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.

ATTORNEY FOR APPELLANT

Jennifer L. Koethe
Raleigh, North Carolina

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Samuel J. Dayton
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Gavilan Love,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 28, 2022

Court of Appeals Case No. 21A-CR-1254

Appeal from the LaPorte Circuit Court

The Honorable Thomas Alevizos, Judge

Trial Court Cause No. 46C01-1911-F1-1564

Weissmann, Judge.

[1] Gavilan Love was convicted of Level 1 felony child molesting and adjudicated a habitual offender. On appeal, Love argues that the victim's testimony was incredibly dubious and, without it, the evidence did not support his conviction. Finding no error, we affirm.

Facts

[2] A jury convicted Love of child molesting based on testimony of several witnesses, including the nine- to ten-year-old victim, K.L. The jury also determined Love was a habitual offender. The trial court subsequently sentenced Love to a total of 38 years imprisonment, with eight years suspended to probation. Love now appeals his conviction.

Discussion and Decision

[3] Love argues that K.L.'s testimony must be disregarded because it satisfies the incredible dubiosity rule. And he claims the remaining evidence is insufficient to convict him. We find the incredible dubiosity rule does not apply.

Sufficiency of Evidence

[4] When reviewing the sufficiency of the evidence, we will not judge witness credibility or reweigh evidence. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). Our role is only to consider evidence supporting the judgment and reasonable inferences that can be drawn from the evidence. *Id.* at 146. It is not necessary that the evidence "overcome every reasonable hypothesis of innocence." *Moore v. State*, 652 N.E.2d 53, 55 (Ind. 1995).

[5] To convict Love of Level 1 felony child molesting, the State had to prove beyond a reasonable doubt that: 1) Love was at least 21 years of age; 2) K.L. was under 14 years of age; and 3) Love knowingly or intentionally performed or submitted to sexual intercourse or other sexual conduct with K.L. *See* Ind. Code 35-42-4-3. Love contends only that the State failed to prove he engaged in any sexual misconduct with K.L., despite K.L.'s testimony that he did. Claiming K.L.'s testimony was "uncorroborated and equivocal," Love asserts the incredible dubiosity rule bars its consideration. Appellant's Br. p. 11.

[6] Generally, a victim's uncorroborated testimony is sufficient for a conviction. *Smith v. State*, 163 N.E.3d 925 (Ind. Ct. App. 2021). However, the incredible dubiosity rule creates an exception where 1) a sole testifying witness; 2) offers testimony that is inherently contradictory, equivocal, or the result of coercion; and 3) there is a complete absence of circumstantial evidence. *Moore v. State*, 27 N.E.3d 749, 756 (Ind. 2015). The incredible dubiosity rule allows us to "impinge on the jury's responsibility to judge the credibility of the witnesses only when it has confronted 'inherently improbable' testimony or coerced, equivocal, wholly uncorroborated testimony of 'incredible dubiosity.'" *Id.* at 754 (quoting *Tillman v. State*, 642 N.E.2d 221, 223 (Ind. 1981)).

[7] Love has not conquered this difficult standard, which requires great ambiguity and inconsistency. *See id.* at 756. He can satisfy the first prong—K.L. was the sole eyewitness. However, he fails at the second prong, making incredible dubiosity unavailable to him.

[8] Love attempts to satisfy the second prong by asserting K.L.'s testimony was "equivocal and unbelievable." Appellant's Br., p. 11.

[9] None of Love's assertions convince us that K.L.'s testimony was "inherently improbable." *See Moore*, 27 N.E.3d at 756 (holding witness's testimony was not inherently improbable because it was consistent throughout trial, even though witness may have lied to police before trial). K.L.'s testimony remained consistent and unequivocal concerning details of the molestation. She testified:

> I went and took a shower, but when I got done, I didn't know where the towels were, so I asked him where the towels were, and then he went and got me a towel. And then, like, five, ten minutes, he came back, and he said — he asked me if I knew how to put lotion on my body and I said, "Yeah." And he said, "Well, I'll show you anyways." And then he came over —Well, he went out again to grab the lotion, 'cause it wasn't in the bathroom. And then he started putting it on his hands, and started putting lotion on my body. On my shoulders first, and then on his way down and started touching my private part. And then he got more lotion, put it on my leg, and then went back up to my private part and touched inside of my private part.

Tr. Vol. III, pp. 172-73.

[10] According to K.L., "[Love] told me not to tell my mom because it's what daddies and daughters do." Tr. Vol. III, p. 179. Months later, when K.L. saw an annual presentation on body safety at school and realized what her father did was wrong, she immediately reported Love's actions to her school counselor. K.L.'s later accounts of the incident to the Department of Child Services assessor, her mother, and the child Forensic Interviewer were

consistent with her first. She provided extensive sensory details about the incident including "the lotion was . . . tannish colored[,]" it "smelled . . . like cucumbers[,]" "there was . . . a gushing sound1[,]" and Love was "on both knees" when he tapped her "[u]p on my lower part of my leg . . . where my foot is." Tr. Vol. III, pp. 173, 176, 177. As K.L.'s testimony was unequivocal, Love has not met the second prong of the incredible dubiosity rule, meaning the rule does not apply.

[11] As K.L.'s testimony is not incredibly dubious, Love essentially asks us to reweigh the evidence and reassess witness credibility. We will not, and therefore, affirm the trial court's judgment.

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