ATTORNEY FOR APPELLANT:

NANCY A. McCASLIN
McCaslin & McCaslin
Elkhart, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

GARY DAMON SECREST
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF D.C., A Child Alleged to be Delinquent,	)	
D. C.,	)	
Appellant-Defendant,	)	
vs.	)	No. 20A03-0701-JV-31
STATE OF INDIANA,	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry C. Shewmaker, Judge
Cause No. 20C01-0605-JD-539

August 23, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

D.C. appeals his adjudication as a delinquent for committing an act that would be child molesting as a class B felony[1] if committed by an adult. D.C. raises two issues, which we revise and restate as:

I. Whether the evidence is sufficient to sustain D.C.'s adjudication as a delinquent; and

II. Whether the juvenile court properly ordered D.C. to pay a monthly probation user fee.

We affirm in part and remand in part.

The relevant facts follow. D.C. and his younger brother, D'M.C., were sharing a bedroom at their grandmother's home. One night in April 2005, D.C. pulled D'M.C.'s underwear down and put his penis in D'M.C.'s anus. D.C. was fourteen years old at the time, and D'M.C. was ten years old. A little while later, after a sexual education class, D'M.C. told a friend from school about the incident and also about an earlier occasion when D.C. had made D'M.C. "touch [D.C.'s] private areas." Transcript at 48. When the friend later told his parents, they called child protective services.

The State alleged that D.C. was delinquent for: (1) Count I, committing an act that would be child molesting as a class B felony if committed by an adult; and (2) Count II,

[1] Ind. Code § 35-42-4-3 (2004).

committing an act that would be child molesting as a class C felony if committed by an adult. The juvenile court adjudicated D.C. to be a delinquent child for committing an act that would be child molesting as a class B felony if committed by an adult but dismissed the other allegation. The juvenile court placed D.C. on probation and ordered him to pay a $15 monthly probation user fee. D.C. filed a motion to correct error, arguing that the evidence was insufficient to sustain his conviction. The trial court denied the motion.

I.

The first issue is whether the evidence is sufficient to sustain D.C.'s adjudication as a delinquent for committing an act that would be child molesting as a class B felony if committed by an adult.[2] When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Jordan v. State, 656 N.E.2d 816, 817 (Ind. 1995), reh'g denied. Rather, we look to the evidence and the reasonable inferences therefrom that support the verdict. Id. We will affirm the conviction if there exists evidence of probative value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. Id.

The offense of child molesting is governed by Ind. Code § 35-42-4-3(a), which provides that "[a] person who, with a child under fourteen (14) years of age, performs or submits to sexual intercourse or deviate sexual conduct commits child molesting, a Class

[2] D.C. frames the issue as whether the trial court abused its discretion in denying his motion to correct error because, he argues, the evidence was insufficient to support his adjudication as a delinquent. We will address the issue as whether the evidence was sufficient to sustain D.C.'s conviction.

B felony." "Deviate sexual conduct" means "an act involving: (1) a sex organ of one person and the mouth or anus of another person." I.C. § 35-41-1-9(1) (2004). Thus, to adjudicate D.C. to be a delinquent for committing an act that would be child molesting as a class B felony if committed by an adult, the State needed to prove that D.C. committed an act involving his sex organ and the anus of D'M.C. and that D'M.C. was a child under fourteen years of age.

D.C. argues that the evidence is insufficient to support his adjudication as a delinquent because the State failed to prove beyond a reasonable doubt that the act involved D'M.C.'s anus. The uncorroborated testimony of one witness may be sufficient by itself to sustain a conviction on appeal. Toney v. State, 715 N.E.2d 367, 369 (Ind. 1999). At the trial, the following exchange occurred on direct examination of D'M.C.:

Q Were you pretending to be asleep?

A Yes.

Q Okay. And what did [D.C.] do?

A He put his penis in my butt.

Transcript at 13.

On cross examination, the following exchange occurred between the defense and D'M.C.:

Q What did you tell Alec?

A That [D.C.] put his penis in my butt.

Q Did you tell him anything else?

A No. No.

Q What do you mean by 'butt'?

A My anus.

Id. at 30.

Here, D'M.C. testified that D.C. put his penis in D'M.C.'s anus, and this testimony is sufficient to support D.C.'s adjudication as a delinquent. See J.D.P. v. State, 857 N.E.2d 1000, 1010 (Ind. Ct. App. 2006) (holding that the uncorroborated testimony of one witness may be sufficient by itself to sustain an adjudication of delinquency on appeal), trans. denied.

II.

The second issue is whether the juvenile court properly ordered D.C. to pay a $15 monthly probation user fee. Ind. Code § 31-40-2-1(a) provides that a juvenile court may order a delinquent child or the child's parent to pay a monthly probation user's fee, subject to I.C. § 31-40-1-3. I.C. § 31-40-1-3(a) states that a parent of a delinquent child "is financially responsible . . . for any services ordered by the court." D.C. asserts, and the State concedes, that the juvenile court improperly ordered him to pay a monthly probation user's fee without inquiring as to his or his parents' ability to pay. We therefore order the juvenile court to conduct an indigency hearing on remand. See A.E.B. v. State, 756 N.E.2d 536, 544 (Ind. Ct. App. 2001) (remanding for indigency hearing to determine juvenile's ability to pay probation and public defender fees).

For the foregoing reasons, we affirm D.C.'s adjudication as a delinquent for committing an act that would be child molesting as a class B felony if committed by an adult, and we remand this cause to the juvenile court with directions to hold a hearing and to make findings on D.C.'s or D.C.'s parents' ability to pay the monthly probation user fee.

Affirmed in part and remanded in part for findings.

MAY, J. and BAILEY, J. concur