MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

Jerry Lee White,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

March 28, 2024

Court of Appeals Case No.
23A-CR-1272

Appeal from the Marion Superior Court

The Honorable Angela Dow Davis, Judge

Trial Court Cause No.
49D27-1912-F1-45790

Memorandum Decision by Judge Bailey
Judges Crone and Pyle concur.

Bailey, Judge.

Case Summary

[1] Following a jury trial, Jerry L. White appeals his five child molesting convictions and his sentence. We affirm.

Issues

[2] White raises the following two restated issues:

I. Whether the State presented sufficient evidence to support his five child molesting convictions.

II. Whether the trial court abused its discretion when it reissued a no-contact order after the trial.

Facts and Procedural History

[3] From approximately 2016 to 2018, White lived with his girlfriend, D.W., and her three daughters at various residences in Indianapolis. D.W.'s oldest daughter, K.A., was born on March 8, 2003; D.W.'s second daughter, M.A., is three years younger than K.A.

[4] K.A. was thirteen years old when she, her family, and White moved into the garage of a house on Nowland Avenue. While they lived there, White molested K.A. three times. First, when K.A. was watching a movie with White on the couch, he pulled down her pants and underwear and licked her vagina.

Another time, in a car, White put his finger in K.A.'s vagina. Yet a different time, on the bed, White touched K.A.'s vagina with his penis and tried to put his penis in her vagina.

[5] When K.A. was still 13 years old, she, her family, and White moved from the garage to the house on Nowland Avenue. From the house on Nowland, they all moved to a house on Dequincy Street. On one occasion while in the Dequincy house, K.A. awoke to White licking her vagina. When K.A. woke up, White ran out of the room.

[6] K.A., her family, and White then moved to a house on Lasalle Street. While they were there, White picked up K.A., put her "on the washer and dryer," and tried to pull her pants down. Tr. v. III at 144. White then carried K.A. to her mother's bed, where he kept trying to pull her pants down. K.A. kept saying "no," and White eventually left her alone. *Id.*

[7] K.A. told five people what White did to her: her best friend, her mother, two aunts, and her uncle. K.A. also gave her uncle a letter in which she summarized White's abuse.

[8] On December 3, 2019, the State charged White as follows:

> Count 1, child molesting, as a Level 1 felony,[1] for licking K.A.'s vagina on the couch in the Nowland Avenue garage;

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[1] Ind. Code § 35-42-4-3(a)(1); I.C. § 35-31.5-2-221.5.

Count 2, child molesting, as a Level 1 felony,[2] for putting his finger in K.A.'s vagina in the car;

Count 3, child molesting, as a Level 4 felony,[3] for trying to put his penis in K.A.'s vagina on the bed in the Nowland Avenue garage;

Count 4, sexual misconduct with a minor, as a Level 4 felony,[4] for licking K.A.'s vagina in the Dequincy Street house;

Count 5, attempted sexual misconduct with a minor, as a Level 4 felony,[5] for trying to pull down K.A.'s pants on the washer and dryer and in her mother's bedroom in the Lasalle Street house.

[9] Before trial, the court issued a no-contact order against White to protect K.A., her sister M.A., her uncle, and her mother. In discovery, the State turned over M.A.'s juvenile history and a video recording and transcribed statement of her forensic interview from November 4, 2019. The State also listed M.A. as a witness, but she did not testify at White's trial.

[10] White's jury trial took place on April 18 and 19, 2023. At trial, K.A. testified about White's sexual abuse of her. K.A. also testified that White was "trying to

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[2] *Id.*

[3] I.C. § 35-42-4-3(b).

[4] I.C. § 35-42-4-9(a)(1).

[5] *Id.*; I.C. § 35-41-5-1.

lure me and my sister[, M.A.] in[to] the basement" at the Dequincy Street house. Tr. v. III at 138.

[11] The jury found White guilty as charged, and the court sentenced him to an aggregate term of forty years. At sentencing, the bailiff asked about the no-contact orders that had been put into place. The State requested that the orders remain in effect for K.A. and M.A., and White did not object. The court granted the State's request. This appeal ensued.

Discussion and Decision

Sufficiency of the Evidence

[12] White contends that the evidence is insufficient to support his convictions because K.A.'s testimony was the only evidence of his guilt, and it was incredibly dubious.[6]

> When reviewing the sufficiency of the evidence needed to support a criminal conviction, we neither reweigh evidence nor judge witness credibility. We consider only the evidence supporting the judgment and any reasonable inferences that can be drawn from such evidence. We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt.

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[6] White does not challenge the sufficiency of the evidence on any grounds other than the alleged incredible dubiosity of K.A.'s testimony.

Bailey v. State, 907 N.E.2d 1003, 1005 (Ind. 2009) (internal citations omitted). Moreover, we note that "[t]he testimony of a sole child witness is sufficient to sustain a conviction for molestation." *Hoglund v. State*, 962 N.E.2d 1230, 1238 (Ind. 2012).

[13] To convict White of Counts I and II—the two Level 1 child molesting counts—the State was required to prove beyond a reasonable doubt that (1) on two separate occasions (2) White[7] (3) knowingly or intentionally (4) performed or submitted to other sexual conduct involving a sex organ of one person and the mouth of another person (5) with a child under fourteen years of age. *See* Ind. Code § 35-42-4-3(a)(1). To convict White of Count III, child molesting as a Level 4 felony, the State was required to prove that (1) White (2) performed or submitted to fondling or touching (3) of a child under fourteen years of age (4) with the intent to arouse or satisfy the sexual desires of White or the child. *See* I.C. § 35-42-4-3(b). To convict White of Count IV, Level 4 felony sexual misconduct with a minor, the State was required to prove (1) White (2) knowingly or intentionally (3) performed or submitted to other sexual conduct involving a sex organ of one person and the mouth of another person (4) with a child under sixteen years of age. *See* I.C. § 35-42-4-9(a)(1). And, to convict White of Count V, attempted Level 4 felony sexual misconduct with a minor, the State was required to prove (1) White (2) knowingly or intentionally (3)

[7] It is undisputed that White was, at all relevant times, over twenty-one years of age, as also required by the statutes with which he was charged.

attempted to (4) perform or submit to other sexual conduct involving a sex organ of one person and the mouth of another person (5) with a child under sixteen years of age. *See* I.C. § 35-42-4-9(a)(1); I.C. § 35-41-5-1. "The intent element of child molesting may be established by circumstantial evidence and may be inferred from the actor's conduct and the natural and usual consequence to which such conduct usually points." *Carter v. State*, 31 N.E.3d 17, 30 (Ind. Ct. App. 2015) (citation omitted), *trans. denied*.

[14] K.A.'s testimony established that White committed each of the charged offenses. K.A. testified that: (1) when she was thirteen years old, White licked her vagina when she was on the couch in the Nowland Avenue garage, as alleged in Count I; (2) on a second occasion when she was thirteen years old, White put his finger in her vagina in a car parked behind the Nowland Avenue garage, as alleged in Count II; (3) on a third occasion when she was thirteen years old, White touched her vagina with his penis and tried to put his penis in her vagina while on the bed in the Nowland Avenue garage; (4) when she was less than sixteen years old, White licked her vagina in the Dequincy Street house; and (5) on a separate occasion when she was less than sixteen years old, White attempted to have sexual contact with her by trying to pull down her pants at the Lasalle Street house. K.A.'s testimony provided sufficient evidence of probative value from which the jury could infer that White committed the crimes as charged. *See Hoglund*, 962 N.E.2d at 1238.

[15] White asserts that the rule of incredible dubiosity applies to the testimony of K.A. and renders the evidence as a whole insufficient to support his

convictions. The rule of incredible dubiosity permits the appellate court to impinge upon the factfinder's determination of credibility issues when it is confronted with inherently improbable, coerced, equivocal, or wholly uncorroborated testimony of incredible dubiosity. *Moore v. State*, 27 N.E.3d 749, 755 (Ind. 2015). Application of the rule is "limited to cases with very specific circumstances because [the Court is] extremely hesitant to invade the province of the jury." *Smith v. State*, 34 N.E.3d 1211, 1221 (Ind. 2015). The standard for invoking the incredible dubiosity rule is not an impossible burden to meet, but it is a difficult one, and testimony must be such that no reasonable person could believe it. *Clark v. State*, 62 N.E.3d 460, 462 (Ind. Ct. App. 2016). In order for the incredible dubiosity rule to apply, there must be (1) a sole testifying witness, (2) testimony that is inherently improbable, contradictory, or coerced, *and* (3) a complete absence of circumstantial evidence. *Moore*, 27 N.E.3d at 756; *cf. Murray v. State*, 761 N.E.2d 406, 408 (Ind. 2002) (finding the incredible dubiosity rule inapplicable even when there was a single eyewitness).

[16] K.A.'s testimony was not inherently improbable, contradictory, or coerced. "Cases where we have found testimony inherently improbable have involved situations either where the facts as alleged 'could not have happened as described by the victim and be consistent with the laws of nature or human experience,' or where the witness was so equivocal about the act charged that her uncorroborated and coerced testimony 'was riddled with doubt about its trustworthiness.'" *Carter v. State*, 31 N.E.3d 17, 31 (Ind. Ct. App. 2015) (quoting *Watkins v. State*, 571 N.E.2d 1262, 1265 (Ind. Ct. App. 1991). K.A.'s

testimony did not describe scenarios that were so inconsistent with human experience that they could not have happened as described, and her testimony was not equivocal. Nor was her testimony internally inconsistent, as White claims; her testimony that White "touched" her "daily" but "kind of spaced apart," was consistent with her further descriptions of specific instances of such touching. Tr. v. III at 179.

[17] The evidence was sufficient to support White's convictions.

No-Contact Order Regarding M.A.

[18] Before trial, the court issued a no-contact order to protect K.A., her sister M.A., her uncle, and her mother. At sentencing, without any objection from White, the court continued the no-contact order for everyone except K.A.'s mother. White asserts that the trial court abused its discretion when it continued the no-contact order for M.A, K.A.'s younger sister, as a part of his sentence.

[19] The court had discretion to issue the no-contact order under Indiana Code Section 35-38-1-30[8] if there was a nexus to the protected person and White's crime. *See Howe v. State*, 25 N.E.3d 210, 214 (Ind. Ct. App. 2015) (regarding a no-contact order issued as a condition of probation). We review the trial court's decision for an abuse of that discretion. *See, e.g.*, *Wilson v. State*, 5 N.E.3d 759, 762 (Ind. 2014); *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on*

[8] Indiana Code Section 35-38-1-30 provides, in full: "A sentencing court may require that, as a condition of a person's executed sentence, the person shall refrain from any direct or indirect contact with an individual."

reh'g, 875 N.E.2d 218. A trial court only abuses its discretion when its decision "is 'clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.'" *Anglemyer*, 868 N.E.2d at 490 (quoting *K.S. v. State*, 849 N.E.2d 538, 544 (Ind. 2006)).

[20] The trial court's decision to continue the no-contact order for M.A. was not clearly illogical. It was reasonable to believe that M.A. had a nexus to White's crimes against K.A. M.A. is K.A.'s younger sister who lived with K.A. and White at the times when White molested K.A. Although M.A. ultimately did not testify, the State listed her as a witness against White. Furthermore, M.A. was forensically interviewed, and the State provided White with a video recording and transcribed statement of her forensic interview from November 4, 2019. Thus, White was aware that M.A. provided a statement to the authorities in this case. Moreover, there was some evidence from which it could be inferred that White attempted to victimize M.A. too; K.A. testified that White was "trying to lure me and my sister in[to] the basement" of the Dequincy Street house. Tr. v. III at 138.

[21] There was a sufficient nexus between M.A. and White's crimes such that the trial court acted within its sound discretion when it continued the no-contact order regarding M.A.

Conclusion

[22] The State provided sufficient evidence to support White's convictions, and the trial court did not abuse its discretion when it reissued the no-contact order as to M.A.

[23] Affirmed.

Crone, J., and Pyle, J., concur.

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