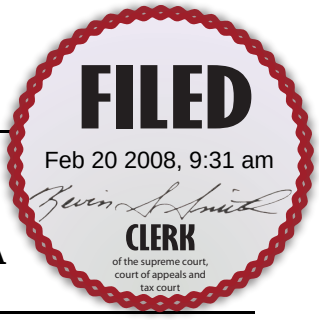
ATTORNEY FOR APPELLANT:

MICHAEL R. FISHER
Marion County Public Defender Agency
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

JOSEPH ROBERT DELAMATER
Deputy Attorney General
Indianapolis, Indiana



IN THE COURT OF APPEALS OF INDIANA

BRAUNELL MACKEY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0707-CR-368
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark Stoner, Judge
Cause No. 49G06-0611-FB-211267

February 20, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Braunell Mackey appeals his conviction for class B felony Robbery,[1] claiming that the evidence is insufficient to support his conviction. We affirm.

Huey Washington, an Indianapolis high school student, sought help at his school after being robbed at gunpoint by two males on a street next to the school grounds. The school police officer presented Washington with approximately seven student identification cards because Washington said that he recognized one of the perpetrators as another student at school he knew as Bruno. Within a couple seconds, Washington identified Mackey without hesitation as one of the perpetrators. A couple days later, a detective presented Mackey with a different set of student identification cards. Washington again, without hesitation, identified Mackey as one of the perpetrators within a couple seconds of seeing his picture. The State charged Mackey with class B felony robbery, and a jury found him guilty as charged.

Mackey concedes that the State established beyond a reasonable doubt that a robbery occurred as described by Washington, but contends that the State failed to establish that it was Mackey who committed the robbery. In reviewing a claim of insufficient evidence, we neither reweigh the evidence nor judge the credibility of the witnesses. *Sanders v. State*, 704 N.E.2d 119, 123 (Ind. 1999). Instead, we look to the evidence most favorable to the verdict and the reasonable inferences drawn therefrom. *Id.* We affirm the conviction if there is probative evidence from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. *O'Connell v. State*, 742 N.E.2d 943, 949 (Ind. 2001).

Mackey acknowledges that "the uncorroborated testimony of one witness may be

[1] Ind. Code § 35-42-5-1.

sufficient by itself to sustain a conviction on appeal." *Toney v. State*, 715 N.E.2d 367, 369 (Ind. 1999). However, he cites *Sisson v. State*, 710 N.E.2d 203 (Ind. Ct. App. 1999), for the principle that "a reviewing court may impinge upon the fact finder's resolution of credibility issues when confronted with testimony of 'inherent improbability,' or coerced, equivocal, wholly uncorroborated testimony of 'incredible dubiosity.'" *Id*. at 206 (quoting *Webster v. State*, 699 N.E.2d 266, 268 (Ind. 1998)). We observe that "[a]pplication 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).

Mackey argues that Washington's in-court identification was equivocal and that the out-of-court identification process was so flawed that it was coercive. At trial, the following colloquy took place:

> Prosecutor: Do you see that person in the courtroom today?
> Washington: Nope.
> Prosecutor: You don't see the person you recognized…
> Washington: Oh, him. Right there.
> Prosecutor: Okay. Where is he seated and what is he wearing?
> Washington: Red tie and white shirt.

Tr. at 11-12. This conversation suggests that Washington did not initially see Mackey in the courtroom, not that Washington was unsure that Mackey was the person who committed the robbery. Moreover, shortly thereafter Washington unequivocally identified Mackey as the person in the photos that the school police officer and the detective showed him. *Id*. at 26-27. As to the out-of-court identification process, we are unpersuaded that it was coercive. We conclude that Washington's testimony was neither equivocal nor coerced and was not so

incredibly dubious or inherently improbable that no reasonable person could believe it. *See Love*, 761 N.E.2d at 810. As such, there was sufficient evidence to support Mackey's conviction.

Affirmed.

BAILEY, J., and NAJAM, J., concur.