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FILED
Sep 17 2009, 8:53 am
CLERK
of the supreme court, court of appeals and tax court

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IN THE
COURT OF APPEALS OF INDIANA

STEVEN ROTTET,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 53A01-0901-CR-44
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MONROE CIRCUIT COURT
The Honorable Mary Ellen Diekhoff, Judge
Cause No. 53C05-0708-FA-748

September 17, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Steven Rottet appeals his conviction for child molesting as a class A felony.[1] Rottet raises one issue, which we revise and restate as whether the evidence is sufficient to sustain Rottet's conviction. We affirm.

The facts most favorable to the conviction follow. In November 2004, R.S. and Rottet began a romantic relationship. In 2004 and 2005, M.S., R.S.'s daughter who was born on July 8, 1996, lived with R.S. and Rottet. In September 2005, M.S. was watching television in her bedroom, and Rottet entered the room and told M.S. to take off her clothes. M.S. sat there, and Rottet again told M.S. to take off her clothes. M.S. took off her shorts, Rottet then put his hand on M.S.'s vagina and "put his finger in [her] vagina" for "[a] couple of minutes." Transcript at 97. Rottet then started kissing M.S., told M.S. not to tell, and left the room.

A few weeks later, Rottet went into M.S.'s bedroom and made M.S. put her mouth on his penis and told her to move her mouth up and down, and "white stuff" came out of Rottet's penis. Id. at 99. A month later, Rottet went into M.S.'s bedroom and tried to put his penis into M.S.'s vagina a couple of times but was unable to "[b]ecause it didn't fit." Id. at 100. On another occasion, Rottet made M.S. put her hand on his penis and told her to move her hand up and down.

In January or February 2006, R.S., Rottet, and M.S. were in a room together. R.S. left the room and later returned to ask M.S. for help. M.S. "wiggled under the blanket and [Rottet] had to turn over, kind of like he was getting . . . his arm off of her." Id. at

[1] Ind. Code § 35-42-4-3 (2004) (subsequently amended by Pub. L. No. 216-2007, § 42 (eff. July 1, 2007)).

166. R.S. asked M.S. "what was going on and she said, 'Nothing.'" Id. R.S. asked Rottet about the incident, and Rottet said that "nothing was going on," but R.S. was not satisfied with his explanation. Id.

In April 2006, R.S. and Rottet ended their relationship, and R.S. moved elsewhere with her children. In March 2007, R.S. talked to Sharlet Doyle about babysitting her children. At some point, R.S. expressed concerns to Doyle and asked Doyle to find out if anything happened between M.S. and Rottet. Doyle asked M.S. if Rottet hurt her. M.S. was scared and nervous and her eyes filled up with tears. M.S. told Doyle that Rottet touched her. Doyle did not ask M.S. any additional questions and called the police.

In August 2007, the State charged Rottet with child molesting as a class A felony. In June 2008, the State filed an amended charge of child molesting as a class A felony.[2] The State also alleged that Rottet was an habitual offender.

During the jury trial and while M.S. was testifying, Rottet's attorney referenced a deposition given by M.S., and the following exchange occurred during cross-examination of M.S.:

> Q. So let's go back to what we were talking about, about memory on a scale of one to ten. With one being not as sure, not sure about that remembering and ten being very sure. I asked you about how sure you were on that scale of putting your mouth on [Rottet]'s private. I asked you that.
>
> A. Yes.
>
> Q. And you said five.

[2] It appears that the amended charging information was substantially similar to the original charging information.

A. Yeah.

Q. And I asked you how sure you were of the white stuff coming out of [Rottet]'s penis. How sure you were of that memory and you said five.

A. Yeah.

Id. at 126. On redirect examination, the following exchanges occurred:

Q. Okay, now [M.S.] do you recall every single detail regarding all of the acts that [Rottet] did to you or had you to do him?

A. Huh, not all of them, but like it happened more than once, but there was [sic] past few times I remember.

Q. Okay, so you don't remember all, but you remembered it happened?

A. Yes.

Q. Is that why you gave it a five on your memory scale?

A. Yes.

Q. Because it happened a long time ago?

A. Yes.

* * * * *

Q. . . . [M.S.] by giving a five to your memory of [Rottet]'s penis in your mouth, does that mean it didn't happen?

A. No.

Q. Can you say that again, I don't think that they could hear you?

A. No.

Q. By giving it a five on the white stuff coming out of his penis, does that mean it didn't happen?

A. No.

Id. at 142, 146.

The jury found Rottet guilty as charged. Rottet then admitted that he was an habitual offender. The parties filed a sentencing agreement in which Rottet agreed to a sentence of fifty years with forty years executed and ten years suspended to probation. Rottet agreed not to appeal the sentence and the State agreed to withdraw the habitual sentencing enhancement. The trial court sentenced Rottet pursuant to the sentencing agreement to fifty years in the Department of Correction with ten years suspended to probation.

The sole issue is whether the evidence is sufficient to sustain Rottet's conviction. When reviewing the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). We do not assess witness credibility or reweigh the evidence. Id. We consider conflicting evidence most favorably to the trial court's ruling. Id. We affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." Id. (quoting Jenkins v. State, 726 N.E.2d 268, 270 (Ind. 2000)). It is not necessary that the evidence overcome every reasonable hypothesis of innocence. Id. at 147. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. Id. The

uncorroborated testimony of one witness may be sufficient by itself to sustain a conviction on appeal. Toney v. State, 715 N.E.2d 367, 369 (Ind. 1999).

The offense of child molesting as a class A felony is governed by Ind. Code § 35-42-4-3(a), which, in relevant part, provides: "A person who, with a child under fourteen (14) years of age, performs or submits to sexual intercourse or deviate sexual conduct commits child molesting, a Class B felony. However, the offense is a Class A felony if . . . it is committed by a person at least twenty-one (21) years of age . . . ." Deviate sexual conduct is defined as "an act involving: (1) a sex organ of one person and the mouth or anus of another person; or (2) the penetration of the sex organ or anus of a person by an object." Ind. Code § 35-41-1-9. Thus, the State was required to prove beyond a reasonable doubt that Rottet, a person at least twenty-one years of age, performed or submitted to sexual intercourse or deviate sexual conduct with M.S., a child under fourteen years of age.

Rottet argues that the evidence is insufficient because M.S.'s testimony is not corroborated by other evidence and because M.S.'s testimony is incredibly dubious. "Under the incredible dubiosity 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 dubiosity." Murray v. State, 761 N.E.2d 406, 408 (Ind. 2002). 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 guilt. Whedon v. State, 765 N.E.2d 1276, 1278 (Ind. 2002). "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." Love v. State, 761 N.E.2d 806, 810 (Ind. 2002).

Rottet argues that M.S.'s testimony is incredibly dubious for a number of reasons. Rottet argues that M.S. did not tell her mother about the molestations, that "it is possible she did not tell because she was not then certain of her memory," and that "[h]er memory did not improve until she talked to a therapist." Appellant's Brief at 6. Rottet argues that M.S. did not tell anyone for almost a year after Rottet was gone and "[t]here was no reason not to tell when he had not threatened her . . . and was out of her life." Id. Rottet also argues that M.S. told Sharlet Doyle, who had a niece who had been molested, and "Doyle's question asking whether Rottet hurt her and her role as the seeker of truth . . . suggests she wanted M.S. to answer yes." Id. at 7. Rottet also argues that M.S.'s testimony is incredibly dubious because M.S. "stated at the deposition her memory of putting her mouth on Rottet's private and white stuff coming out was a 5 on a scale of 1 to 10." Id. at 6.

Our review of the record reveals that the incredible dubiosity rule does not apply here. M.S.'s testimony is not inherently contradictory. Rottet merely asks that we reweigh the evidence and judge the credibility of the witnesses, which we cannot do. Drane, 867 N.E.2d at 146. As previously mentioned, the uncorroborated testimony of one witness may be sufficient by itself to sustain a conviction on appeal. Toney, 715

N.E.2d at 369. Based upon the evidence discussed above, we conclude that the State presented evidence of probative value from which the trial court could have found Rottet guilty beyond a reasonable doubt of child molesting as a class A felony. See Fajardo v. State, 859 N.E.2d 1201, 1209 (Ind. 2007) (declining to invoke the incredible dubiosity rule to impinge on the jury's evaluation of the evidence and concluding that a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt); Surber v. State, 884 N.E.2d 856, 869 (Ind. Ct. App. 2008) (holding that the victim's testimony was not so incredibly dubious or inherently improbable that no reasonable person could believe it and that the State presented sufficient evidence to sustain the defendant's conviction for child molesting), trans. denied.

For the foregoing reasons, we affirm Rottet's conviction for child molesting as a class A felony.

Affirmed.

CRONE, J., and MAY, J., concur.