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IN THE
COURT OF APPEALS OF INDIANA

WILLIAM TEMPLE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0702-CR-125
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Sheila Carlisle, Judge
Cause No. 49G03-0607-FC-126895

August 17, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

William Temple appeals his conviction for Child Molesting, as a Class C felony, following a bench trial. He raises a single issue for our review, namely, whether the State presented sufficient evidence to support his conviction.

We affirm.

FACTS AND PROCEDURAL HISTORY

On July 11, 2006, Brenda Schultz hosted her family at her Indianapolis home. Temple, Schultz' brother, attended along with three of Schultz' grandchildren, including four year-old A.M. At some point that evening, the grandchildren were inside the home with Schultz, while the other adults were outside in the yard. Schultz left the home to walk her dog, and as she left Temple entered the home.

After about ten minutes, Schultz went back inside her house. Upon entering, she noticed that A.M. was not with the other grandchildren and that Temple was in the kitchen. Schultz heard Temple say, "Does this feel good?" Transcript at 17. She then walked towards the kitchen and saw that Temple was approximately six inches away from A.M., that A.M.'s panties were down, and that Temple's finger was "[i]n her vagina." Id. at 19. Schultz became hysterical and ran from the house, screaming, "Bill, I can't believe you did this. Get out. Get out. Get him out." Id. at 39. A fellow family member confronted Temple and punched him in the mouth, after which Temple "took off running." Id. at 41.

On July 14, the State charged Temple with two counts of child molesting, each as a Class C felony. The State also alleged that Temple was a repeat sexual offender. The

State subsequently dismissed one count of child molesting. Following a bench trial in which Schultz testified as to her observations on July 11, the court found Temple guilty on the remaining charge of child molesting. The court also found that Temple was a repeat sexual offender and sentenced him to a total of ten years in the Department of Correction. This appeal ensued.

DISCUSSION AND DECISION

Temple contends that the State did not present sufficient evidence to support his conviction. When reviewing a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the judgment and the reasonable inferences that may be drawn from that evidence to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

To prove child molesting, as a Class C felony, the State was required to show beyond a reasonable doubt that Temple, "with a child under fourteen (14) years of age, perform[ed] or submit[ted] to any fondling or touching, of either the child or the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person." Ind. Code § 35-42-4-3 (2004). While mere touching alone is not sufficient to constitute the crime of child molesting, the intent element of that crime may be established by circumstantial evidence and may be inferred from the actor's conduct and the natural and usual sequence to which such conduct usually points. Bowles v. State,

737 N.E.2d 1150, 1152 (Ind. 2000). Further, "[t]he intent to arouse or satisfy sexual desires may be inferred from evidence that the accused intentionally touched a child's genitals." Kirk v. State, 797 N.E.2d 837, 841 (Ind. Ct. App. 2003) (quoting Lockhart v. State, 671 N.E.2d 893, 903 (Ind. Ct. App. 1996)), trans. denied.

On appeal, Temple maintains that the State did not meet its burdens because the testimony of Schultz was "inherently improbable and unworthy of belief." Appellant's Brief at 7. Specifically, Temple argues that Schultz' testimony was improbable in light of a number of issues: (1) she testified that she could not see A.M. when Schultz walked into the house and saw Temple; (2) she stated that Temple was either kneeling or "stooped down," transcript at 25, when she saw him; (3) she stated at different times that A.M.'s panties were either pulled down to A.M.'s knees or not pulled down very far; (4) Schultz could not recall whether A.M. was wearing a skirt or a dress when the act occurred; and (5) Schultz testified that her youngest daughter had been molested by a family member, and Schultz "wished [that] she could have better protected her daughter at that time." Appellant's Brief at 8. In light of those statements, Temple asserts that Schultz' testimony that she saw his finger in A.M.'s vagina without being able to see A.M. as Schultz entered the home is inherently improbable and incredibly dubious. We cannot agree.

The incredible dubiosity rule applies only in very narrow circumstances. See Love v. State, 761 N.E.2d 806, 810 (Ind. 2002). If a sole witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence, a defendant's conviction may be reversed. Id. This is appropriate only where the court has

confronted inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiosity. Id. 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.

Here, the State presented sufficient evidence for the court to convict Temple of child molesting, and the incredible dubiosity rule does not apply. First, there is nothing "so incredibly dubious or inherently improbable" about Schultz' testimony that no reasonable person could believe it. See id. Essentially, Temple argues that Schultz must have been able to see both him and A.M. when Schultz reentered her house. But that is not the case—Schultz' testimony indicates that Temple may have been blocking A.M. from view of the front door, and only as Schultz walked towards the kitchen did she see A.M. being fondled by Temple. There is nothing inherently flawed in that testimony.

Second, Schultz was not the only witness called by the State. Rather, the State also called Lisa Rodriguez, a family friend that was at Schultz' home on July 11. Rodriguez testified that, at some point that evening, Schultz exited the house to walk her dog, and Temple then entered the house. Rodriguez then stated that Schultz reentered the home a short time later, only to come back outside screaming at Temple. That testimony corroborates Schultz' testimony. The State also called Delores McKinney, A.M.'s mother, who likewise testified as to Schultz' hysterical state following the incident inside her home. Thus, Schultz' testimony was not "wholly uncorroborated." See id.

Temple's argument on appeal amounts to a request for this court to reweigh the evidence, which we will not do. Jones, 783 N.E.2d at 1139. It was the trial court's

prerogative to assess the weight and credibility of witnesses, including Schultz'. See id. We must conclude that the State presented sufficient evidence to convict Temple of child molesting as a Class C felony.

Affirmed.

MATHIAS, J., and BRADFORD, J., concur.