

Appellant-Defendant Robert A. Romero appeals following his convictions for Class B felony Sexual Misconduct with a Minor,¹ two counts of Class C felony Sexual Misconduct with a Minor,² Class D felony Dissemination of Material Harmful to Minors,³ and Class D felony Possession of Child Pornography.⁴ On appeal, Romero contends that the evidence was insufficient to support his convictions. We affirm.

FACTS AND PROCEDURAL HISTORY

During the summer of 2006, K.J., who was fourteen years old, occasionally visited the Fort Wayne home his uncle, Romero, shared with his roommate, L.L. During one visit, sometime between June 1, 2006 and August 31, 2006, Romero asked K.J. to go upstairs to the “computer room” to “grab his camera for him.” Tr. p. 160. While in the computer room, K.J. saw pornographic images on Romero’s computer. When K.J. told Romero about what he had seen, Romero replied, “You know you like it.” Tr. p. 160.

During another visit, Romero came into the living room where K.J. was sitting and sat down on the couch next to K.J. Romero showed K.J. pornographic pictures and videos that were stored on his laptop. Romero asked K.J. what type of pornography he liked, and K.J. replied that he really did not care. Romero asked K.J. whether he “was hard or not” and K.J. replied “not really.” Tr. p. 163. Romero said that he was “hard” and “put [K.J.’s] hand on his pants” over his penis. Tr. p. 163. Romero told K.J. to unzip Romero’s pants, and K.J.

¹ Ind. Code § 35-42-4-9(a) (2005).

² Ind. Code § 35-42-4-9(b).

³ Ind. Code § 35-49-3-3 (2005).

⁴ Ind. Code § 35-42-4-4 (2006).

complied. Romero repeated his question as to whether K.J. was “hard” and said that K.J. “had to be hard” and felt his penis. Tr. p. 164. Romero pulled K.J.’s pants down and told K.J. to “jack him off.” Tr. p. 164. Again, K.J. complied. During this encounter, Romero used a bottle of “WET” brand lubrication. Tr. p. 165. After ejaculating, Romero cleaned his and K.J.’s hands with a rag.

Romero engaged K.J. in other similar instances of molestation throughout the summer. For instance, on another occasion, Romero “rushed [K.J.] to the living room,” and the “same exact thing” that happened before occurred again, except this time “it was oral.” Tr. p. 194. K.J. described this incident of molestation as follows:

It always started out with are you hard or do you like that. And after that [Romero] put my, his hand on my pants and end up pulling ‘em down and performed oral sex and said that guys give better head than girls do. And then it really didn’t last that long because [Romero] said [L.L.] was gonna be home soon.

Tr. p. 195. Romero also showed K.J. pornographic images and videos on his cell phone via the website ultrapassword.com. K.J. could not remember the exact dates of the abuse, but he knew that Romero had molested him three or four times.

At some point during October 2006, K.J. notified his mother about Romero’s actions. K.J. seemed scared and told his mother that “he didn’t want [her] to get mad at him and that he had some things to talk to [her] about.” Tr. p. 202. K.J. told his mother that Romero had done “some things to him” that were sexual in nature, but would provide no details. Eventually, K.J. wrote his mother a letter detailing Romero’s actions. K.J.’s mother reported the molestation to the Fort Wayne Police Department.

After being informed of the molestation, the police obtained a search warrant for Romero's home. Incident to the search, the police recovered a bottle of "WET" brand lubricant, multiple disks and compact discs ("CDs"), a laptop computer, and a desktop computer, all of which belonged to Romero. Each disk and both computers contained numerous files of pornographic images and videos. Police also recovered multiple cell phones capable of showing images and videos. One of the CDs recovered from Romero's home contained the file KDV05.mpg, an eleven-minute video that showed children performing sexual acts. KDV05.mpg was downloaded onto Romero's computer in 2004 and was subsequently transferred to the CD.

On July 11, 2007, the State charged Romero with Class B felony sexual misconduct with a minor, Class B felony attempted sexual misconduct with a minor, two counts of Class C felony sexual misconduct with a minor, Class D felony dissemination of material harmful to minors, and Class D felony possession of child pornography. On June 26, 2008, Romero was convicted, following a jury trial, of each count except for the one count of Class B attempted sexual misconduct with a minor. The trial court imposed an aggregate six-year executed sentence. This appeal follows.

DISCUSSION AND DECISION

Romero challenges the sufficiency of evidence supporting his convictions for sexual misconduct with a minor and dissemination of material harmful to a minor, arguing that his convictions are based on the incredibly dubious testimony of the victim, K.J. Romero also challenges the sufficiency of the evidence to support his conviction for possession of child

pornography, arguing that the evidence was insufficient to show that he knowingly or intentionally possessed child pornography. Our standard for reviewing sufficiency of the evidence claims is well-settled. *Alkhalidi v. State*, 753 N.E.2d 625, 627 (Ind. 2001). Upon review, we consider only the evidence that supports the verdict and all reasonable inferences drawn therefrom. *Murray v. State*, 761 N.E.2d 406, 408 (Ind. 2002). We do not reweigh the evidence or judge the credibility of the witnesses, and it lies within the jury's exclusive province to weigh conflicting evidence. *Alkhalidi*, 753 N.E.2d at 627. We will affirm the conviction if there is probative evidence and reasonable inferences from which a reasonable jury could have found the defendant guilty beyond a reasonable doubt. *Hyppolite v. State*, 774 N.E.2d 584, 598 (Ind. Ct. App. 2002), *trans. denied*.

I. Incredibly Dubious Testimony

“Under the incredible dubiousity rule, a court will impinge upon the jury’s responsibility to judge the credibility of witnesses only when confronted with inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiousity.” *Murray*, 761 N.E.2d at 408. Application of this rule is limited to cases where a single witness presents inherently contradictory testimony which is equivocal or the result of coercion and there is a complete lack of circumstantial evidence of the appellant’s guilt. *Id.* Additionally, it is well established that a conviction may be based on the sole uncorroborated testimony of the victim, even if that victim is a minor. *Smith v. State*, 432 N.E.2d 1363, 1372 (Ind. 1982).

Romero contends that K.J.’s testimony was so incredibly dubious or inherently

improbable that no reasonable person could say that guilt had been proven beyond a reasonable doubt. Romero claims that K.J.'s testimony lacked detail in describing any of the alleged incidents, such as the exact dates on which these incidents occurred. He also cites minor inconsistencies in K.J.'s testimony as revealing the dubious nature of his story. However, the events described by K.J. are not inherently improbable, nor do they run counter to human experience. In addition, the State presented evidence corroborating K.J.'s testimony. The State offered into evidence a tube of "WET" brand lubrication recovered from Romero's home. (State's Ex. 2) The State also offered into evidence records and testimony establishing that Romero had downloaded pornography onto his cell phone from the website ultrapassword.com. Moreover, to the extent that K.J.'s lengthy testimony may have contained a few minor inconsistencies, such inconsistencies were for the jury to resolve, and did not rise to the level of making K.J.'s testimony incredibly dubious. *See Murray*, 761 N.E.2d at 409 (stating that it is for the trier of fact to resolve conflicts in the evidence and to decide which witnesses to believe or disbelieve); *Heeter v. State*, 661 N.E.2d 612, 615-16 (Ind. Ct. App. 1996). As such, we will not disturb the jury's determination with respect to Romero's convictions for Class B and Class C sexual misconduct with a minor and dissemination of material harmful to minors.

II. Knowing or Intentional Possession

To convict Romero of possession of child pornography, the State was required to prove, pursuant to Indiana Code section 35-42-4-4(c), that Romero knowingly or intentionally possessed a CD that contained a picture, drawing, photograph, motion picture,

videotape, digitized image, or pictorial representation that “depicts or describes sexual conduct by a child who is less than sixteen years of age or appears to be less than sixteen years of age, and that lacks serious literary, artistic, political, or scientific value.” Romero claims that the evidence was insufficient to prove that he knowingly or intentionally downloaded and possessed child pornography. “A person engages in conduct ‘intentionally’ if, when he engages in the conduct, it is his conscious objective to do so.” Indiana Code § 35-41-2-2(a) (2006). Likewise, “A person engages in conduct ‘knowingly’ if, when he engages in the conduct, he is aware of a high probability that he is doing so.” Indiana Code § 35-41-2-2(b). “Intent and knowledge may be proved by circumstantial evidence and inferred from the circumstances and facts of each case.” *Heavrin v. State*, 675 N.E.2d 1075, 1079 (Ind. 1996).

Here, Romero admitted that he often downloaded pornography onto his computer, that the CD containing the child pornography belonged to him, and that the boys featured in the eleven-minute video in question appear to be under the age of sixteen. In addition, the record established that the file in question, KDV05.mpg, was downloaded onto Romero’s computer on the evening of September 13, 2004. The record further established that in order to save KDV05.mpg from Romero’s computer to the CD on which it was found, one would have to “intentionally select what videos [he] would want to put on that disk and then [he] would have to use some third party software program ... to go ahead and write to that disk.” Tr. p. 288. We conclude that this evidence was sufficient to support the jury’s determination that Romero knowingly or intentionally possessed child pornography. We therefore affirm

Romero's conviction for Class D felony possession of child pornography. Romero's claim that the evidence presented at trial was insufficient to prove that he knowingly or intentionally possessed the child pornography amounts to an invitation to reweigh the evidence, which we decline.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and MAY, J., concur.