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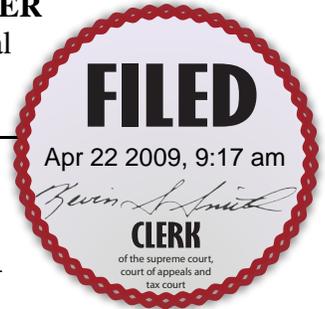
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**IN THE  
COURT OF APPEALS OF INDIANA**

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S.S., )  
)  
Appellant-Defendant, )  
)  
vs. ) No. 49A05-0811-JV-652  
)  
STATE OF INDIANA, )  
)  
Appellee-Plaintiff. )

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Marilyn Moores, Judge  
The Honorable Danielle Gregory, Magistrate  
Cause No. 49D09-0807-JD-2083

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**April 22, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

S.S., a juvenile, appeals her delinquency adjudication for what would be class D felony theft if committed by an adult. She claims that the evidence is not sufficient to sustain the juvenile court's order. We affirm.

On July 14, 2008, S.S. and K.H., also a juvenile, went to Burlington Coat Factory on Lafayette Road in Indianapolis. They went to the sunglasses section, and K.H. put two pairs of sunglasses into her purse. Then they went to the shoe department, where S.S. asked K.H. to put a pair of shoes into her purse. They tried on dresses, and K.H. put more merchandise into her purse. K.H. walked out of the store with all of the items in her purse, while S.S. stood in a checkout line with several items. The security sensor detector was triggered as K.H. attempted to exit the store. Loss prevention officer Anna Ray stopped K.H. and inspected her purse. Ray discovered two pairs of sunglasses, a pair of shoes, and other store merchandise in K.H.'s purse.

On July 15, 2008, the State filed a delinquency petition alleging that S.S. was a delinquent child for committing theft, a class D felony if committed by an adult. The juvenile court held an initial hearing that same day, and S.S. denied the allegation. On September 15, 2008, the juvenile court held an evidentiary hearing, found the allegation true, and adjudicated S.S. a delinquent. S.S. now appeals.

Our standard of review is well-settled.

When the State seeks to have a juvenile adjudicated a delinquent, it must prove every element of the offense beyond a reasonable doubt. On review, we will not reweigh the evidence or judge the credibility of the witnesses. Rather, we look to the evidence and the reasonable inferences

therefrom that support the true finding. We will affirm the adjudication if evidence of probative value exists from which the factfinder could find the juvenile guilty beyond a reasonable doubt. In other words, we will affirm the finding of delinquency unless it may be concluded that no reasonable factfinder could find the elements of the crime proven beyond a reasonable doubt.

*D.B. v. State*, 842 N.E.2d 399, 401-02 (Ind. Ct. App. 2006) (citations omitted).

S.S. contends that we should reverse the juvenile court's order because the testimony of the State's key witness, K.H., was incredibly dubious. S.S. is correct that the "incredible dubiousity" rule allows us, in rare circumstances, to impinge upon a trier of fact's function to judge the credibility of a witness. *Hardley v. State*, 893 N.E.2d 1140, 1143 (Ind. Ct. App. 2008) (citing *Love v. State*, 761 N.E.2d 806, 810 (Ind. 2002)). Our supreme court stated the rule as follows:

If a sole witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence, a defendant's conviction may be reversed. This is appropriate only where the court has confronted inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiousity. 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.

*Love*, 761 N.E.2d at 810 (citations omitted).

In support of her argument, S.S. claims that K.H.'s testimony was "vague and contradictory" and that K.H.'s statements were suspect because she received the benefit of a plea agreement in exchange for her testimony.<sup>1</sup> The slight inconsistencies in K.H.'s testimony, which were acknowledged by the juvenile court at the evidentiary hearing, simply

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<sup>1</sup> The State originally charged K.H. with class D felony theft, but pursuant to the plea agreement, K.H. pled guilty to class A misdemeanor conversion.

do not rise to the level of incredible dubiousity. The gist of K.H.'s testimony, that S.S. accompanied her to Burlington Coat Factory and knew that K.H. was placing in her purse merchandise desired by S.S., is not "so incredibly dubious or inherently improbable that no reasonable person could believe it." *Id.*

In rendering its decision, the trial court closely reviewed the details of K.H.'s testimony and weighed it accordingly:

I do believe that [S.S.] did direct [K.H.] to put some things in her purse for her benefit. [S.S.] was there, she knew [K.H.] was taking it and I think she participated by um, having [K.H.] put things in her purse on her behalf. [K.H.] was a little confusing about how the shoes got in her bag or from what point they went from each place. And [S.S.] took them off the shoe rack and then she put them on the floor and at her direction she picked them up and put them in her purse. [K.H.] said [S.S.] liked them, and on redirect she changed it a bit and said that [S.S.] said she liked them then she put them in her purse. What didn't change is that she was acting on behalf of [S.S.] when she put the shoes in her purse. ... I don't think [S.S.] had anything to do with the sunglasses and all the other objects but I do believe she had something to do with the shoes going into that purse on her behalf. That's why I am finding her responsible for the shoes only.

Tr. at 17-18. Moreover, the trial court was well aware of the benefit provided to K.H. by the State in exchange for her testimony, as S.S. was permitted to cross-examine her on the subject of her plea agreement.

In sum, the incredible dubiousity rule does not apply to K.H.'s testimony in this case, and we will not judge her credibility. In our view, there was evidence of probative value from which the trial court could make a finding of delinquency beyond a reasonable doubt. Thus, we must affirm the trial court's order.

Affirmed.

BRADFORD, J., and BROWN, J., concur.