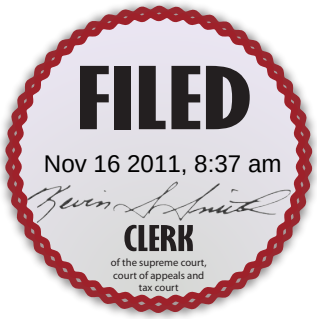

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IN THE
COURT OF APPEALS OF INDIANA

D. B.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A03-1103-JV-166
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Stephen M. Sims, Judge
Cause No. 02D07-1002-JD-281

November 16, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

D.B. appeals the juvenile court's true finding of child molesting, a class C felony[1] if committed by an adult.

We affirm.

ISSUE

Whether the State presented sufficient evidence to support the true finding.

FACTS

On October 25, 2009, J.M., age six, and her sister, S.C., age fifteen, went to the home of their fifteen-year-old cousin, D.B. S.C. left J.M. under D.B.'s care while she went to visit a friend. While J.M. was playing in D.B.'s sisters' bedroom, D.B. entered and said: "Let me show you [a] magic trick." (Tr. 16). D.B. removed his clothes and J.M.'s pants, then "humped" her with his "privacy" touching her "bottom." (Tr. 16-17). At the factfinding hearing, J.M. stated that a boy uses his "privacy" to "tinkle" and that she uses her "bottom" to "poop." (Tr. 17). J.M. said that "[i]t hurted" and told D.B. to stop. (Tr. 18). J.M. stated that no one else saw what happened, as D.B.'s mother was asleep on the couch in another room.

When S.C. returned to pick up J.M., the two sisters began to walk to their grandmother's house. J.M. told S.C. what D.B. had done. When the pair arrived at their grandmother's house, they told her about D.B.'s actions. Their grandmother called the police.

[1] Ind. Code § 35-42-4-3.

A paramedic arrived and examined J.M., observing "redness around the anus." (Tr. 24). Sexual Assault Nurse Examiner Angela Sexton examined J.M. on the same day and found no injuries. Sexton testified that 99 percent of child sexual assault victims have no observable physical injury. Also on the same day, a worker at the Child Advocacy Center interviewed J.M. The interview was taped and transferred onto a disk. In the interview, J.M. stated that D.B. had molested her on at least three other occasions.

In its "Petition to Adjudge Delinquency," the State alleged that D.B. committed four counts of child molesting, a class C felony if committed by an adult. After the State presented its case, the juvenile court dismissed the first three counts and made the true finding regarding the facts described above. D.B. was made a ward of the Indiana Department of Correction.

DECISION

D.B. contends that the State failed to present sufficient evidence to support the true finding. Generally, in addressing a claim of insufficient evidence, we must consider only the probative evidence and reasonable inferences supporting the trier of fact's determination. *Glenn v. State*, 884 N.E.2d 347, 355 (Ind. Ct. App. 2008), *trans. denied*. We will not reweigh the evidence or assess witness credibility in reviewing the determination. *Id.* "Reversal is appropriate only when reasonable persons would not be able to form inferences as to each material element of the offense." *Alvies v. State*, 905 N.E.2d 57, 61 (Ind. Ct. App. 2009). "Not only must the fact-finder determine whom to believe, but also what portions of conflicting testimony to believe." *In re J.L.T.*, 712 N.E.2d 7, 11 (Ind. Ct. App. 1999), *trans. denied*. A conviction may stand on the

uncorroborated evidence of a minor witness. *Newsome v. State*, 686 N.E.2d 868, 875 (Ind. Ct. App. 1997).

D.B. claims that the uncorroborated taped statements of J.M. were so incredibly dubious as to be unbelievable. He points to J.M.'s claims during the taped interview that she had been molested a number of times by a number of people. He also points to J.M.'s claim that D.B.'s house contained security cameras, a claim that the State stipulated was not true.

First, we note that the incredible dubiosity rule does not apply to conflicts that exist between trial testimony and statements made to the police before trial. *Buckner v. State*, 856 N.E. 2d 1011, 1018 (Ind.Ct.App.2006). Rather, it only applies to conflicts in trial testimony. *Id*. We will overturn a conviction "when the testimony is so incredibly dubious or inherently improbable that it runs counter to human experience, and no reasonable person could believe it." *Baumgartner v. State*, 891 N.E.2d 1131, 1138 (Ind. Ct. App. 2008). Under the incredible dubiosity rule, "a court will impinge on the [trier of facts'] responsibility to judge the credibility of a witness when confronted with inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiosity." *Glenn*, 884 N.E.2d at 355. Application of this rule is limited to cases where a sole witness presents inherently contradictory and equivocal testimony and there is a complete lack of circumstantial evidence of the appellant's guilt. *Id*. "The standard to be applied is whether the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it." *Id*.

To prove child molesting, a class C felony if committed by an adult, the State had to show that D.B. performed fondling or touching of J.M., a child under fourteen years of age, with intent to arouse or to satisfy either J.M.'s or his sexual desires. *See* I.C. § 35-42-4-3(b). Here, S.C. testified that immediately after she picked up J.M. from D.B.'s house, J.M. told her about D.B.'s actions. J.M. testified at the factfinding hearing that D.B. told her he was going to show her a "magic trick" and then rubbed his exposed penis against her naked buttocks. J.M. also testified that D.B.'s "humping" of her buttocks caused pain. J.M. further testified that D.B.'s mother did not see anything because she was asleep on the couch, a fact that was verified by D.B., D.B.'s father, and D.B.'s mother. The paramedic who first examined J.M. stated that there was redness around her anus. This evidence is sufficient to prove that D.B. committed child molesting, a class C felony if committed by an adult.

To be sure, approximately fifty-two minutes into the taped interview that lasted over an hour and ended after 9 p.m., a visibly tiring six-year-old J.M., who already had been molested, interviewed by police officers, and subjected to two physical examinations on October 25, 2009, began to ramble about security cameras in D.B.'s house and about other incidents of molestation. However, before that time, J.M.'s interview statements were significantly consistent with her trial testimony.

We cannot say that the discrepancies between J.M.'s statements during the taped interview and her factfinding testimony render her testimony incredibly dubious. Neither can we say that J.M.'s claims were so outrageous that no reasonable person could believe that D.B. molested her. This is especially true where the juvenile judge was the trier of

fact, heard the testimony of the witnesses, viewed the taped interview, and heard defense counsel's argument about the contents of the taped interview. In short, the evidence is sufficient to support the true finding.

Affirmed.

FRIEDLANDER, J., and VAIDIK, J., concur.