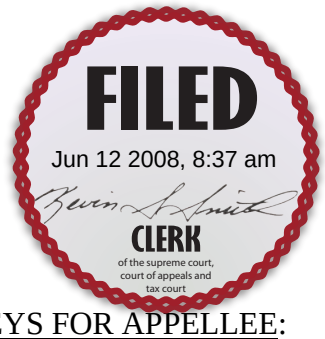

ATTORNEY FOR APPELLANT:

MICHAEL E. CAUDILL
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEPHEN R. CARTER
Attorney General of Indiana
Indianapolis, Indiana

GEORGE P. SHERMAN
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF D.B.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0712-JV-1070
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Danielle Gregory, Magistrate
Cause No. 49D09-0701-JD-000153

JUNE 12, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

HOFFMAN, Senior Judge

D.B. appeals his adjudication as a delinquent child for committing child molesting as a class B felony if committed by an adult, child molesting as a class C felony if committed by an adult, and battery as a class A misdemeanor if committed by an adult. We affirm.

D.B. raises two issues for our review:

I. Whether the trial court erred in admitting evidence; and

II. Whether there is sufficient evidence to support the juvenile court's adjudication.

The facts most favorable to the juvenile adjudication reveal that on November 12, 2006, sixteen-year-old D.B. battered three-year-old A.C., fondled her, and placed his finger in her vagina. The following day, A.C. attempted to put her tongue in her babysitter's mouth and told her babysitter that her vagina hurt and burned.

Two days later, Diane Bowers, a forensic child interviewer with the Marion County Prosecutor's Office interviewed A.C. The State subsequently alleged that D.B. was a delinquent child. After a child hearsay hearing, the juvenile court determined that A.C.'s hearsay statement to Bowers was reliable. The court therefore admitted the statement at D.B.'s denial hearing. Following the hearing, the juvenile court issued an order finding that the allegations against D.B. were true. D.B. appeals.

D.B. first argues that the juvenile court erred in admitting A.C.'s videotaped statement to Bowers into evidence. Specifically, D.B.'s sole contention is that the trial court erred in concluding that A.C.'s statement was sufficiently reliable.

The decision to admit or exclude evidence is within a trial court's sound discretion and is afforded great deference on appeal. *Taylor v. State,* 841 N.E.2d 631, 634 (Ind. Ct. App. 2006), *trans. denied.* An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. *Id.*

Indiana Code Section 35-37-4-6 provides in relevant part that an otherwise inadmissible statement or videotape made by a protected person, which includes a child under fourteen years of age, is admissible in criminal actions involving sex crimes if the court finds that the time, content, and circumstances of the statement provide sufficient indications of reliability. Considerations in making the reliability determination include whether there was significant opportunity for coaching, the nature of the questioning, whether there was a motive to fabricate, use of age appropriate terminology, and spontaneity and repetition. *Taylor*, 841 N.E.2d at 635.

In *Purvis v. State,* 829 N.E.2d 572, 583 (Ind. Ct. App. 2005), *trans. denied, cert. denied,* 547 U.S. 1026 (2006), we affirmed the trial court's determination that the victim's statements to his mother were reliable where there was no opportunity for the statements to be coached, the victim had no motivation to lie, and the victim's statement was mostly spontaneous and expressed in age appropriate language. Here, as in *Purvis,* our review of the evidence reveals that there was no opportunity for the statements to be coached where A.C. and her mother did not discuss the incident, three-year-old A.C. had no motivation to lie, and A.C.'s statement was spontaneous and expressed in age appropriate language. This evidence supports the juvenile court's determination that

A.C.'s statement was reliable, and the juvenile court did not abuse its discretion in admitting the statement into evidence. *See Purvis*, 829 N.E.2d at 572.

D.B. also argues that there is insufficient evidence to support his adjudication as a delinquent child. Specifically, his sole contention appears to be that A.C.'s testimony was incredibly dubious.

When reviewing a claim of sufficiency of the evidence with respect to juvenile adjudications, we do not reweigh the evidence or judge the credibility of witnesses. *K.D. v. State*, 754 N.E.2d 36, 38 (Ind. Ct. App. 2001). We look only to probative evidence supporting the adjudication and the reasonable inferences that may be drawn from that evidence to determine whether a reasonable trier of fact could conclude the juvenile was guilty beyond a reasonable doubt. *Id.* at 38-39. If there is substantial evidence of probative value to support the adjudication, it will not be set aside. *Id.* at 39.

Under the incredible dubiosity rule, a reviewing court will impinge on the fact finder's responsibility to judge the credibility of a witness only when it has confronted inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiosity. *Copeland v. State*, 802 N.E.2d 969, 971 (Ind. Ct. App. 2004). When a sole witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence, a defendant's conviction may be reversed. *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 gravamen of D.B.'s argument appears to be that A.C.'s testimony is incredibly dubious because it is inconsistent. Specifically, D.B. points out that during questioning by the State, A.C. testified that D.B. inappropriately touched her. However, when asked by defense counsel if it was true that D.B. had never touched her, she responded, "yes." Tr. p. 186.

However, we agree with the State that A.C. was apparently confused by the nature of defense counsel's question. We further note that A.C. subsequently pointed to the spot where D.B. touched her and testified that it hurt when he touched her there. These events were not inherently improbable nor do they run counter to human experience. *See Moreland v. State*, 701 N.E.2d 288 (Ind. Ct. App. 1998). There is sufficient evidence to support the juvenile court's adjudication.

Affirmed.

MATHIAS, J., and CRONE, J., concur.