## MEMORANDUM DECISION




ATTORNEY FOR APPELLANT

Anthony S. Churchward
Anthony S. Churchward, P.C.
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General

Catherine E. Brizzi
Deputy Attorney General
Indianapolis, Indiana

# IN THE COURT OF APPEALS OF INDIANA

Robert M. Crouse,
*Appellant-Defendant,*

v.

State of Indiana,
*Appellee-Plaintiff*

October 5, 2022

Court of Appeals Case No. 22A-CR-636

Appeal from the Whitley Circuit Court

The Honorable Matthew J. Rentschler, Judge

Trial Court Cause No. 92C01-2106-F3-605

**Crone, Judge.**

## Case Summary

[1] Robert M. Crouse appeals his convictions following a bench trial for three counts of level 3 felony rape. He contends that the State presented insufficient evidence to support his convictions. Finding the evidence sufficient, we affirm.

## Facts and Procedural History

[2] In 2018, Crouse was a pastor at Faith Baptist Church in Whitley County and had been since 2007. He helped administer a youth group consisting of approximately twelve children. The youth group went to the church on Saturdays to clean in preparation for the Sunday service. At some point, members of the group stopped coming to church on Saturdays, and Crouse decided that only three siblings, L.E.B., A.B., and L.O.B. (the Siblings), would continue to come and clean. Crouse began to regularly transport the Siblings to the church in his personal vehicle or in the church van. Crouse had known the Siblings since around 2007 when they were very young. The Siblings all have special needs and currently live with their parents because they do not possess the skills to be able to live on their own.

[3] In December 2020, Crouse admitted to his wife that he was addicted to pornography and that he had been having sexual contact with the Siblings since 2018 when the Siblings were between the ages of eighteen and twenty-four. His wife notified law enforcement, and an investigation followed. During the course of the investigation, Crouse admitted to engaging in oral sex and vaginal intercourse with L.E.B. He also admitted to engaging in oral sex and anal

penetration with A.B. and L.O.B. He indicated that the sexual conduct began when the Siblings found him watching pornography. He also told officers that L.E.B. and L.O.B. engaged in sexual activity with each other in front of him. Crouse stated that the Siblings were "willing participants" in the sexual activity. Tr. Vol. 2 at 28.

[4] On June 3, 2021, the State charged Crouse with three counts of level 3 felony rape. A bench trial was held on February 15, 2022. The State presented eight witnesses and one exhibit. Crouse rested without presenting any evidence. The trial court found Crouse guilty as charged and, following a hearing, sentenced him to an aggregate sentence of thirty years. This appeal ensued.

## Discussion and Decision

[5] Crouse challenges the sufficiency of the evidence supporting his rape convictions. In reviewing a claim of insufficient evidence, we do not reweigh the evidence or judge the credibility of witnesses, and we consider only the evidence that supports the judgment and the reasonable inferences arising therefrom. *Bailey v. State*, 907 N.E.2d 1003, 1005 (Ind. 2009). It is "not necessary that the evidence 'overcome every reasonable hypothesis of innocence.'" *Drane v. State*, 867 N.E.2d 144, 147 (Ind. 2007) (quoting *Moore v. State*, 652 N.E.2d 53, 55 (Ind. 1995)). "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." *Bailey*, 907 N.E.2d at 1005.

[6] To convict Crouse of rape as charged, the State was required to prove that he knowingly or intentionally had sexual intercourse with another person or knowingly or intentionally caused another person to perform or submit to other sexual conduct "when the other person was so mentally disabled or deficient that consent to sexual intercourse or other sexual conduct" could not be given. Ind. Code § 35-42-4-1(a)(3). Crouse's sole challenge on appeal is whether the State presented sufficient evidence that the Siblings' mental disabilities or deficiencies rendered them unable to consent.

[7] Capacity to consent "presupposes an intelligence capable of understanding the act [of sexual intercourse], its nature, and possible consequences." *Stafford v. State*, 455 N.E.2d 402, 406 (Ind. Ct. App. 1983). This Court has defined "mentally disabled or deficient" as having "subnormal intelligence or mental disease or defect." *Ball v. State*, 945 N.E.2d 252, 257 (Ind. Ct. App. 2011), *trans. denied*.[1] The "mental disability or deficiency" prong of the statute "primarily exists to prevent abuse of persons in our society who, by reason of mental disability, are unable to protect themselves from sexual abuse." *Id*. The defendant "must be aware of a high probability that the victim is mentally disabled and unable to consent to sexual intercourse." *Bozarth v. State*, 520 N.E.2d 460, 464 (Ind. Ct. App. 1988), *trans. denied*.

---

[1] The meaning of this phrase "has been expanded … to include not only a victim with lower-than-normal intelligence, but also a victim who was highly intoxicated, and a victim who had unknowingly ingested eight Xanax." *Ball*, 945 N.E.2d at 257 (citations omitted).

[8] Here, the State presented evidence that Crouse had known the Siblings since approximately 2007 and that he was well aware of their mental disabilities. He was much older than the Siblings, was their longtime pastor, spent a considerable amount of time with them over the years, and occupied a position of trust in their lives. Forensic interviewer Lorrie Freiburger testified that she conducted interviews with each of the three Siblings. Regarding each Siblings' developmental ability to communicate, Freiburger stated that L.O.B. is equivalent to a four-year-old, L.E.B. is equivalent to a three- or four-year-old, and A.B. is equivalent to a five-year-old.

[9] Clinical psychologist Lisa Marie Wooley testified that she reviewed the forensic interviews as well as school records. She determined that A.B. meets the criteria for mild to moderate intellectual disability and has an IQ between 52 and 64. She further found that A.B. demonstrated impaired cognitive and adaptive functioning that impacted his ability to care for himself, and that he functions at a first-grade level and has difficulties with reasoning, understanding, and foreseeing consequences. Freiburger stated that, due to A.B.'s intellectual limitations, A.B. is more likely to be gullible and obey authority figures. She further testified that A.B. lacks the ability to think abstractly and to make moral judgments.

[10] Regarding L.E.B., Freiburger determined that she has an IQ of approximately 54, suffers from a cognitive and communication disability, and meets the criteria for mild to moderate intellectual disability. Due to her communication disability, L.E.B. has difficulty verbally communicating her wants and needs.

Her academic functioning is between a kindergarten and first-grade level, and she has difficulty with moral reasoning. Her limited depth of understanding makes her more gullible and more likely to be victimized.[2] As for L.O.B., Freiburger testified that he has an IQ of approximately 57 or 58 and functions academically in the second- to-third-grade range. Although he has higher "verbal acuity" than his siblings, he has similar trouble with "moral reasoning, forethought, understanding, [and] consequences in relationship to behavior." Tr. Vol. 2 at 99.

[11] Testimony from the Siblings' mother further revealed that the Siblings all live at home with their parents because they are unable to function independently. None of the Siblings works but instead they receive social security disability benefits. Their mother indicated that while they can each complete menial tasks around the house, even accomplishing those things is often challenging for the Siblings. Moreover, each of the Siblings testified at trial, and the trial court, as trier of fact, was able to assess their mental disabilities or deficiencies firsthand.[3]

[12] Based upon the foregoing, we have little difficulty determining that the State presented sufficient evidence that the Siblings' mental disabilities or deficiencies rendered them unable to consent to sexual intercourse or other sexual conduct with Crouse. Further, there was ample evidence to support a reasonable

---

[2] The record further indicates that L.E.B. suffered brain damage from a breech birth.

[3] L.E.B.'s testimony consisted primarily of her nodding her head to indicate an affirmative answer and shaking her head to indicate a negative answer.

inference that Crouse was aware of a high probability that his victims were mentally disabled and unable to consent to sexual intercourse or other sexual conduct, and he does not claim otherwise on appeal.[4] His convictions are affirmed.

[13] Affirmed.

May, J., and Weissmann, J., concur.

[4] In his brief, Crouse dedicates a single sentence alluding to evidence that he claims was probative of "his subjective belief that [the Siblings] were consenting" to sexual intercourse or other sexual conduct. Appellant's Br. at 11. However, Crouse's alleged belief that the Siblings were consenting is of no moment. Rather, a defendant must simply be "aware of a high probability that the victim is mentally disabled and unable to consent to sexual intercourse." *Bozarth*, 520 N.E.2d at 464. Crouse has not claimed that he lacked such awareness, and the State's evidence was more than sufficient to establish that he was aware of a high probability that the Siblings were mentally disabled and unable to consent.