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IN THE
COURT OF APPEALS OF INDIANA

QUENTAUN SPELLER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0712-CR-671
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
CRIMINAL DIVISION 2
The Honorable Paula Lopossa, Senior Judge
Cause No. 49G02-0704-FB-56856

June 25, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Quentaun Speller appeals his convictions for two counts of Sexual Deviate Conduct with a Minor,[1] one as a class B felony and one as a class C felony. Upon appeal, Speller challenges the sufficiency of the evidence supporting the convictions.

We affirm.

The facts favorable to the convictions follow. Speller is the step-brother of Marlon Moss, the victim's father. From November 2006 through February 2007, Speller lived with the Moss family in their Marion County home. During that time, Speller repeatedly fondled and kissed fifteen-year-old A.M. and on numerous occasions inserted his finger into her vagina. These varying sexual abuses took place in A.M.'s bedroom, her younger brother's bedroom, the kitchen, and the laundry room.

On April 4, 2007, the State charged Speller with four counts of sexual deviate conduct with a minor, three as class B felonies and one as a class C felony. A jury trial was held September 24 and 25, 2007, at the conclusion of which the jury found Speller guilty of Counts III and IV for inserting his finger into A.M.'s vagina (Count III) and repeatedly fondling and touching her (Count IV). The jury acquitted Speller of Counts I and II, which involved allegations of sexual intercourse and oral sex respectively. On October 5, 2007, the trial court sentenced Speller to twenty years on Count III and four years on Count IV and ordered the sentences be served concurrently.

On appeal, Speller argues that the evidence is insufficient to support his convictions. Specifically, Speller notes that there is no physical evidence linking him to the crimes charged, and he further invokes the incredible dubiosity doctrine.

[1] Ind. Code Ann. § 35-42-4-9 (West, PREMISE through 2007 1st Regular Sess.).

When considering a challenge to the sufficiency of evidence supporting a conviction, we neither reweigh the evidence nor judge witness credibility. *McHenry v. State*, 820 N.E.2d 124 (Ind. 2005). This review "respects 'the [fact-finder]'s exclusive province to weigh conflicting evidence.'" *Id*. at 126 (quoting *Alkhalidi v. State*, 753 N.E.2d 625, 627 (Ind. 2001)). Considering only the probative evidence and reasonable inferences supporting the verdict, we must affirm "'if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.'" *McHenry v. State*, 820 N.E.2d at 126 (quoting *Tobar v. State*, 740 N.E.2d 109, 111-12 (Ind. 2000)).

Speller first argues that his convictions should be reversed because the State failed to present any physical evidence linking him to the crimes. Instead, the State relied upon the testimony of the victim. Specifically, A.M. testified that Speller repeatedly fondled and touched her and, on numerous occasions, inserted his finger into her vagina. We note that the uncorroborated testimony of a single witness is sufficient to sustain a conviction on appeal. *Holeton v. State*, 853 N.E.2d 539 (Ind. Ct. App. 2006). Perhaps recognizing this, Speller asserts that A.M.'s testimony is incredibly dubious. Pointing to the fact that the jury acquitted him of Counts I and II, Speller asserts that A.M.'s testimony was so contradictory that "clearly [the jury] stopped believing [A.M.] at some juncture". *Appellant's Brief* at 8. Speller maintains that reversal is required because "it's impossible to distinguish between the truth and what the jurors believed to be fabricated". *Id*.

Under the incredible dubiosity doctrine, we may impinge upon a jury's function to judge the credibility of a witness only where the court has confronted inherently

improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiosity. *Love v. State*, 761 N.E.2d 806 (Ind. 2002). That is, reversal is appropriate only when "a sole witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence". *Id*. at 810. "Application of this rule is rare and the standard to be applied is whether the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it." *Id.* The incredible dubiosity rule applies to inconsistencies in trial testimony rather than inconsistencies between trial testimony and pre-trial statements. *See Holeton v. State*, 853 N.E.2d 539.

Minor inconsistencies between A.M.'s pre-trial statements and her testimony at trial do not render her testimony incredibly dubious. *See id*. In this regard, any inconsistencies in A.M.'s testimony reflect on her credibility, which assessment is within the jury's prerogative. Further, that the jury acquitted Speller of two counts and found him guilty of two counts shows that the jury simply afforded greater weight to parts of A.M.'s testimony than others. This too is within the jury's prerogative. *See Hodge v. State*, 688 N.E.2d 1246 (Ind. 1997).

Having reviewed the record, we find nothing so inherently improbable about A.M.'s testimony that would have us impinge upon the jury's function to assess her credibility and weigh the evidence. A.M. recounted numerous incidents of fondling and touching and numerous incidents during which Speller inserted his finger into her vagina. Such evidence is sufficient to sustain Speller's convictions.

Judgment affirmed.

KIRSCH, J., and BAILEY, L., concur