

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Mark Alan Hurley,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 25, 2022

Court of Appeals Case No.
22A-CR-298

Appeal from the
Jackson Circuit Court

The Honorable
Richard W. Poynter, Judge

Trial Court Case No.
36C01-2001-F4-1

Darden, Senior Judge.

Statement of the Case

- [1] Mark Alan Hurley appeals his conviction by jury on December 7, 2021, for the crime of battery on a person less than fourteen years of age by a person over eighteen years of age, a Level 6 felony.¹ We affirm.

Issue

- [2] Hurley raises one issue, which we restate as: whether there is sufficient evidence to sustain the conviction.

Facts and Procedural History

- [3] In 2019, ten-year-old M.B. lived with her grandmother, who is legally blind, in an apartment building in Seymour, Indiana. Hurley, who was at that time sixty-two years of age and lived in the same building, approached M.B. one day and talked with her. M.B. introduced him to her grandmother, who eventually came to trust Hurley. Similarly, over time M.B. grew very close to Hurley and thought of him as a “good friend.” Tr. Vol. 2, p. 90. On several occasions, he took her to get food, and they had fun going to the park, riding bicycles, and playing darts at his apartment.
- [4] On several occasions, M.B. took baths at Hurley’s apartment, with her grandmother’s permission. On December 13, 2019, M.B. went to Hurley’s apartment to take a bath. He let her into his apartment, and M.B. noted that he

¹ Ind. Code § 35-42-2-1 (2018).

smelled of alcohol, as he sometimes had in the past. M.B. went into the bathroom and closed the door. When the tub was full of water, she took off her clothes, got in the tub, and closed the shower curtain.

[5] Next, Hurley, who was fully clothed, entered the bathroom uninvited and opened the shower curtain. He leaned over M.B., pushed her knees apart, and touched the inside of her thighs, within inches of her genitals. M.B. slapped Hurley's hand and told him to "get out." *Id.* at 100. He left the bathroom, and M.B. quickly got out of the tub, got dressed, and went back to her grandmother's apartment.

[6] Upon arriving home, M.B.'s appeared to be upset, and she started to cry. She told her grandmother that Hurley had touched her, and her grandmother called Hurley. Hurley claimed he was "just washing her back." *Id.* at 118. M.B.'s grandmother hung up the telephone and immediately called the police. A detective interviewed Hurley, and he claimed he may have accidentally touched M.B.'s knees while washing her back at her request.

[7] Shortly thereafter, M.B. began to exhibit signs of significant psychological trauma over the months following the incident with Hurley. She repeatedly raised the subject of suicide and, on one occasion, even tried to jump in front of a car, only to be held back by her friends. As a result, M.B. had to be hospitalized for a period of time and placed on medication.

[8] On January 22, 2020, the State charged Hurley with child molesting, a Level 4 felony, and battery on a person under fourteen years of age by a person over

eighteen years of age, a Level 6 felony. In May 2020, Chris Stearns, who was acquainted with Hurley, encountered him in their apartment complex. Hurley appeared to have been drinking alcohol and told Stearns, with a smirk on his face, that he had gotten “into some sexual trouble with a minor,” but he was not worried because he thought he would “get[] away with it.” *Id.* at 140. His comments upset Stearns, who notified the police about what Hurley had said.

[9] A jury determined that Hurley was not guilty of child molesting but found him guilty of battery as charged. The trial court imposed a sentence on Hurley for the battery conviction, and this appeal followed.

Discussion and Decision

[10] First, Hurley claims the evidence is insufficient to sustain his conviction of battery as charged; and second, he further claims that M.B.’s testimony is incredibly dubious and should be disregarded.

[11] To convict Hurley of battery as charged, the State was required to prove beyond a reasonable doubt that: (1) Hurley, (2) a person over eighteen years of age, (3) knowingly or intentionally (4) touched M.B., (5) a person under fourteen years of age, (6) in a rude, insolent, or angry manner. Ind. Code § 35-42-2-1.

[12] Sufficiency of the evidence claims warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility. *Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020). Rather, we consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. *Id.* If the evidence and reasonable inferences provide substantial evidence of

probative value to support the verdict, we affirm. *Sanders v. State*, 704 N.E.2d 119, 123 (Ind. 1999).

[13] The incredible dubiousity rule recognizes that, in very rare cases, a witness' credibility is so untrustworthy and lacking as to justify reversal on appeal. *Clark v. State*, 62 N.E.3d 460, 462 (Ind. Ct. App. 2016). Application of the rule is limited to cases where a witness presents inherently contradictory testimony which is equivocal or the result of coercion and there is a resulting complete lack of circumstantial evidence of the appellant's guilt. *Bradford v. State*, 675 N.E.2d 296, 300 (Ind. 1996). The standard is not an impossible burden to meet, but it is a difficult one, and the testimony must be such that no reasonable trier of fact could believe it. *Clark*, 62 N.E.3d at 462.

[14] Hurley argues that M.B.'s testimony was uncorroborated. We disagree. Although Hurley and M.B. were the only people present during the incident, Hurley later told Stearns, an acquaintance of his, that he had gotten in trouble with a minor but thought he would get away with it. Further, in the weeks and months following the incident, M.B.'s entire psychological demeanor had changed from a sweet, childlike person to one who became very sad and angry. She displayed symptoms of severe emotional distress, resulting in her being hospitalized and put on medication.

[15] Hurley next claims that key parts of M.B.'s testimony conflicted with her grandmother's testimony. The incredible dubiousity rule applies only when a witness contradicts herself or himself in a single statement or while testifying,

and does not apply to conflicts between multiple statements. *Carter v. State*, 31 N.E.3d 17, 31 (Ind. Ct. App. 2015), *trans. denied*. Any inconsistencies between the testimonies of M.B. and her grandmother were a matter for the jury to resolve.

[16] Finally, Hurley argues that M.B.’s testimony was “inherently incredible,” because Hurley had never approached M.B. in such a way before, and (according to M.B.) he did not speak as he touched her. Appellant’s Br. p. 12. This argument amounts to a request to reweigh the evidence. By the time of trial, M.B. was at least twelve years of age and qualified to testify in court, subject to cross-examination. Her testimony was clear and without contradiction as to Hurley’s touching her, and her credibility was for the jury to decide. The testimony fails to meet the key standard of incredible dubiousity: that no reasonable trier of fact could believe it. *See Carter*, 31 N.E.3d at 31 (rejecting application of incredible dubiousity rule to child-victim’s testimony; testimony was consistent and not contradictory). We decline to apply the incredible dubiousity rule here. As a result, based on the totality of the evidence, including M.B.’s testimony, we conclude there was sufficient evidence to sustain Hurley’s battery conviction.

Conclusion

[17] For the reasons stated above, we affirm the judgment of the trial court.

[18] Affirmed.

Crone, J., and Weissmann, J., concur.