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IN THE
COURT OF APPEALS OF INDIANA

JASON MORALES,	)	
	)	
Appellant/Defendant,	)	
	)	
vs.	)	No. 82A04-1005-CR-311
	)	
STATE OF INDIANA,	)	
	)	
Appellee/Plaintiff.	)	

APPEAL FROM THE VANDERBURGH CIRCUIT COURT
The Honorable Carl A. Heldt, Judge
Cause No. 82C01-0902-FB-150

April 20, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Defendant Jason Morales appeals his convictions for Class B felony Sexual Misconduct with a Minor.[1] Specifically, Morales contends that the evidence is insufficient to support his convictions because the only evidence of his guilt, the testimony of the victim, was incredibly dubious. We affirm.

FACTS AND PROCEDURAL HISTORY

On February 8, 2009, fourteen-year-old V.R. spent the night with her cousin Kristen Fifer at the home Fifer shared with her fiancé, Morales. Despite knowing that V.R. was only fourteen years old, Morales prepared alcoholic drinks for V.R. and Fifer. V.R. and Fifer drank these drinks while watching a movie and "playing on the computer." Tr. p. 194. After the movie was over, Fifer went to bed and V.R. continued "playing on the computer." Tr. p. 199. At some point, V.R. dropped a glass of water that she was drinking. Morales knelt down next to V.R. and helped clean up the broken glass. While cleaning up the broken glass, Morales "leaned in to kiss" V.R. Tr. p. 199. Morales "kept trying to kiss" V.R. despite her telling him that she "didn't want to kiss him." Tr. p. 200.

Morales asked V.R. to help him put clean sheets on the bed in the spare bedroom in which V.R. was going to sleep. While in the spare bedroom, Morales "laid [V.R.] on the bed and started kissing [her] again." Tr. p. 201. V.R. subsequently testified that Morales stuck "his tongue in [her] mouth while kissing her." Tr. p. 202. At some point, Morales also put his hand down V.R.'s pants, under her underwear, and "stuck his finger in [V.R.'s] vagina." Tr. p. 203. Throughout this encounter, V.R. repeatedly told Morales, "I don't want to do this

[1] Ind. Code § 35-42-4-9(A)(1) (2009).

and this is wrong, stop." Tr. pp. 203-04.

Morales took V.R. to work with him and then to a gas station in Kentucky to buy cigarettes. Upon returning home, Morales helped V.R. back into the spare bedroom where he "laid [her] down … took [her] pants off and then pulled [her] underwear down and lifted [her] shirt up." Tr. p. 206. Morales "put his hands under [V.R.'s] bra," "touched [her] boobs," and "tried to have sex with [her]." Tr. p. 206. After Morales was not able to successfully complete sexual intercourse with V.R., he "took his clothes off and … [told V.R.] to put [her] mouth on his penis and suck it." Tr. p. 206. Morales "started pushing [V.R.'s] head towards" his penis and when V.R. objected, told her to "just do it." Tr. p. 206. Eventually, Morales "pushed [V.R.'s] head down onto [his penis] and … made [her] suck it." Tr. p. 206. In addition, at some point, Morales "put his mouth on [V.R.'s] vagina and started licking." Tr. p. 207.

On February 17, 2009, the State charged Morales with three counts of Class B felony sexual misconduct with a minor. At trial, V.R. testified that while she could remember the events that took place, she could not remember the exact timing sequence in which these events occurred because she was "blacking out." Tr. p. 207. V.R. further testified that although she had been drunk before, this time felt different because she "had never blacked out or not known what [she] was doing." Tr. p. 208. At the conclusion of trial, the jury found Morales guilty as charged. On April 27, 2010, the trial court sentenced Morales to three concurrent eighteen-year terms of incarceration. Morales now appeals.

DISCUSSION AND DECISION

Morales contends that the evidence is insufficient to support his convictions because the only evidence of his guilt, the testimony of V.R., was incredibly dubious.

> In addressing a claim of insufficient evidence, we do not reweigh the evidence nor do we reevaluate the credibility of witnesses. We view the evidence most favorable to the verdict and the reasonable inferences therefrom and will affirm the conviction if there is substantial evidence of probative value from which a reasonable jury could find the defendant guilty beyond a reasonable doubt. In general, the uncorroborated testimony of one witness is sufficient to sustain a conviction on appeal. However, appellate courts may apply the 'incredible dubiosity' rule to impinge on the jury's function to judge the credibility of a witness.

Gregory v. State, 885 N.E.2d 697, 704-05 (Ind. Ct. App. 2008) (citations denied), *trans. denied*.

The "incredible dubiosity" test is a difficult standard to meet, one that requires great ambiguity and inconsistency in the evidence. *Edwards v. State*, 753 N.E.2d 618, 622 (Ind. 2001). "For testimony to be so inherently incredible that it is disregarded based on a finding of 'incredible dubiosity,' the witness must present testimony that is inherently contradictory, wholly equivocal or the result of coercion, and there must also be a complete lack of circumstantial evidence of the defendant's guilt." *Clay v. State*, 755 N.E.2d 187, 189 (Ind. 2001). Thus, before a court can interfere with the jury's authority to judge witness credibility and evaluate evidence, the court must be presented with testimony which "'runs counter to the human experience,'" and is "so convoluted and/or contrary to human experience that no reasonable person could believe it." *Edwards*, 753 N.E.2d at 622 (quoting *Campbell v. State*, 732 N.E.2d 197, 207 (Ind. Ct. App. 2000)). V.R.'s testimony does not meet this standard.

Indiana Code section 35-42-4-9(A)(1) provides in relevant part that "a person at least

twenty-one (21) years of age" "who, with a child at least fourteen (14) years of age but less than sixteen (16) years of age, performs or submits to sexual intercourse or deviate sexual conduct" commits Class B felony sexual misconduct with a minor. The charging information alleged that Morales committed three separate acts of Class B felony sexual misconduct with a minor in violation of Indiana Code section 35-42-4-9(A)(1). Specifically, the charging information alleged that Morales committed Class B felony sexual misconduct with a minor by (1) "penetrating [V.R.'s] vagina with his finger;" (2) "placing his tongue inside [V.R.'s] vagina;" and (3) "placing his penis in [V.R.'s] mouth." Appellant's App. pp. 53-54.

At trial, V.R. testified that Morales, knowing that she was fourteen years old, put his hand down her pants, under her underwear, and "stuck his finger in [her] vagina." Tr. p. 203. V.R. also testified that Morales "pushed [V.R.'s] head down onto [his penis] and … made [her] suck it," and that at some point Morales "put his mouth on [V.R.'s] vagina and started licking." Tr. pp. 206-07.

In requesting that we apply the incredible dubiosity rule, Morales argues that V.R.'s testimony was inherently incredible because she admittedly could not remember the exact timing sequence because she "blacked out" a few times during the course of the evening in question. Tr. p. 207. Despite the fact that she could not remember the exact timing sequence of the acts in question, V.R.'s testimony was consistent with respect to the acts committed by Morales, and the limits of her memory were thoroughly explored during his testimony. Morales did not point to any authority supporting his claim that a witness's inability to remember the exact timing of certain events renders that witness's testimony incredibly

dubious. Therefore, in light of V.R.'s consistent testimony regarding the specific acts committed by Morales, we conclude that Morales has failed to demonstrate that V.R.'s testimony is inherently improbable testimony or equivocal, wholly uncorroborated testimony that is incredibly dubious.

Furthermore, the State presented circumstantial evidence supporting Morales's convictions. The State presented evidence that the DNA of an unidentifiable male was found in the underwear that V.R. was wearing on the night that these events took place. Expert testimony indicated that the amount of male DNA found in V.R.'s underwear is consistent with what would be found if a woman "had her vagina licked by a man and then put her panties back on." Tr. p. 109. Records from Morales's workplace confirmed that he entered the building at 2:17 a.m. on the night in question, corroborating both his and V.R.'s statements. Morales also admitted that he "made out" with V.R. State's Ex. 15. In addition, the State also presented evidence that shortly after the events in question occurred, Morales demonstrated extreme guilt in a letter he wrote to Fifer in which he indicated that he planned to take his life because "I cannot go through life knowing I f***** up like this, and plus I know this will eventually come out and put strain on the entire family." State's Ex. 15. Morales also sent an email to his supervisor at work on February 10, 2009, in which he indicated that "[f]or personal reasons" he intended to take his life. State's Ex. 12.

The "incredible dubiosity" rule is not applicable to the instant matter. Morales's remaining arguments are simply invitations to reweigh the evidence or reassess the credibility of a witness, which we will not do. *See Gregory*, 885 N.E.2d at 704. The evidence is

sufficient to support Morales's convictions for Class B felony sexual misconduct with a minor.

The judgment of the trial court is affirmed.

BAKER, J., and MAY, J., concur.