MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

Robert Nathaniel Farmer,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

April 29, 2024

Court of Appeals Case No.
23A-CR-715

Appeal from the Howard Superior Court

The Honorable Hans S. Pate, Judge

Trial Court Cause No.
34D04-1908-F1-2667

Memorandum Decision by Chief Judge Altice
Judges Bradford and Felix concur.

Altice, Chief Judge.

Case Summary

[1] Following a jury trial, Robert Farmer was convicted of Class A felony child molesting of L.B. (Child). He appeals and raises the following restated issues:

> 1. Did the trial court abuse its discretion when it denied Farmer's motion to dismiss the charging information, which he asserted was not specific enough for him to prepare a defense?
>
> 2. Did the trial court abuse its discretion when it admitted the videotaped forensic interview of Child as well as several statements Child made to family members?
>
> 3. Did the State present sufficient evidence to convict Farmer?
>
> 4. Did the trial court err when it classified Farmer as a credit restricted felon subsequent to the sentencing hearing via an amended sentencing order?

[2] We affirm and remand.

Facts & Procedural History

[3] Child was born in October 2005 to E.B. and J.B. (Father and Mother, respectively). By late 2008 or early 2009, Father and Mother were no longer together, and Mother began dating Farmer. She and Farmer moved in together sometime in 2009, eventually marrying in 2015. Father also remarried sometime after 2009. Between the years 2009 and 2016, Mother and Father maintained a flexible and cooperative parenting time arrangement, where Child

often would alternate spending a week at each parent's home. Farmer and Mother moved residences around Kokomo "quite a few times." *Transcript Vol. 3* at 176. When Child was around five or six years old, Mother began working overnight shifts at Meijer, which lasted a little over two years.

[4] In 2016, Mother left Farmer and moved in with her sister (Aunt), and Child began living full-time with Father and his wife (Stepmother). Child continued to spend time with Mother at Aunt's home. In 2018, Mother and Child's younger sister moved back in with Farmer but Child did not.

[5] On January 16, 2019, when Child was thirteen years old, Father and Stepmother confronted Child about their suspicions that she had snuck out of a recent school sporting event with her boyfriend and engaged in sexual intercourse with him. Child initially denied the allegation but eventually acknowledged that she had engaged in sexual activity with him, although not intercourse. As part of their conversation, Child said that there was "something else" that they needed to know and disclosed that Farmer had sexually abused her, beginning when she was four or five years old. *Id.*; *see also id.* at 157. Father and Stepmother called the police and were told to take Child to a hospital.

[6] Detective Dustin Spicer of the Kokomo Police Department (KPD) responded and met Child, Father, and Stepmother at the hospital. Detective Spicer spoke primarily to Father and Stepmother, although Child was present in the room.

As their conversation was occurring, Detective Spicer saw that Child was, at times, "visibly upset" and crying. *Id*. at 94.

[7] Two days later, Child was forensically interviewed at Tomorrow's Hope, a local child advocacy center. Among others who viewed the interview from an observation room was KPD Sergeant Jon Webster. In the interview, Child estimated that Farmer molested her two or three times per week when Mother worked at night. She described that Farmer sometimes placed her on top of him, so they were facing each other and that he held her in place, and, at times, he put his fingers inside her vagina, forced his penis into her mouth, and tried to put his penis inside her, which was painful. She indicated that the last time anything occurred was when she was around ten years old. Child stated that Farmer told her he would hurt Mother and keep her younger sister away if she told anyone, and she said that she was afraid of Farmer because he was a large man and abusive toward Mother. During the interview, Child discussed the sexual activity with her boyfriend and the conversation with Father and Stepmother.

[8] On February 6, Farmer gave a videotaped statement to Sergeant Webster, denying the allegations. When asked why Child would make up such accusations, Farmer said Child may have done so to avoid getting in trouble for having engaged in sexual activity at age thirteen with her boyfriend. Farmer also told Sergeant Webster that Father had previously made false allegations against him. Later that day, Sergeant Webster interviewed Mother and told her the allegations that Child had made against Farmer. Among other things,

Mother stated that the kids were never left alone with Farmer other than occasionally when she was running late from work.

[9] On August 28, 2019, the State charged Farmer with Level 1 felony child molesting, alleging:

> that on, about or between 2009 and 2016 at or near Kokomo in Howard County, State of Indiana, Robert Nathaniel Farmer, a person of at least twenty-one (21) years of age, did perform or submit to sexual intercourse or other sexual conduct as defined in Indiana Code Section 35-31.5-2-221.5 with Victim 1, a child under the age of fourteen years (14).

Appendix at 26.

[10] On September 18, 2019, Farmer filed a motion to dismiss, asserting that the charging information failed to state the offense with sufficient certainty to allow him to prepare a defense because he "has no idea where or when the State [] is alleging the crime took place." *Id*. at 39. Farmer also noted that he had not yet received Child's Tomorrow's Hope interview, which he needed before conducting any depositions. The trial court directed the State to immediately turn over any discovery in its possession and took the matter under advisement, ultimately denying Farmer's motion to dismiss in November 2019.

[11] Farmer requested and received court permission to depose Child, who was deposed in May 2021. During the deposition, Child testified, among other things, that Farmer put his penis in her mouth and inside her vagina, estimating that he did each "probably [] around" fifty times. *Transcript Vol. 3* at 248, 249.

[12] The matter proceeded to a jury trial January 6-10, 2023. Farmer's theory of defense was that, when confronted by Father and Stepmother about having sex with her boyfriend, Child fabricated the claim against Farmer to avoid getting in trouble herself. Before the trial began, the trial court held a hearing outside the jury's presence on the parties' respective motions in limine. As is relevant to this appeal, Farmer told the court that he "absolutely" intended to use a transcript of the Tomorrow's Hope forensic interview (the Interview) to cross-examine Child about inconsistencies between her statements in the Interview and her subsequent deposition. *Id*. at 24. The State responded that "right now the [Interview] is not coming in" but argued that Farmer's use of Child's statements from the Interview would open the door to the State playing the video as the best evidence. *Id*. at 20. The trial court agreed, ruling that "because the defense has [] said that they want to use the transcription" of the Interview to cross-examine Child, the full video would be played for the jury as the best evidence. *Id*. at 24.

[13] At that point, Farmer objected on the basis that he "didn't have ten days notice" from the State as required by statute but thereafter acknowledged that the trial court's decision to admit the video was based on his use of the transcript to cross-examine Child. *Id*. at 25. Farmer further agreed that "[w]e've all know[n] about" the video since the start of the case several years prior and that the video was "not a surprise." *Id.* at 26. As to when it would be played during trial, Farmer indicated he did not care as long as it was not played during Child's testimony, suggesting that it made the "most sense" for

the State to play it during Sergeant Webster's testimony as he had observed the Interview. *Id*. at 26, 28.

[14] Farmer referred to the Interview in his opening statement at trial, telling the jurors to "watch [the Interview] pretty closely because when I watch it I see a little girl making stuff up as she goes along" and pointing out that it was critical to pay attention to whether Child's statements in the 2019 Interview and in her subsequent 2021 deposition were consistent. *Id*. at 77-78.

[15] During the testimony of Sergeant Webster, the State offered the video of the Interview into evidence. Farmer stated that he had no foundational objection but objected "for the reasons previously indicated" to the court. *Id*. at 99. Farmer also objected to the admission of his videotaped statement to police as it contained reference to prior bad acts, abuse of alcohol, and general violence and yelling in the home with Mother. Both videos were admitted and played over Farmer's objections. Detective Webster testified that, after interviewing Father and, separately, Mother, he met with Father and Stepmother to discuss the various residences and locations in Kokomo where Farmer and Mother had resided over the years, in an attempt to match those locations with Child's age while living at each.

[16] Father and Stepmother each testified that there were many occasions when Child "was refusing to go to her mother's house," was scared to go, and "would ball and cry not to go over there." *Id.* at 124-25, 146. She also started wetting the bed for a period of time. Father noted that, after Mother left Farmer and

began living with Aunt, Child did not express unwillingness to go for visits and, rather, "enjoyed i[t] over there." *Id*. at 150. However, when Mother moved back in with Farmer in 2018, Child told Father that she did not want to go such that Father eventually called Mother to express that Child was almost thirteen years old and should have a choice on whether she went to Mother's for visits.

[17] Father's mother (Grandmother) testified about a particular incident in December 2018 when Father asked her to pick up Child at the movie theater because he had received a "frantic and upset" call from Child, wanting to be picked up but he was not available. *Id*. at 164. Grandmother testified that Child had gone to see a movie with Mother, and when Farmer showed up to the movie, Child wanted to leave. Grandmother described that she arrived to find Child "terrified, shaking, crying." *Id*. Over Farmer's objection, Grandmother testified that when she asked Child why she was so upset, Child told her that it was because Farmer was there.

[18] Mother testified that having Farmer watch Child and the younger sibling was a "last resort" based on her concerns with his excessive drinking. *Id*. at 180, 181. She stated that she did not know about the abuse until Child disclosed it to Father and Stepmother in January 2019. Mother recalled the December 2018 incident at the movie theater, describing that she spoke to Child on the phone after she had been picked up and that Child was upset and crying in the call. Over Farmer's objection, Mother testified that Child had told her she did not want to be around Farmer. Mother also testified that, after she was back living

with Farmer in 2018, Child "didn't want to come stay with [her] anymore," so they would occasionally see each other at other locations. *Id*. at 199-200.

[19] Child, then seventeen years old, was the last to testify. She recalled that she met Farmer in 2009, Mother moved in with him a year or two later, and "that's when everything started." *Id*. at 220. She testified that typically it would happen when she fell asleep on the couch, and he was at the other end of the couch, drunk, and would start touching her, which caused her to wake up. Child testified that Farmer would insert his fingers into her vagina, which "happened so many times that it just kinda merges together." *Id.* at 226. He also "tried to put his penis in my vagina" many times but it never went "fully in" because of her small size. *Id.* at 228; *Transcript Vol. 4* at 22. She said she would feel bruised and that it "hurt when [she] peed" and that she "constantly" had urinary tract infections (UTI). *Transcript Vol. 3* at 233; *Transcript Vol. 4* at 2. Child also described that Farmer would grab her and "put his penis in [her] mouth" while having his hand on the top of her head and "pushing down." *Transcript Vol. 3* at 229.

[20] Child testified that Mother was not home when Farmer would do these things to her, and Child identified several different residences where the abuse occurred by describing or naming nearby restaurants or landmarks. In 2012, Child went to the doctor for a UTI and bed wetting but did not disclose the sexual abuse. She testified that Farmer said he would hurt her sister or Mother if she told anyone, and because "[h]e was abusive," she believed him. *Id*. at 221. Child explained that she had wanted for "so long" to tell Father about

Farmer but did not know how to make that disclosure, until confronted about her being sexually active. *Id*. at 215.

[21] During closing arguments, Farmer argued that Child was not credible, pointing out what he maintained were inconsistencies between Child's statements during the Interview, where Child "looks like a teenager . . . kind of making it up as [she] went along," her 2021 deposition, and trial testimony. *Transcript Vol. 4* at 46-47. He urged that she fabricated the crime to evade punishment for her own sexual activity with her boyfriend.

[22] The jury found Farmer guilty as charged, and a sentencing hearing was held on March 9, 2023. At the hearing, the parties stipulated that the evidence showed that the crime occurred prior to July 1, 2014, such that Farmer should be sentenced as a Class A felony, rather than a Level 1 felony. The trial court sentenced Farmer to fifty years at the Indiana Department of Correction, with forty-nine years executed and one suspended to home detention. The next day, the court issued an abstract of judgment with "no" checked in the box asking whether the defendant was a credit restricted felon. *Appendix* at 172.

[23] On March 16, the State filed a motion to correct error, asserting that the trial court should consider the credit restricted felon statute, Ind. Code § 35-31.5-2-72, in sentencing Farmer. Thereafter, the court issued an amended sentencing order, which added that Farmer was being sentenced as a credit restricted felon

pursuant to I.C. § 35-31.5-5-2-72(a)(A)(B) and I.C. 35-42-4-3(a).[1] On March 27, the court issued an amended abstract of judgment that identified Farmer as a credit restricted felon.

[24] Farmer now appeals. Additional facts will be provided as necessary.

Discussion & Decision

1. Denial of Motion to Dismiss

[25] Farmer asserts the trial court erred when it denied his motion to dismiss because the charging information was "overly vague" and not stated with sufficient certainty to allow him to prepare a defense. *Appellant's Brief* at 9. We review a trial court's denial of a pretrial motion to dismiss for an abuse of discretion. *Hahn v. State*, 67 N.E.3d 1071, 1082 (Ind. Ct. App. 2016), *trans. denied*. An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before it, or when the court misinterprets the law. *Id*.

[26] The purpose of the charging information is to provide a defendant with notice of the crime of which he is charged so that he is able to prepare a defense. *Gilliland v. State*, 979 N.E.2d 1049, 1060-61 (Ind. Ct. App. 2012). Ind. Code §

[1] Although the signature line on the Amended Sentencing Order is dated March 9, 2023 – the same date as the sentencing hearing – the CCS indicates that it was signed on March 23, 2023. The State's motion to correct error was also denied on March 23.

35-34-1-2(a) requires, as relevant here, that a charging information be in writing and allege the commission of an offense by:

> (5) stating the date of the offense with sufficient particularity to show that the offense was committed within the period of limitations applicable to that offense; [and]
>
> (6) stating the time of the offense as definitely as can be done if time is of the essence of the offense[.]

I.C. § 35-34-1-2(d) further provides that an information "shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged." We have recognized that "[t]he State is not required to include detailed factual allegations in a charging information." *Grimes v. State*, 84 N.E.3d 635, 640 (Ind. Ct. App. 2017), *trans. denied*.

[27] Farmer argues that the charging information alleged that he committed the offense between 2009 and 2016 in Kokomo, and, from that, it was "impossible" for him to present a defense as "he has no idea where or when the State [] is alleging the crime(s) took place." *Appellant's Brief* at 12. Therefore, he argues, the court should have dismissed the charge against him or, alternatively, ordered the State to amend the information. His claim fails for at least a couple of reasons.

[28] First, time is generally not of the essence for the crime of child molesting. *Cabrera v. State*, 178 N.E.3d 344, 346 (Ind. Ct. App. 2021); *Gaby v. State*, 949 N.E.2d 870, 876 (Ind. Ct. App. 2011). "'It is difficult for children to remember

specific dates," and an abused child often "loses any frame of reference in which to compartmentalize the abuse into distinct and separate transactions." *Cabrera*, 178 N.E.3d at 346 (quoting *Baker v. State*, 948 N.E.2d 1169, 1174 (Ind. 2011)). The exact date becomes important only in limited circumstances, such as when the victim's age at the time of the offense falls at or near the dividing line between classes of felonies. *Id*. Such is not the case here, where Child testified that the abuse ended around age ten. Thus, the only requirement is that the charging information allege that the offense was committed within the statutory period of limitations. *Gaby*, 949 N.E.2d at 876. And a prosecution for a Class A felony child molesting may be commenced at any time before the alleged victim reaches thirty-one years of age. Ind. Code § 35-41-4-2(c); I.C. § 35-41-4-2(e)(1).

[29] Second, we have recognized that "where a charging instrument may lack appropriate factual detail, additional materials such as the probable cause affidavit supporting the charging instrument may be taken into account in assessing whether a defendant has been apprised of the charges against him." *Grimes*, 84 N.E.3d at 639. Here, the probable cause affidavit (PCA), several pages in length and single spaced, was prepared by Sergeant Webster and was filed with the charging information. It summarized his observations of the Interview, Child's statements, and the content of his recorded interviews of Farmer and Mother. The PCA outlined that, according to Child, the touching occurred when she was sleeping and Mother was at work and that it happened in at least two of the residences where they lived in Kokomo, one located near a

Kentucky Fried Chicken. The PCA also provided information Sergeant Webster had obtained from his meeting with Father and Stepmother as to where Mother and Farmer lived at various times and what age Child would have been at each location, and it stated that Child had reported that the abuse ended when she was around ten years old.

[30] The charging information and the PCA, taken together, contained sufficient detailed facts to apprise Farmer of the charge against him to prepare a defense. We therefore conclude that the trial court did not abuse its discretion when it denied his motion to dismiss. *See Gaby*, 949 N.E.2d at 876 (finding charging information was sufficiently specific where it alleged that a single act of molestation happened during a five-year period).

2. Admission of Evidence

[31] Farmer argues that the trial court erred when it admitted the video of the Interview and when it allowed witness testimony from Father, Stepmother, and Grandmother about statements Child had made. The decision to admit or exclude evidence is within the sound discretion of the trial court. *Alvarado v. State*, 89 N.E.3d 442, 445 (Ind. Ct. App. 2017), *trans. denied*. An abuse of discretion may occur if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court, or if the court has misinterpreted the law. *Id*. We may affirm the trial court's ruling if it is sustainable on any legal basis in the record, even though it was not the reason enunciated by the trial court. *Id*.

[32] Moreover, errors in the admission of evidence are to be disregarded unless they affect the substantial rights of a party. Ind. Appellate Rule 66(A); *Wilkes v. State*, 7 N.E.3d 402, 405-06 (Ind. Ct. App. 2014). We consider the likely impact of the improperly admitted or excluded evidence on a reasonable, average jury in light of all the evidence in the case. *Hayko v. State*, 211 N.E.3d 483, 492 (Ind. 2023), *cert. denied*, 144 S. Ct. 570 (2024). We have held that reversible error cannot be predicated upon the erroneous admission of evidence that is merely cumulative of other evidence that has already been properly admitted. *Matter of N.E.*, 228 N.E.3d 457, 473 (Ind. Ct. App. 2024) (quotations omitted).

a. Video of the Interview

[33] Farmer contends that the trial court erred in admitting the video of the Interview over his objection. He asserts that the Interview contained hearsay and did not meet the requirements of I.C. § 35-37-4-6, the Protected Person Statute (the PPS), which permits the admission of otherwise inadmissible hearsay evidence in defined circumstances. As is relevant to Farmer's appeal, the PPS provides that a videotape of a protected person is admissible if (1) the court finds in a hearing, attended by the protected person and outside the presence of the jury, that the time, content, and circumstances of the videotape provide sufficient indications of reliability, and (2) the defendant is notified at least ten days before trial of the prosecuting attorney's intention to introduce the statement or videotape and of the contents of the statement or videotape. I.C. § 35-37-4-6(e), (g) (effective July 1, 2022 through April 19, 2023).

[34] Farmer argues that the trial court erred in admitting the video because it failed to conduct a hearing and make a reliability finding and the State failed to provide Farmer with the required notice of its intent to use the video. Under the specific facts and circumstances of this case, we find Farmer's arguments misplaced and unpersuasive.

[35] The record reflects that the State did not intend to use the video at trial as substantive evidence or otherwise. It was only after Farmer informed the court and the State, on the morning of trial, that he intended to use a transcript of the Interview during his cross-examination of Child to impeach her credibility that the State then responded that the full video should be played as the complete and best evidence of the Interview, a position with which the trial court agreed. Although Farmer then voiced objection to admission of the video based on lack of required notice, he expressly acknowledged that the court's decision to admit the video was based upon his use of the transcript to impeach Child. Farmer also stated that he did not care when the State chose to play the Interview, as long as not during Child's testimony, and even suggested that playing it during Sergeant Webster's testimony made the most sense. On these facts, the PPS's requirements for the State to provide ten days' notice to a defendant and the court to hold a hearing to determine the reliability of Child's statement are simply inapplicable. Accordingly, the failure to comply with the PPS did not render the Interview inadmissible, as Farmer claims.

[36] In reaching our decision, we observe that, in addition to cross-examining Child about statements she made in the Interview, Farmer referred to the video in

both his opening statement and closing argument to advance his theory that Child fabricated the allegations. We agree with the State that "Farmer's deliberate, strategic decision to use the forensic interview [] to support his defense theory demonstrates that the trial court's decision to admit the video did not affect his substantial rights." *Appellee's Brief* at 24. For these reasons, the trial court did not commit reversible error when it admitted the videotape of the Interview.

b. Witness Testimony

[37] Farmer next argues that the trial court abused its discretion when it admitted, over his objection, hearsay evidence from Father, Stepmother, Grandmother, and Mother about statements Child made to them expressing that she did not want to go to Mother's house – such as "don't make me go" – or that she said she was "scared" of Farmer and did not want to be around him. The trial court permitted the testimony, stating that Child would be testifying and subject to cross-examination. Farmer asserts on appeal that this was a misunderstanding of hearsay and was error. The State maintains that Child's statement "don't make me go" was a command and not an assertion of fact – and thus not hearsay – and that the other challenged statements were excited utterances and thus admissible as an exception to hearsay. Ind. Rules Evid. 801(a), 803(2).

[38] Assuming without deciding that allowing the statements into evidence was error, we find that such was harmless as the challenged statements were cumulative of the witnesses' personal observations of Child's demeanor and emotions as well as of Child's in-court testimony, in which she described her

fear of Farmer, not wanting to visit Mother at her home when Farmer was there, and experiencing distress at encountering Farmer at the theater. *See N.E.*, 228 N.E.3d at 473 (reversible error cannot be predicated upon the erroneous admission of evidence that is merely cumulative of other, properly-admitted evidence); *Willis v. State*, 776 N.E.2d 965, 967 (Ind. Ct. App. 2002). On this record, Farmer has not demonstrated that admission of the several challenged statements undermined confidence in the outcome of the proceeding. *Hayko*, 211 N.E.3d at 492. Accordingly, Farmer has not established that the admission of the witnesses' testimony was reversible error.

3. Sufficiency of the Evidence

[39] When reviewing a claim of insufficient evidence, it is well established that our court does not reweigh evidence or assess the credibility of witnesses. *Smith v. State*, 163 N.E.3d 925, 928 (Ind. Ct. App. 2021). When we are confronted with conflicting evidence, we consider it most favorably to the trial court's ruling. *Young v. State*, 973 N.E.2d 1225, 1226 (Ind. Ct. App. 2012), *trans. denied*. It is not necessary that the evidence overcome every reasonable hypothesis of innocence; rather, the evidence is sufficient if an inference reasonably may be drawn from it to support the trial court's decision. *Id*. The 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).

[40] During the relevant period, Indiana law provided that a person commits Class A felony child molesting when he is over the age of twenty-one and knowingly

or intentionally performs or submits to sexual intercourse or deviate sexual conduct with a child under the age of fourteen. Ind. Code § 35-42-4-3(a)(1) (version effective July 1, 2007 to June 30, 2014). "Sexual intercourse" means an act that includes any penetration of the female sex organ by the male sex organ. I.C. § 35-31.5-2-302 (added July 1, 2012). Proof of the slightest penetration of the female sex organ, including penetration of the external genitalia, is sufficient to sustain a conviction for child molestation based on sexual intercourse. *Boggs v. State*, 104 N.E.3d 1287, 1289 (Ind. 2018). "Deviate sexual conduct" meant an act involving a sex organ of one person and the mouth or anus of another person, or an act involving the penetration of the sex organ or anus of a person by an object. I.C. § 35-31.5-2-94 (repealed and replaced July 1, 2014 by I.C. § 35-31.5-2-221.5, which replaced the word "deviate" with the word "other"). Proof of the slightest penetration of the sex organ, including penetration of the external genitalia, is sufficient to demonstrate a person performed deviate/other sexual conduct with a child. *Boggs*, 104 N.E.3d at 1289. And a finger is an object for purposes of the child molesting statute. *Seal v. State*, 105 N.E.3d 201, 209 (Ind. Ct. App. 2018), *trans. denied*.

[41] Farmer acknowledges that generally the uncorroborated testimony of a victim is sufficient to sustain a conviction but here asks us to disregard Child's testimony because it was "so unbelievable" that it was incredibly dubious. *Appellant's Brief* at 10, 23. The incredible dubiosity rule "allows the reviewing court to impinge upon the factfinder's responsibility to judge the credibility of witnesses when

confronted with evidence that is 'so unbelievable, incredible, or improbable that no reasonable person could ever reach a guilty verdict based upon that evidence alone.'" *Smith*, 163 N.E.3d at 929 (quoting *Moore v. State*, 27 N.E.3d 749, 755 (Ind. 2015)). The rule is applied in limited circumstances, namely where there is (1) a sole testifying witness; (2) testimony that is inherently contradictory, equivocal, or the result of coercion; and (3) a complete absence of circumstantial evidence. *Id*. (quotations omitted).

[42] In arguing that Child's testimony was incredibly dubious, Farmer suggests that Child's deposition testimony was "vastly different" from her statements in her Interview and at trial because, in her deposition, she stated that his penis went inside her, whereas in the Interview and at trial, she said it would not fit. *Appellant's Brief* at 24. Farmer also highlights that Child's testimony about being alone with Farmer on many occasions was not consistent with Mother's, who said that she rarely left Child alone with Farmer. Farmer especially urges that the timing and circumstances surrounding Child's disclosure made the allegations "suspect" – i.e., at the time her parents were confronting her about having sexual relations with her boyfriend. *Id*.

[43] None of those matters made Child's testimony inherently contradictory or improbable. Indeed, she testified repeatedly, coherently, and unequivocally that Farmer touched her vagina, tried to push his penis in her vagina, and put his penis in her mouth. As to the alleged discrepancies about whether his penis went inside her, Child explained at trial that Farmer's penis did not "fully" go inside her, due to her small size. *Transcript Vol. 3* at 247. In any event, our

courts have recognized inconsistencies between pretrial statements and trial testimony do not necessarily render testimony incredibly dubious. *See Corbett v. State*, 764 N.E.2d 622, 626 (Ind. 2002) (recognizing that inconsistencies between a police statement and trial testimony does not equate to uncorroborated "testimony inherently contradictory as a result of coercion").

[44] In addition to Child's testimony, there was at least some circumstantial evidence corroborating Child's testimony, and "[i]n a case where there is circumstantial evidence of an individual's guilt, reliance on the incredible dubiosity rule is misplaced." *Moore*, 27 N.E.3d at 759. Father and Stepmother each testified that they observed a period of time that Child was scared and would cry when she was to go to Mother's house, and Father recalled that Child resumed wetting the bed for a period of time. Grandmother observed that, when she picked up Child at the movie theater, Child was "terrified, shaking, crying." *Transcript Vol. 3* at 164. Child was treated in June 2012 for a UTI, consistent with her testimony. For all these reasons, the incredible dubiosity rule provides no relief to Farmer. The State presented sufficient evidence to convict him as charged.

4. Credit Restricted Felon Classification

[45] Farmer argues that this court should remove his designation as a credit restricted felon. Ind. Code § 35-31.5-2-72 defines a "credit restricted felon" as a person at least twenty-one years old who has been convicted of, as is relevant here, child molesting involving sexual intercourse or other sexual conduct with

a victim less than twelve years of age. A defendant's classification as a credit-restricted felon is relevant to the defendant's initial assignment to a credit-time class, which, in turn, affects the defendant's accrual of credit time toward his sentence. *Holmgren v. State*, 196 N.E.3d 281, 285 (Ind. Ct. App. 2022), *trans. denied*; *see also* Ind. Code § 35-50-6-4(c) (discussing available credit time classes for credit restricted felons); I.C. § 35-50-6-3.1 (explaining the credit time classes).

[46] Ind. Code § 35-38-1-7.8 provides:

> (a) At the time of sentencing, a court shall determine whether a person is a credit restricted felon (as defined in IC 35-31.5-2-72).
>
> (b) A determination under subsection (a) must be based upon:
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> > (1) evidence admitted at trial that is relevant to the credit restricted status;
> >
> > (2) evidence introduced at the sentencing hearing; or
> >
> > (3) a factual basis provided as part of a guilty plea.
>
> (c) Upon determining that a defendant is a credit restricted felon, a court shall advise the defendant of the consequences of this determination.

The trial court, and not the jury, determines whether a defendant is a credit restricted felon. *Pierce v. State*, 29 N.E.3d 1258, 1270-71 (Ind. 2015).

[47] Here, at the sentencing hearing, the parties stipulated that the offense occurred before July 1, 2014 such that the offense was a Class A felony rather than a Level 1 felony; Child would have been eight years old on July 1, 2014. In addition, the court stated at the hearing, while discussing aggravating factors, that Child was less than twelve years old. Farmer thus qualified as a credit restricted felon as defined by I.C. § 35-31.5-2-72. However, the trial court did not make that express determination at the sentencing hearing. Rather, following the State's motion to correct error, the trial court issued an amended sentencing order stating that "[p]ursuant to IC Code 35-31.5-2-72(1)(A)(B) and IC Code 35-42-4-3(a), Defendant is sentenced as a 'Credit Restricted Felon.'" *Appendix* at 176. An amended abstract was issued as well that reflected his status as a credit restricted felon.

[48] Farmer does not dispute that he qualifies as a credit restricted felon. Rather, his claim appears to be that the designation must be removed due to the court's noncompliance with the statute, i.e., the trial court did not make the determination at the sentencing hearing. Here, any error in that regard was harmless given the parties' stipulation that the offense occurred on or before July 1, 2014, when Child was eight. Because there was substantial evidence of probative value to support the trial court's determination that Farmer qualified as a credit restricted felon, we decline to remove that classification.

[49] However, I.C. § 35-38-1-7.8(c) requires that, upon determining that a defendant is a credit restricted felon, the court "shall advise" the defendant of the consequences of this determination. We have held that, "[t]here is no particular

language required as long as the trial court's advisement makes clear to the defendant that the credit restricted felon status determines the calculation of the defendant's credit time." *Neal v. State*, 65 N.E.3d 1139, 1142 (Ind. Ct. App. 2016). In this case, at no time was Farmer advised of the consequences of the credit restricted felon determination. While the State suggests that the amended sentencing order was "a sufficient advisement," we disagree. *Appellee's Brief* at 27. We therefore remand to the trial court with instructions to advise Farmer of the consequences of the credit restricted felon determination as required by I.C. § 35-38-1-7.8(c).

[50] Judgment affirmed and remanded.

Bradford, J. and Felix, J., concur.

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