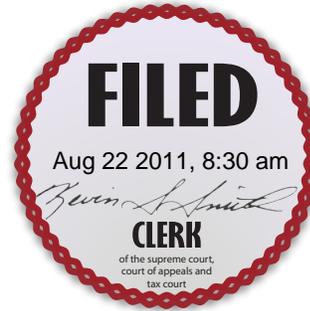


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

A.B.,)
)
Appellant-Respondent,)
)
vs.) No. 49A02-1101-JV-142
)
STATE OF INDIANA,)
)
Appellee-Petitioner.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Gary K. Chavers, Judge Pro Tempore
The Honorable Geoffrey A. Gaither, Magistrate
Cause No. 49D09-1005-JD-1340

August 22, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

A.B. was adjudicated a juvenile delinquent after the delinquency court found as true the State's allegation that he committed an act that would, if tried as an adult, result in a conviction for Child Molesting, as a Class C felony.¹ A.B. now appeals, raising for our review only whether there is sufficient evidence to establish that he committed the alleged act so as to support the juvenile delinquency adjudication.

We affirm.

Facts and Procedural History

A.B. is the nephew of M.S. M.S. is the mother of L.S., an eight-year old girl with diabetes insipidus, significant visual impairment, and mental developmental delays. During the events relevant to this case, L.S. lived in Indianapolis with her mother, grandparents, aunt, and A.B.

Sometime in April 2010, while L.S. was visiting her father, J.O., J.O. was bathing L.S. and attempted to clean the area around her vagina. L.S. repeatedly pulled away, causing J.O. concern. In response, J.O. called police, who involved Child Protective Services ("CPS"). It was ultimately determined that A.B. had touched L.S.'s vagina and inserted his fingers and a stick into her vagina.

On May 21, 2010, the State alleged that A.B. is a juvenile delinquent for committing acts that, if found guilty as an adult, would constitute Child Molesting, one as a Class B felony, and one as a Class C felony. On September 12, 2010, the State amended the

¹ Ind. Code § 35-42-4-3.

information, adding two counts alleging conduct that would constitute Child Molesting, one as a Class B felony, and one as a Class C felony. On October 5, 2010, the State dismissed the counts alleged in the May 21, 2010, information and left the two allegations added on September 12, 2010.

On October 5, 2010, the delinquency court conducted a Child Hearsay hearing to determine whether L.S. could testify. After concluding that L.S. could testify, a denial hearing was conducted on December 3, 2010, and was continued on December 10, 2010, during which L.S., her father, mother, and paternal grandmother, B.O., all testified. At the conclusion of the hearing, the court found not true the allegation of delinquency as to Child Molesting, as a Class B felony, but found true the allegation of delinquency as to Child Molesting as a Class C felony if committed by an adult. At a dispositional hearing on January 21, 2011, the court adjudicated A.B. a juvenile delinquent and ordered him to participate in probation and outpatient sex offender treatment.

This appeal followed.

Discussion and Decision

A.B. challenges the sufficiency of the evidence underlying his adjudication as a delinquent for Child Molesting, as a Class C felony. Specifically, A.B. contends that there is no probative evidence from which the delinquency court could conclude beyond a reasonable doubt that he committed the act alleged, and further that the testimony upon which his adjudication relies, namely, L.S.'s testimony, is incredibly dubious and is thus unable to support the delinquency adjudication.

When the State seeks a juvenile delinquency adjudication for committing an act that would be a crime if committed by an adult, the State must prove every element of the crime beyond a reasonable doubt. M.S. v. State, 889 N.E.2d 900, 901 (Ind. Ct. App. 2008), trans. denied. On appeal, this court considers only the evidence and reasonable inferences therefrom that support the judgment, and we neither reweigh evidence nor judge the credibility of witnesses. Id. We will affirm the delinquency adjudication so long as there is substantial evidence of probative value from which a reasonable trier of fact could conclude that the juvenile was guilty of the charged offense beyond a reasonable doubt. Id.

A.B. was adjudicated a delinquent for conduct that would constitute Child Molesting, as a C felony if committed by an adult. To obtain this adjudication, the State was required to prove beyond a reasonable doubt that on or between April 1, 2009, and April 15, 2010, A.B. performed or submitted to fondling or touching with L.S., a child under fourteen years of age, with intent to arouse or satisfy his own sexual urges. Ind. Code § 35-42-4-3(b); App. at 66.

At the denial hearing, L.S. testified numerous times that A.B. had touched her vagina with his fingers, used a stick to touch her vagina, and inserted his fingers into her vagina, causing her pain and ripping her diaper. Specifically, L.S. answered “Yes” when asked whether anyone had ever touched her vagina and indicated that A.B. had done so. (Tr. at 31.)

L.S. also stated that A.B. told her “I’m very sorry for touching you,” “I’ll be your friend again for not touching you,” “I will not touch your [vagina] ever again,” and “I’ll be your best friend, don’t touch.” (Tr. at 32.) L.S. further testified that “I was outside when he took the stick up the tree ... and put the stick into my [vagina].” (Tr. at 32.) L.S. later said that

A.B. had used his fingers to touch her vaginal area when she was in his room, that it caused her discomfort, that she asked her grandmother to make A.B. stop touching her, and that her diaper ripped during this incident. While A.B. directs us to L.S.’s statements regarding A.B. on cross-examination—generally agreeing when asked whether A.B. had “touched” L.S., without more detail as to the nature of the touching (Tr. 38)—this is a request that we reweigh evidence, which we cannot do. M.S., 889 N.E.2d at 901.

A.B. also contends that, even if the evidence is sufficient to sustain the true adjudication against him, L.S.’s testimony is incredibly dubious and that we therefore must reverse the true finding and delinquency adjudication. Our supreme court has stated the standard for incredible dubiousity:

Under the incredible dubiousity rule, a court will impinge on a jury’s responsibility to judge witness credibility only when confronted with inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiousity. Tillman v. State, 642 N.E.2d 221, 223 (Ind.1994). The incredible dubiousity rule, however, is limited to cases where a sole witness presents inherently contradictory testimony which is equivocal or the result of coercion and there is a complete lack of circumstantial evidence of the defendant’s guilt. Id.

Majors v. State, 748 N.E.2d 365, 367 (Ind. 2001) (emphasis supplied). “The incredible dubiousity rule applies to conflicts in trial testimony rather than conflicts that exist between trial testimony and statements made to the police before trial.” Buckner v. State, 857 N.E.2d 1011, 1018 (Ind. Ct. App. 2006) (citing Reyburn v. State, 737 N.E.2d 1169, 1171 (Ind. Ct. App. 2000)). For testimony to be so incredibly dubious as to warrant reversal of a conviction or delinquency adjudication, the single witness’s testimony must be coerced or “inherently

improbable [so] that no reasonable person could believe it.” Love v. State, 761 N.E.2d 806, 810 (Ind. 2002).

Here, A.B. contends that L.S.’s testimony is equivocal, conflicted, and thus inherently improbable. We disagree. First, testimony and circumstantial evidence was offered by L.S.’s father, who testified about L.S.’s response to an attempt to bathe her that led to the present case. Moreover, L.S.’s testimony is clear as to A.B.’s touching of her vagina; it conflicts only when L.S. was asked about touching generally, without making reference to her genitalia. Nor is her testimony inherently improbable, as in Penn v. State, 237 Ind. 374, 146 N.E.2d 240 (1957), where the testimony offered was “inherently contradictory” and “bizarre.” Love, 761 N.E.2d at 810 n.3 (discussing Penn in a footnote).

Thus, we cannot agree with A.B. that L.S.’s testimony meets the incredible dubiousity standard, nor can we agree that there was insufficient evidence to support his delinquency adjudication.

Affirmed.

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