

Case Summary

Appellant-Defendant Douglas A. Inman appeals his convictions for two counts of Child Molesting, as Class C felonies,¹ and Contributing to the Delinquency of a Minor, a Class A misdemeanor.² We affirm.

Issues

Inman raises two issues on appeal:

- I. Whether there was insufficient evidence to support the convictions; and
- II. Whether the trial court erred by prohibiting defense counsel from telling the jury that a hung jury was a possible verdict.

Facts and Procedural History

Inman forced his daughter, H.I., to touch his penis with her hand and move her hand up and down. H.I. testified that this occurred between five and fifteen times and that the most recent occurrence was in February or March of 2008. She also testified that another incident occurred in January of 2008. On March 1, 2008, Inman drove H.I. to a wooded area in Grant County and smoked a marijuana joint with H.I.

In 2008, H.I. began cutting and hitting herself due to her father molesting her and H.I. not being happy with life. Two of H.I.'s friends became concerned about H.I. and informed the school counselor, Matt Backs, that H.I. had cuts and bruises that were caused by H.I.'s father, Inman. After Backs asked several questions as to why H.I. had these cuts and bruises, H.I. told Backs that she was causing the injuries because her father was touching her

¹ Ind. Code § 35-42-4-3(b).

² Ind. Code § 35-46-1-8.

inappropriately. At that point, Backs contacted the local Department of Child Services regarding the allegation.

For the incidents described above and other alleged incidents, the State charged Inman with four counts of Child Molesting, as Class A felonies, one count of Attempted Child Molesting, as a Class A felony, two counts of Child Molesting, as Class C felonies, Child Solicitation, as a Class D felony,³ and Contributing to the Delinquency of a Minor, as a Class A misdemeanor. At the end of the State's case-in-chief, Inman moved for a directed verdict as to count I, Child Molesting, as a Class A felony, which the trial court granted. At the conclusion of the jury trial, Inman was found not guilty on the remaining Class A felonies and the Child Solicitation charge and was found guilty of the two Class C Child Molesting felonies and the single count of Contributing to the Delinquency of a Minor. The trial court sentenced Inman to six years for each of the Class C felonies, suspending two years of each sentence, and one year for the Class A misdemeanor. The trial court ordered the sentences for the Class C felonies to be served consecutive to each other and concurrent to the sentence for the Class A misdemeanor.

Inman now appeals.

Discussion and Decision

I. Sufficiency of the Evidence

Inman contends that the evidence is insufficient to support his convictions because the only evidence of his guilt, the testimony of H.I., was incredibly dubious. In addressing a

³ Ind. Code § 35-42-4-6.

claim of insufficient evidence, we do not reweigh the evidence nor do we reevaluate the credibility of the witnesses. Rohr v. State, 866 N.E.2d 242, 248 (Ind. 2007), reh'g denied. We view the evidence most favorable to the verdict and the reasonable inferences therefrom and will affirm the convictions if there is substantial evidence of probative value from which a reasonable jury could find the defendant guilty beyond a reasonable doubt. Id. In general, the uncorroborated testimony of one witness is sufficient to sustain a conviction on appeal. Seketa v. State, 817 N.E.2d 690, 696 (Ind. Ct. App. 2004). Appellate courts may, however, apply the “incredible dubiousity” rule to impinge on the jury’s function to judge the credibility of a witness. Fajardo v. State, 859 N.E.2d 1201, 1208 (Ind. 2007).

If a sole witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence, a defendant's conviction may be reversed. This is appropriate only where the court has confronted inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiousity. 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. (quoting Love v. State, 761 N.E.2d 806, 810 (Ind. 2002)). Thus, if this court is confronted with a situation where the sole witness presents inherently contradictory testimony that is equivocal with a complete lack of circumstantial evidence of guilt and we conclude that no reasonable person could believe the testimony, we may reverse the trial court’s decision. Sisson v. State, 710 N.E.2d 203, 206 (Ind. Ct. App. 1999), trans. denied.

Inman argues that the only evidence supporting his convictions was the testimony of H.I. and that her testimony was incredibly dubious. Inman raises a number of inconsistencies in H.I.’s testimony regarding the charges against Inman. H.I. told her friends and school

counselor that Inman had caused her bruises and cuts, but she later admitted to her counselor that she had inflicted them due to being molested. H.I. initially reported to police that Inman had sexual intercourse with her. However, at trial H.I. denied that intercourse had occurred. Other aspects of H.I.'s story regarding the events of March 1, 2008, could not be validated, including Inman driving to CVS with H.I. in the car while he bought condoms⁴ and the weather conditions on the date in question.⁵ H.I. admitted to asking one of her friends to lie to police and tell them that her friend, and not H.I., had written a letter that contained a graphic description of a sexual encounter.

While H.I.'s testimony revealed instances where she lied and parts of her testimony were contradicted on cross-examination, her in-court testimony was not inherently contradictory. Her testimony regarding the incidents when Inman made her place her hand on his penis and move it up and down was not uncertain or contradictory. Neither was her testimony that Inman drove her to the woods and they smoked marijuana together. H.I.'s testimony is not inherently contradictory to the point that it runs counter to human experience or that no reasonable person could believe it to be true. See Edwards v. State, 753 N.E.2d 618, 623 (Ind. 2001). Therefore, the incredible dubiousity rule is not applicable. Any inconsistencies in H.I.'s testimony and her admitted prior lies go to her credibility.

During cross-examination, defense counsel questioned H.I. extensively regarding her

⁴ The March 1, 2008 surveillance video from the particular CVS store was reviewed by police and Inman was not observed entering or exiting the store during the relevant timeframe.

⁵ H.I. described the weather conditions as a temperature of fifty or sixty and a little cloudy. The National Weather Service recorded that it was clear and the minimum temperature for March 1, 2008, in Grant County, Indiana was twenty-six and the maximum temperature was forty-one.

inconsistent statements and past instances of lying, including lies told during the investigation of the charged crimes. Defense counsel also elicited testimony from H.I.'s mother that H.I. had previously accused three others of molesting her, but that H.I. later recanted each accusation. H.I.'s mother also testified that she did not believe H.I.'s accusations against Inman due to the inconsistencies in H.I.'s story. Defense counsel vigorously attacked H.I.'s credibility throughout the trial. The determination of H.I.'s credibility was a question for the jury, and this court may not replace the jury's judgment of her credibility with its own. See Moreland v. State, 701 N.E.2d 288, 291 (Ind. Ct. App. 1998). The jury heard and viewed the evidence and was entitled to believe H.I.'s in-court testimony regarding the two instances of Child Molesting and Contributing to the Delinquency of a Minor. As Inman does not otherwise challenge the evidence supporting his convictions, there was sufficient evidence in H.I.'s testimony to support all three convictions.

II. Comment in Defense Counsel's Closing Argument

Inman also argues that the trial court erred by prohibiting his defense counsel from telling the jury, during closing argument, that a hung jury was a possible verdict. "Conduct during final argument is a matter within the sound discretion of the trial court, and a conviction will not be reversed unless there has been a clear abuse of discretion resulting in prejudice to the accused." Bowles v. State, 737 N.E.2d 1150, 1154 (Ind. 2000). During his closing argument, Inman's defense counsel commented,

If you find reasonable doubt, and certainly there was a lot of it, I want you to discuss it among you, and I really want you to come back with a verdict of not guilty, cause that's the just verdict in this case. But I will tell you there are

three possible forms of verdict in this case. Guilty, not guilty and there's a majority of one.

Trial Transcript at 373. The State objected that a hung jury, described by defense counsel as a majority of one, was not a proper verdict. The trial court sustained the objection. A hung jury is the failure of a jury to reach a verdict. See Davenport v. State, 734 N.E.2d 622, 625 (Ind. Ct. App. 2000), trans. denied. Therefore, the trial court did not abuse its discretion in prohibiting the characterization of a hung jury as a proper verdict.

Affirmed.

MATHIAS, J., and BARNES, J., concur.