



## Case Summary

Appellant-Defendant Gary Davis (“Davis”) appeals his conviction of Child Molestation, a Class A felony.<sup>1</sup> We affirm.

## Issue

Davis presents one issue for appeal, which we restate as whether the State failed to present sufficient evidence of probative value to support his conviction.

## Facts and Procedural History

C.D.’s mother (“Mother”) has custody of her. On February 5, 2005, then-four-year-old C.D.<sup>2</sup> left Mother’s house with her father, Davis, and her cousin, Crystal, for an unsupervised visit with Davis. Although Davis’s stepfather and Crystal were present for most of the visitation at Davis’s home, they left before Davis brought C.D. back to her Mother’s house. Therefore, Davis was alone with C.D.

After this visit with Davis, C.D. asked Mother if she could start wearing pull-up diapers instead of her underwear, even though she had been potty trained for two years. C.D. would also only go into the bathroom “a little bit” and only if Mother was with her. Tr. at 236. When questioned by Mother, C.D. disclosed that her “Daddy” had molested her. At trial, C.D. testified her “Daddy” had “sex” with her while they were in the bathroom. More specifically, C.D. testified he put his “dick” on the “inside” of her “bottom”<sup>3</sup> and her “butt,” it felt “hard” and she cried. Tr. at 210, 214. C.D. also testified her Daddy put his “dick” in her mouth, it tasted like “hair,” “white stuff” came out into her mouth and throat and she

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<sup>1</sup> Ind. Code § 35-42-4-3.

<sup>2</sup> C.D. was five years old when she testified at trial.

“puked” it up. Tr. at 215. Mother testified that she had never heard C.D. use the words “sex” or “dick” prior to disclosing this incident to her and that Davis referred to his penis as “dick.” Tr. 239-241.

Mother testified that when C.D. disclosed she had been molested, there was no question in her mind to whom C.D. was referring. She testified that Davis was the only person C.D. referred to as “Daddy.” Tr. at 238. Also, Davis, who had lived with C.D. and Mother for the first three years of C.D.’s life, was the only adult male who had ever lived with them. Moreover, Mother testified that C.D. had always called Davis and no other man “Daddy.”

The State charged Davis with Child Molesting, a Class A felony. During the trial, C.D. failed to identify Davis as her “Daddy.” Nevertheless, the jury found Davis guilty as charged.

Davis now appeals.

### **Discussion and Decision**

Davis claims that the State failed to present sufficient evidence to support his conviction for Child Molestation, a Class A felony. “The standard for reviewing sufficiency of the evidence claims is well settled. We do not reweigh the evidence or assess the credibility of the witnesses.” Stewart v. State, 768 N.E.2d 433, 435 (Ind. 2002). “Rather, we look to the evidence and reasonable inferences drawn therefrom that support the verdict and will affirm the conviction if there is probative evidence from which a reasonable jury could have found the defendant guilty beyond a reasonable doubt.” Id.

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<sup>3</sup> “Bottom” is the word C.D. used in describing a vagina.

A conviction of child molesting may rest solely upon the uncorroborated testimony of a child. J.V. v. State, 766 N.E.2d 412, 415 (Ind. Ct. App. 2002), trans. denied. “[B]y its very nature child molestation often occurs without witnesses or physical evidence.” Carter v. State, 754 N.E.2d 877, 880 (Ind. 2001). At trial, C.D. testified in graphic detail regarding the events of the day in question. Mother also testified that C.D. wore pull-ups and avoided the bathroom after her visit with Davis. We find this is sufficient to support Davis’s conviction of Child Molestation.

However, Davis argues that C.D.’s testimony is incredibly dubious, requesting this Court to reweigh the evidence. In rare cases, the “incredible dubiousity rule” will permit an appellate tribunal to impinge upon the finder of fact’s responsibility to judge the credibility of witnesses. Lewis v State, 726 N.E.2d 836, 842 (Ind. Ct. App. 2000), trans. denied. Application of the rule is limited to cases where a sole witness provides inherently contradictory testimony that is equivocal or coerced, and no circumstantial evidence supports the defendant’s guilt. Berry v. State, 703 N.E.2d 154, 160 (Ind. 1998).

Davis claims C.D.’s testimony is incredibly dubious because she failed to identify him as her “Daddy” at trial. However, the Indiana Supreme Court has unanimously held, on similar facts, that this is not incredibly dubious. See Carter, 754 N.E.2d at 880. In Carter, M.C., an autistic child, was not able to identify her father in the courtroom. Id. at 878-79. After failing to identify her father, M.C. then gave a “disjointed version” of her story before her responses became “so rambling and incoherent that the prosecutor concluded her direct examination.” Id. The Court noted that although M.C. failed to recognize her father as her

attacker in the courtroom, she had named her father as her attacker four times (to her mother, during a videotaped interview, to an officer ten days later and at trial). Id. at 880. Also, the court noted that the defendant “was undisputedly the only father figure in her life.” Id. Although the court noted this was a “close case,” it ultimately held the testimony was “not so equivocal as to be incredibly dubious.” Id.

Here, C.D. also named her “Daddy” as her attacker both when she relayed the events to Mother and at trial. Mother testified that no man, other than Davis, had ever lived with her and C.D. Mother also testified that C.D. had always called Davis and no other man her “Daddy.”

Moreover, the rest of C.D.’s testimony was not equivocal. Unlike the victim in Carter, C.D. was able to testify in graphic and clear detail about the events of the molestation. We find this testimony was not equivocal. Therefore, the incredible dubiousity rule does not apply.

We find there was sufficient evidence of probative value to support Davis’s conviction.

Affirmed.

NAJAM, J., and CRONE, J., concur.