficient to sustain Fletcher’s conviction. When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. *Jordan v. State*, 656 N.E.2d 816, 817 (Ind. 1995), *reh’g denied*. Rather, we look to the evidence and the reasonable inferences therefrom that support the verdict. *Id.* We will affirm the conviction if there exists evidence of probative value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. *Id.*

[5] Fletcher argues the incredible dubiousity rule applies, M.H.’s testimony was coerced and wholly uncorroborated, and her testimony was equivocal “because M.H. had continued to live with Fletcher well into adulthood . . . and allowed Fletcher to help raise her daughter for over six [] years, which is inherently contradictory to what a normal child molest victim does with their alleged attacker.” Appellant’s Brief at 9. He further argues M.H.’s testimony was “coerced by the fact that M.H. was under pressure because she was concerned over losing custody” of her child, “[f]or all we know, [B.] had been threatening M.H. to get [their child] away from Fletcher because of the lie she had told [B.] when M.H. and [B.] were in high school,” and “[t]he pending custody modification would have created a coercive situation for M.H. to testify against Fletcher.” *Id.* at 9-10. The State maintains that it presented sufficient evidence that Fletcher molested M.H., Fletcher’s argument is an invitation to reweigh the evidence, the incredible dubiousity rule is inapplicable, and M.H.’s testimony did not contradict itself.

[6] At the time of the offense, Ind. Code § 35-42-4-3(a) provided that “[a] person who, with a child under fourteen (14) years of age, performs or submits to . . . deviate sexual conduct commits child molesting” and that the offense was a class A felony if it was committed by a person at least twenty-one years of age.<sup>3</sup> Ind. Code § 35-41-1-9 provided that “deviate sexual conduct” meant “an act involving: (1) a sex organ of one person and the mouth or anus of another person; or (2) the penetration of the sex organ or anus of a person by an object.”<sup>4</sup>

[7] We observe that the uncorroborated testimony of one witness is sufficient to sustain a conviction, even if the witness is the victim. *Ferrell v. State*, 565 N.E.2d 1070, 1072-1073 (Ind. 1991). The incredible dubiousity rule applies only in very narrow circumstances. *See Love v. State*, 761 N.E.2d 806, 810 (Ind. 2002). The rule is expressed as follows:

If a sole witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence, a defendant’s conviction may be reversed. This is appropriate only where the court has confronted inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiousity. Application of this rule is rare and the standard to be applied is

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<sup>3</sup> Subsequently amended by Pub. Law No. 158-2013, § 439 (eff. July 1, 2014); Pub. Law No. 247-2013, § 6 (eff. July 1, 2014); Pub. Law No. 168-2014, § 68 (eff. July 1, 2014); Pub. Law No. 187-2015, § 48 (eff. July 1, 2015); Pub. Law No. 190-2021, § 12 (eff. July 1, 2021).

<sup>4</sup> Subsequently repealed by Pub. Law No. 114-2012 (eff. July 1, 2012).

whether the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it.

*Id.* (citations omitted).

[8] Fletcher fails to show that M.H.'s testimony was inherently contradictory or so inherently improbable that no reasonable person could believe it. M.H. was thoroughly examined and cross-examined. Further, Fletcher's defense counsel questioned M.H. regarding the extent to which she lived with Fletcher after her child was born and when she told B. about what had happened. The court indicated the jury had a couple of questions and asked "what is the current custody agreement," M.H. testified "[w]e have parenting time where distance is a factor," the court asked "[a]re you at jeopardy to lose your daughter now, or before the Petition was filed," and she answered "[n]o." Transcript Volume II at 181. Fletcher's defense counsel asked whether B. was requesting full custody in his petition, and M.H. replied affirmatively. The jury was able to assess M.H.'s credibility and consider her testimony regarding her recollection of Fletcher's actions, the extent Fletcher visited or stayed at the home where M.H. lived after her child was born, and the fact B. filed a petition for modification of custody and parenting time. The jury found that Fletcher committed one of the six charged crimes. Based upon our review of the evidence as set forth above and in the record, we conclude the State presented evidence of a probative nature from which the jury could find beyond a reasonable doubt that Fletcher committed child molesting as a class A felony.

[9] For the foregoing reasons, we affirm Fletcher's conviction.

[10] **Affirmed.**

Mathias, J., and Molter, J., concur.