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IN THE
COURT OF APPEALS OF INDIANA

JEFFREY A. ROCK,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A03-0604-CR-151
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Jerome Frese, Judge
Cause No. 71D01-9711-CF-516

October 24, 2006

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Jeffrey Allen Rock (Rock), appeals his conviction for Count I, child molesting, a Class A felony, Ind. Code § 35-42-4-3, and Count II, child molesting, a Class C felony, I.C § 35-42-4-3(b).

We affirm.

ISSUE

Rock raises one issue on appeal, which we restate as: Whether the evidence was sufficient to sustain Rock's convictions.

FACTS AND PROCEDURAL HISTORY

During the summer of 1997, J. M., fourteen, accompanied his half-brother, R.H., to visit R.H.'s father, Richard Harrell (Harrell), in South Bend, Indiana. Harrell and Rock, thirty-one, were co-owners of an auto repair shop where J.M. and R.H. spent most of their days that summer. Rock and Harrell also lived together in a house they rented from Harrell's mother. J.M. and R.H. typically shared R.H.'s bedroom.

One night, J.M. went with Rock who was spending the night at his girlfriend's, Christina Kraai (Kraai), apartment. J.M. fell asleep on the couch in the living room. Rock slept on the living room floor that night because Kraai had poison ivy and her itching was keeping him awake. J.M. testified he awoke to find Rock's legs "covering half my body, and he was sucking my penis." (Transcript p. 24). J.M. asked Rock to get off him; Rock complied. J.M. waited for Rock to go back to sleep, then went back to sleep himself. J.M. did not immediately tell anyone about the incident.

Later that summer, J.M. was sitting on the bed in Rock's room playing with a model. Rock joined J.M. on the bed and "grabbed and squeezed" J.M.'s penis over his clothes. (Tr. p. 28). J.M. left Rocks' room and immediately told R.H. what happened. The night before J.M. had told R.H. about the previous incident at Kraai's apartment. R.H. advised J.M. to tell Harrell. When Rock was in the shower, J.M. followed R.H.'s advice and told Harrell about the two incidents. Harrell told J.M. to go to his room, and that he would talk to Rock. When Harrell approached Rock about J.M.'s allegations, Rock denied the accusations. Shortly thereafter, Rock moved out of his own free will.

Not long after Rock moved out, Harrell received a phone call from Rock from the county jail. Rock admitted to everything over the phone and started crying saying, "I did it. I'm sorry I did it. I know I've got a problem. I need help." (Tr. p. 63). Harrell hung up on him.

On November 19, 1997, the State filed an Information charging Rock with Count I, child molesting as a Class A felony and Count II, child molesting as a Class C felony. On January 26 and 27, 1998, a jury trial was held. The jury found Rock guilty of both offenses. On February 26, 1998, a sentencing hearing was held. Rock was sentenced to fifty years on Count I and eight years on Count II, with six years ordered suspended. The sentences are to be served consecutively.

Rock now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Rock, in a paltry two-paragraph argument, claims there is insufficient evidence to sustain his convictions. Rather, Rock's argument that J.M.'s testimony is incredibly

dubious, is not sufficiently developed to support his contention. Conversely, the State argues the incredible dubiosity rule does not apply here. We agree.

The application of the incredible dubiosity rule is rare and is limited to cases where the sole witness' testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it. *Stephenson v. State*, 742 N.E.2d 463, 497 (Ind. 2001), *reh'g denied*, *cert. denied*. Under the incredible dubiosity rule, "a court will impinge on the jury's responsibility to judge the credibility of the witness only when it is confronted with inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiosity." *Id.* (quoting *Tillman v. State*, 642 N.E.2d 221, 223 (Ind. 1994)). "When a sole witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence, a defendant's conviction may be reversed." *Stephenson*, 742 N.E.2d at 497-98.

In reviewing sufficiency of the evidence claim, we will not reweigh the evidence or assess the credibility of the witnesses. *White v. State*, 846 N.E.2d 1026, 1030 (Ind. Ct. App. 2002), *trans. denied*. We will consider only the evidence most favorable to the judgment, together with all reasonable and logical inferences to be drawn therefrom. *Id.* The conviction will be affirmed if there is substantial evidence of probative value to support the conviction of the trier of fact. *Id.* A judgment based on circumstantial evidence will be sustained if the circumstantial evidence alone supports a reasonable inference of guilt. *Id.*

Here, Rock argues there are inconsistencies between the testimonies of J.M. and Kraai. In support of his argument, Rock focuses this court's attention not only on the

inconsistencies of J.M. and Kraai's statements, but also on the inherent improbability that any reasonable person could believe a child would not notice a 150-160 pound man on top of him with his penis in their mouth. Still, we find the incredible dubiosity rule to be inapplicable. As we have previously clarified, the standard for dubious testimony is inherent contradiction, not contradiction between witnesses' testimony. *See Stephenson,* 742 N.E.2d at 499. By claiming contradictory testimony, instead of inherent contradictions within one witness' own testimony, Rock is actually asking us to reweigh the evidence and assess the witnesses' credibility. We decline this invitation.

CONCLUSION

Based on the foregoing, we find there was sufficient evidence to sustain Rock's convictions.

Affirmed.

BAILEY, J., and MAY, J., concur.