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IN THE
COURT OF APPEALS OF INDIANA

WILLIAM HINESLEY, III,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 55A04-1102-CR-90
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MORGAN SUPERIOR COURT
The Honorable Jane Spencer Craney, Judge
Cause No. 55D03-1006-FA-178

OCTOBER 27, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

STATEMENT OF THE CASE

Appellant William J. Hinesley, III, appeals his conviction of child molesting, a Class A felony. Ind. Code § 35-42-4-3 (2007). We affirm.

ISSUES

Hinesley raises two issues, which we restate as:

I. Whether the trial court applied an incorrect standard of law in the course of finding Hinesley guilty.

II. Whether there is sufficient evidence to sustain Hinesley's conviction.

FACTS AND PROCEDURAL HISTORY

On the night of January 16, 2009, the Hinesley family was at home in Paragon, Indiana. Hinesley, his son William J. Hinesley, IV ("Billy"), who was twenty years old at the time, a foster daughter, V.V., who was thirteen years old at the time, and others were present. Eventually, Hinesley and V.V. were the only ones awake. They sat on a couch in the living room and talked as they watched a movie. Next, Hinesley got up and went into the kitchen. When he returned, he approached V.V. and pulled down her pants and underwear. Hinesley got on top of V.V. and put his penis in her vagina. After a short period of time, V.V. tried to push Hinesley away, and he got up and left the room. V.V. got up and pulled up her pants.

Meanwhile, Billy was going to the kitchen to get a glass of water. He encountered V.V., who told him that she had just had sex with Hinesley. Billy sent V.V. to the master bedroom while he woke his sister, S.H., and had her go into the master bedroom with him

and V.V. In the morning, Billy contacted his uncle, who was a police officer in Mooresville, Indiana, and the local police were contacted.

The State charged Hinesley with Class A felony child molestation and other offenses not at issue in this appeal. The case was tried to the bench. Hinesley testified in his defense and denied molesting V.V. The trial court determined that Hinesley was guilty of Class A felony child molestation and sentenced him accordingly. Hinesley now appeals.

DISCUSSION AND DECISION

I. STANDARD FOR WEIGHING EVIDENCE

Hinesley asserts that the trial court's judgment cannot stand because the trial court used an improper legal standard for weighing the evidence. In a trial before the bench, the court is responsible for weighing the evidence and judging the credibility of witnesses as the trier of fact, and we do not interfere with this function on appeal. *Davidson v. State*, 907 N.E.2d 612, 613-14 (Ind. Ct. App. 2009), *trans. denied*.

In this case, after the parties presented their evidence and their closing arguments, the trial court stated, "[B]y trying it to the bench, then you left it in my bailiwick as to the law and the evidence to determine who I found was credible and who was not credible, and I found [V.V.] credible, and I find you guilty of Count 1 as a Class A felony." Tr. p. 278. We find no error in the trial court's statement of its responsibilities as the trier of fact. Hinesley claims that the trial court should have explained why it disregarded his testimony as not credible. However, he cites to no authority that requires a judge, when

rendering a judgment in a bench trial, to explain his or her assessment of each witness's credibility. We find no error.

II. SUFFICIENCY OF THE EVIDENCE

When an appellant challenges the sufficiency of the evidence supporting a conviction, we do not reweigh the evidence or judge the credibility of the witnesses. *Joslyn v. State*, 942 N.E.2d 809, 811 (Ind. 2011). We consider only the probative evidence and reasonable inferences drawn from the evidence that support the judgment. *Id.* We will affirm if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. *Id.*

In order to convict Hinesley of child molesting as a Class A felony as charged, the State was required to prove beyond a reasonable doubt that (1) Hinesley (2) a person of at least twenty-one years of age (3) performed sexual intercourse (4) with V.V. (5) a child under fourteen years of age. Ind. Code § 35-42-4-3; Appellant's App. p. 12.

Hinesley argues that his conviction must be reversed because the evidence that he performed sexual intercourse with V.V. is "incredibly dubious." Appellant's Br. p. 5. Within the narrow limits of the "incredible dubiosity" rule, a court may impinge upon a factfinder's function to judge the credibility of a witness. *Love v. State*, 761 N.E.2d 806, 810 (Ind. 2002). However, the rule applies only where a sole witness presents inherently contradictory testimony that is equivocal or the result of coercion and there is a complete lack of circumstantial evidence of the defendant's guilt. *Thompson v. State*, 765 N.E.2d 1273, 1274 (Ind. 2002).

In this case, the incredible dubiosity rule does not apply because Billy corroborated portions of V.V.'s trial testimony. V.V. testified that immediately after Hinesley had sex with her, she encountered Billy, whom she told that Hinesley had just had sex with her. Billy also testified that V.V. told him that Hinesley had just had sex with her. Furthermore, Billy testified that after talking with V.V., he gathered V.V. and his sister in the master bedroom, which also corroborates V.V.'s testimony. In addition, V.V.'s testimony was not inherently contradictory or improbable. Instead, she unequivocally stated that Hinesley had sexual intercourse with her.

Hinesley argues that V.V.'s trial testimony differed from her deposition testimony at several points, but V.V. testified at trial that her deposition testimony was incorrect and stated reasons why she had not testified accurately at her deposition. The impact of any inconsistencies between V.V.'s trial testimony and deposition testimony upon her credibility was a matter for the trier of fact to weigh. *See D.B. v. State*, 842 N.E.2d 399, 402 (Ind. Ct. App. 2006) (affirming a conviction for child molestation where the victim's trial testimony established the necessary elements of the charged offense, despite discrepancies between the victim's deposition testimony and trial testimony). Similarly, Hinesley points to inconsistencies between Billy's initial statement to the police and his trial testimony, but that was also a matter for the trier of fact to weigh. Finally, Hinesley argues that the police investigation that led to the filing of charges against Hinesley was of "poor and pathetic quality." Appellant's Br. p. 6. This argument is a request to reweigh the evidence, which we cannot do. The evidence is sufficient to sustain Hinesley's conviction.

CONCLUSION

For the reasons stated above, we affirm the judgment of the trial court.

Affirmed.

FRIEDLANDER, J., and RILEY, J., concur.