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IN THE
COURT OF APPEALS OF INDIANA

WILLIAM JUDGE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 70A01-0602-CR-47
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE RUSH CIRCUIT COURT
The Honorable Barbara Arnold Harcourt, Judge
Cause No. 70C01-0503-FC-75

March 8, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Appellant-Defendant William "Billy" Judge (hereinafter "Judge") appeals his conviction, following a jury trial in Rush Circuit Court, for Class A felony child molesting. Judge raises several issues on appeal, which we consolidate and restate as:

I. Whether the trial court properly admitted Judge's confession at trial; and,

II. Whether there was sufficient evidence to support Judge's conviction.

Concluding that Judge's confession was properly admitted at trial and that there was sufficient evidence to sustain his conviction, we affirm.

Facts and Procedural History

The facts most favorable to the conviction reveal that Amanda and Loren Collins are married, have three children, and were living in Rushville, Indiana, in March of 2005. During that time, Amanda's sister, Amber Smith ("Smith"), and cousin, Jennifer Shouse ("Shouse"), would babysit for the Collins children while their parents were at work. Shouse would watch the children in their home. Also during that time, Judge, who was a family friend, would frequently visit the Collins family home.

On March 18, 2005, Smith was babysitting the children at her home while Amanda and Loren were at work. When Smith gave six-year-old A.C.[1] her bath, A.C. did not want her aunt to wash between her legs. This was unusual, so Smith asked A.C. what was wrong. A.C. told Smith that Judge touched her on her "pee pee." Tr. p. 52. A.C. said that the incident had happened when her mom was at work and Shouse, who was babysitting, was asleep on the couch in the living room.

[1] It is unclear from the record whether A.C. was five or six years old at the time of the molestation. However, at trial, she was six years old. Tr. p. 24.

Smith telephoned Amanda and told her what A.C. had said. When Smith returned the children home the next morning, A.C. repeated the story to her mother, stating that Judge had touched her "private." Id. at 46. Amanda called the police, and Detective Bradley Hatfield ("Detective Hatfield") responded. After questioning Amanda and A.C. at their home and subsequently obtaining a statement from A.C. at the police station, Detective Hatfield located twenty-six year old Judge at his mother's apartment, where he resided. Id. at 66.

Upon Detective Hatfield's arrival at Judge's home on March 19th, he noticed that Judge's demeanor was "nervous." Id. at 66. He was shaking and wouldn't look at Detective Hatfield. Detective Hatfield asked Judge to come with him to the police station for questioning, and Judge complied. Upon arriving at the police station, Detective Hatfield read Judge his Miranda rights and watched him sign the rights waiver form. Detective Hatfield then began to question Judge regarding the accusations made by A.C. During the taped interview, Judge admitted to putting his finger inside A.C.'s vagina.

On March 21, 2005, the State charged Judge with Class C felony child molesting[2] and Class D felony sexual battery[3]. The State later amended the information to include a third count for Class A felony child molesting.[4] On November 29, 2005, the State filed a motion for leave to amend information to include a repeat sex offender enhancement. On December 16, 2005, the State filed a request for an enhanced sentence pursuant to Indiana Code section 35-50-2-14. An amended information was filed on December 22, 2005.

[2] See Ind. Code § 35-42-4-3(b) (2004).
[3] See Ind. Code § 35-42-4-8 (2004).
[4] See Ind. Code §§ 35-42-4-3(a)(1)(2004).

A jury trial commenced on January 19, 2006. Following the State's evidence, the trial court granted Judge's motion for a directed verdict on Count II, class D felony sexual battery. The jury convicted Judge of the remaining two counts and subsequently found Judge to be a repeat sexual offender.

On January 19, 2006, the trial court held a sentencing hearing and merged Judge's Class C felony molestation conviction into the Class A felony conviction. The court then sentenced Judge to fifty years and enhanced the sentence by an additional ten years because of his status as a repeat sexual offender. This appeal ensued. Additional facts will be supplied as needed.

I. Admissibility of Judge's Confession

Judge mounts a multi-prong attack challenging the admissibility of his pretrial confession. Specifically, Judge contends that the trial court improperly admitted his confession at trial because his confession was coerced by Detective Hatfield's use of threats, deception, and promises of leniency if he confessed. Judge further asserts that without his confession, there is no independent proof of the corpus delicti of the crimes charged, and thus the trial court's admission of Judge's confession amounts to fundamental error. Finally, Judge contends that the admission of his confession violated Indiana Rule of Evidence 704(b).

A. *Coerced Confession*

Initially, we note that Judge failed to object to the admission of the taped confession at trial. "Appellate review of the voluntariness of a confession is foreclosed when the defendant did not object on this ground at trial." Ford v. State, 504 N.E.2d

1012, 1013 (Ind. 1987). Waiver notwithstanding, the events surrounding the confession indicate that Judge's claim is without merit.

Judge's confession was made during a taped interview with Detective Hatfield on March 19, 2005. The interview tape contained the following relevant statements:

> [Det. Hatfield]: Okay, today's date is March 19th, 2005. It's approximately 2:36 p.m., with Detective Brad Hatfield of the Rushville Police Department in the Detectives[']Office at the police department, with uh, Billy Judge, uh-it's actually William Judge, right?
>
> [Judge]: Yes.
>
> [Det. Hatfield]: Do me a favor and state your full name, date of birth and social security number for me.
>
> [Judge]: William Dean Judge . . .
>
> * * *
>
> [Det. Hatfield]: Okay. Uh, you know why we're here to talk, uh, . . .we come to the apartment to pick you up. Okay, before we talk about them, I - - read you your rights (indiscernible) must understand your rights. You have the right to remain silent. Anything you say can and will be used against you in court. You have the right to talk to a lawyer for advice before we ask any questions and have him with you during questioning. If you cannot afford a lawyer, one will be appointed for you before questioning if you wish. If you decide to answer questions now, without a lawyer present, you still have the right to stop answering at any time. You also have the right to stop answering any time if you talk to a lawyer. You're not a juvenile. And it says, read – I have this statement of my rights and understand what my rights are [sic] want to make a statement, answer questions. Do not want a lawyer at this time, understand and know what I am doing. No promise or threats have been made to me and no pressure or force of any kind has been used against me. And you sign right there (indiscernible) you understand that. Okay. You know what we're going to talk about, right? You don't have any idea? Okay. There's been an accusation made against you. . . .
>
> * * *

Have you ever been to Amanda and Loren Collins' house?

[Judge]: The only time I go over there Amanda's around or Loren's around.

[Det. Hatfield]: Okay. Uh, we're being - - A complaint was made that uh, uh – I have to keep thinking of their names – [A.C.] and [S.C.]. Uh, you know who they are?

[Judge]: Uh-huh.

[Det. Hatfield]: That's Loren and Amanda's daughters, uh, said that you – you touched them inappropriately.

[Judge]: No. Never have.

* * *

[Det. Hatfield]: Maybe you on the floor playing with them or anything like that?

[Judge]: No, but anytime I'm around them Loren's always there or Amanda's always around.

[Det. Hatfield]: Why was you afraid to come talk to us?

[Judge]: Do you know where these accusations came from?

[Det. Hatfield]: From the little girls themsel[ves].

* * *

[Det. Hatfield]: No, uh, I've spoken to the little girls and it's coming from -- it's coming from the little girls. And this ain't something that little five-six-year-old girls make up.

[Judge]: I've -- I've never touched them in any way.

[Det. Hatfield]: Okay, these little girls wouldn't -- wouldn't just say this.

[Judge]: Every ti -- Every time I'm around them, Amada's always around and . . .

[Det. Hatfield]: Billy.

[Judge]: . . . Loren's always there.

[Det. Hatfield]: L- - Let me tell you. If you tell me what happened, then we can work with it; but if you don't and you lie to me, and I have to go through all these steps and put these little girls through a lot more, then there's several things I can charge you with, and I will. But if you tell me the truth right now, we can work something out.

[Judge]: We - - We play around, but I - - I didn't touch them in any way . . .

[Det. Hatfield]: Billy.

[Judge]: . . . inappropriate.

[Det. Hatfield]: Billy, these little girls are - - They know enough that when they went to get a bath and they were getting ready to get washed that they said, No, don't touch me there; it'll hurt. And they sai— What do you mean it'll hurt? When Billy does it, it hurts.

[Judge]: 'Cause I've never touched them there.

[Det. Hatfield]: Billy.

[Judge]: I don't touch nowhere – nowhere near below their – below their waste [sic].

[Det. Hatfield]: Billy. Why would these little girls just make this up?

[Judge]: Somebody's got to put them up to it.

[Det. Hatfield]: Well, two little girls aren't going to remember a story and -- that someone tells them and puts them up to it and have the fear in their eyes like these little girls do about being touched.

[Judge]: Well, they've been around Rachel. Rachel knows. She could've (background noise – indiscernible).

[Det. Hatfield]: Well, no, I don't think that - - You know, you need to stop trying to pawn this off on somebody else.

[Judge]: I'm not trying to.

[Det. Hatfield]: All right, if – Billy, why don't you just tell me the truth?

[Judge]: I'm telling you the truth.

[Det. Hatfield]: No. You're not.

[Judge]: I never touched them girls.

[Det. Hatfield]: Billy, you're sitting there quivering.

[Judge]: 'Cause I'm cold.

[Det. Hatfield]: You're cold? It's not that cold in here. All right. You were quivering at the apartment as soon as you seen us. Your actions are telling. So . . .

[Judge]: Wh - -

[Det. Hatfield]: . . . tell me what happened and we can work -- and we can we can take care of this.

[Judge]: I've never touched them in their private areas.

[Det. Hatfield]: Where have you touched them at?

[Judge]: We do play around. I touch them on their head or I tickle them on their belly, and that's it.

[Det. Hatfield]: No. I know better. These little - - little kids don't make things up like this.

[Judge]: When was this supposedly - - was supposed to happen?

[Det. Hatfield]: Well, you tell me. I'm not going to answer everything . . .

[Judge]: 'Cause I'm in - -

[Det. Hatfield]: . . . for you.

* * *

[Det. Hatfield]: You've already told me that you've been to - - to Loren and Amanda's.

[Judge]: The only day I usually go over there is Sunday.

[Det. Hatfield]: Billy.

[Judge]: But I ain't been over there all – all this week.

[Det. Hatfield]: You know, your actions - - your actions yourself are – are giving you away. I mean, you need to tell me the truth.

[Judge]: I'm telling you the truth.

[Det. Hatfield]: You need to tell me, so we can make sure that these little girls are all right. Get them checked out medically, so that these little girls don't have to go through anything else. I need to know what was done to them, so we can make sure they're okay. And I - - I can see that you're worried about these girls.

[Judge]: Yeah,'cause they're like - - they're like little sisters to me.

[Det. Hatfield]: So, tell me what was done, so I can get them checked out and get them taken care of. If I don't know, I can't let the doctors know. And if the doctors don't know, then they can't take care of them.

[Judge]: I – I couldn't tell you what was done, because I never – I never touched them down there in that area . . . .

* * *

[Det. Hatfield]: Yes, you have. Little girls would not make that up. (Indiscernible) stop lying to me. You need to tell me, so I can get these girls taken care of.

[Judge]: I helped them get dressed one time.

[Det. Hatfield]: Okay. And what happened when you helped get them dressed?

[Judge]: I put their under-- I put their underwear on, put their pants on, and their shirt.

[Det. Hatfield]: Okay. And before you put their underwear on, what did you do to them?

[Judge]: [A.C.] had a little uh, sore down there, so I rubbed some cream on it.

[Det. Hatfield]: You rubbed cream on it.

[Judge]: And uh -- What's the name of that cream? Trying to think of it. Uh -- the cream that you use for (indiscernible) - -

[Det. Hatfield]: Like diaper rash stuff?

[Judge]: Yeah.

[Det. Hatfield]: Okay. I can't think of the name of it either. And what else? Did you put maybe your finger inside of her when you was doing that?

[Judge]: No.

[Det. Hatfield]: Then, why would she hurt like that from being touched? Got to be a reason, Billy. I mean, you went from -- told you, you wasn't telling me the truth, because you went from you never touched them down there to now you've done this. Okay? Right now I'm the only one that can help you. And if you keep "bull[---------]" Okay, if you keep "bull[-------]" me around and I'm not going to help; I'm going to stack everything I can on you. And I'll do that. Tell me the truth and we'll work with that. I won't do that to you. All right? So tell me the truth.

[Judge]: Probably accidentally.

[Det. Hatfield]: Probably accidentally. Okay, what happened accidentally?

[Judge]: It might've slipped and went in.

[Det. Hatfield]: Into [A.C.]?

[Judge]: (Indiscernible).

[Det. Hatfield]: Your finger slipped and went in?

[Judge]: Uh-huh.

[Det. Hatfield]: Okay. Did you move it in and out?

[Judge]: No.

[Det. Hatfield]: Did you – How long did you leave it in there for?

[Judge]: I just took it right back out.

* * *

[Det. Hatfield]: And where was you at when you done this?

[Judge]: Down sittin' in the front room with Amanda (sic) Amanda was in there getting the other two out of the bathtub.

[Det. Hatfield]: So, she was in the bathroom getting the other kids out of the bathtub and - -

[Judge]: Yeah, while I was get – while I was getting [A.C.] dressed.

[Det. Hatfield]: And you was getting [A.C.] dressed. How could it just accidentally slip in there?

[Judge]: 'Cause the cream and stuff was on there.

[Det. Hatfield]: Where was the sore on her?

[Judge]: It was right here.

[Det. Hatfield]: It was up top of her -- you know wha – called a pubic area?

[Judge]: Uh-huh.

[Det. Hatfield]: Okay is that –

[Judge]: It was right below it.

[Det. Hatfield]: Right below it.

[Judge]: Uh-huh.

[Det. Hatfield]: So you were rubbing cream all the way down far enough to let your finger slide inside her vagina?

[Judge]: I was rubbing it on the whole – whole thing 'cause uh – she said the whole thing was hurting.

[Det. Hatfield]: Why would you let your finger accidentally slip inside her?

[Judge]: It just – I don't know.

[Det. Hatfield]: I mean, is it something that – that you thought she was liking?

[Judge]: I guess.

* * *

[Det. Hatfield]: So, you was doing it for her arousal?

[Judge]: (Indiscernible).

[Det. Hatfield]: Could you say – Could you answer "yes."

[Judge]: Yes.

* * *

[Det. Hatfield]: Okay. Uh, you understand and know what perjury is, now that I explained that to you; and do you swear and affirm under the penalties of perjury the statement you just give me is a hundred percent true and accurate to the best of your knowledge?

[Judge]: Yes.

Tr. pp. 70-81.

It is well established that under Miranda, the State bears the burden of proving beyond a reasonable doubt that the defendant knowingly and intelligently waived his rights, and that the defendant's confession was voluntarily given. Wessling v. State, 798 N.E.2d 929, 935-36 (Ind. Ct. App. 2003). Miranda warnings are based upon the Fifth Amendment self-incrimination clause, and were designed to protect an individual from being compelled to testify against himself. Keller v. State, 845 N.E.2d 154, 161 (Ind. Ct. App. 2006). There is no formal requirement for how the State must meet its burden of

advising an individual consistent with Miranda, so this court examines the issue in light of the totality of the circumstances. Id.

Several means of sufficiently informing an individual are commonly employed by law enforcement, including: (1) a candid two-way discussion between law enforcement and the accused regarding these constitutional rights, (2) an oral recitation or reading of the rights to the accused followed by direct questioning as to whether the accused understands these rights, (3) provision of an advisement of rights form read aloud by the accused before it is signed, or (4) any combination of these. Id. at 162. Here, Detective Hatfield orally read Judge's rights to him and then provided an advisement of rights form, which Judge voluntarily signed. Thus, Judge was properly advised of his Miranda rights. However, a "signed waiver is not *conclusive* evidence of a knowing, intelligent, and voluntary waiver." Maxwell v. State, 839 N.E.2d 1285, 1287-88 (Ind. Ct. App. 2005) (emphasis added). Rather, the trial court, and courts on appeal, must consider the totality of the circumstances surrounding the confession. Id. at 1288.

Judge asserts his confession was not voluntarily made due to police coercion and deception. As evidence of this alleged coercion and threats by the police, Judge points to several statements made by Detective Hatfield during the interview at the police station, including Detective Hatfield's statements that he was the "only one" that could help Judge, and that if Judge told him the truth then they could "work something out," but if he lied, that there were "several things that [he could] charge [Judge] with, and [he would]." Appellant's Br. pp. 8-9.

A confession is voluntary if, in the light of the totality of the circumstances, the confession is the product of a rational intellect and not the result of physical abuse, psychological intimidation, or deceptive interrogation tactics that have overcome the defendant's free will. Wessling, 798 N.E.2d at 936. Thus, the critical inquiry is whether the defendant's statements were induced by violence, threats, promises, or other improper influence. Id. Moreover, while it's true that a confession obtained by a promise of immunity or mitigation of punishment is inadmissible, see A.A. v. State, 706 N.E.2d 259, 263 (Ind. Ct. App. 1999), vague statements that a defendant will benefit by cooperating and telling the real story "do not constitute sufficient promises." Fields v. State, 679 N.E.2d 1315, 1320 (Ind. 1997).

Contrary to Judge's arguments on appeal, Detective Hatfield's statements set forth above simply do not constitute sufficient promises to render Judge's confession involuntary. On several occasions, Detective Hatfield told Judge not to lie and encouraged him to tell the truth. Tr. pp. 74-78. Additionally, Detective Hatfield stated that if Judge told the truth, then they could work something out, but if Judge lied then there were several offenses he could be charged with and Detective Hatfield would do so. Tr. p. 73. These statements do not constitute police coercion that would have logically misled Judge or overborne his will in regard to his voluntary statement. See Ford, 504 N.E.2d at 1013 (holding that "vague and indefinite statements by the police which indicate it is in appellant's best interest to cooperate or to tell the real story are not sufficient inducements to render his subsequent confession inadmissible."); see also Miller v. State, 770 N.E.2d 763, 768 (Ind. 2002) (concluding that defendant's confession

was admissible even though the police detective's questioning included confronting the defendant with speculation and assertions that misstated or exaggerated the information known to the detective); Pierce v. State, 761 N.E.2d 821, 824 (Ind. 2002) (holding that statements by police expressing a desire for suspect's cooperation and explaining the crimes and possible penalties are not specific enough to constitute either promises or threats); Washington v. State, 808 N.E.2d 617, 622-23 (Ind. 2004) (concluding that confession was admissible where police told defendant (1) that the victim's blood was all over defendant's clothes, even though at the time of the interrogation the officers did not yet know whose blood it was, and (2) that his family had told police they thought defendant had committed the offense); Fields, 679 N.E.2d at 1320 (finding that confession was admissible even though after speaking with the prosecuting attorney, the police officer told the defendant that there was a possibility of the charge being reduced, but never promised that a lesser charge would be filed); Houser v. State, 678 N.E.2d 95, 102 (Ind. 1997) (use of "good cop, bad cop" interview technique in itself is not a basis for exclusion of confession).

In addition to looking at the crucial element of police coercion, many factors may be considered when reviewing the totality of the circumstances, including: the length of the interrogation, its location, its continuity, the defendant's maturity, education, physical condition, and mental health. Miller, 770 N.E.2d at 767. Here, the record reveals that in addition to voluntarily accompanying Detective Hatfield to the police station and signing a waiver of rights form, Judge was never handcuffed, was interviewed in the general Detectives' office instead of a formal interview room, and was subject to one,

uninterrupted and seemingly short interview[5]. Moreover, Judge did not appear to be mentally "slow" to Detective Hatfield, tr. p. 82, never requested nor was denied an opportunity to speak to an attorney, and there was no evidence or allegation that Judge has a decreased mental capacity or that he was under the influence of alcohol or drugs at the time he made his confession.

Based on the foregoing, we find that there is substantial evidence supporting the trial court's determination that Judge's confession was voluntarily made and therefore admissible at trial.

B. *Corpus Delicti*

Next, Judge contends that there was no independent evidence that he molested A.C., and therefore admission of his confession constitutes fundamental error. In Indiana, a defendant's extrajudicial confession is not admissible unless there is independent proof of the corpus delicti. Oberst v. State, 748 N.E.2d 870, 874 (Ind. Ct. App. 2001), trans. denied; see also Johnson v. State, 653 N.E.2d 478, 479 (Ind. 1995). To establish the corpus delicti, the State must produce evidence, other than the confession, that demonstrates: (1) the occurrence of the specific kind of injury; and, (2) someone's criminal act as the cause of the injury. Oberst, 748 N.E.2d at 874. The corpus delicti need not be shown beyond a reasonable doubt; rather, the evidence must merely support an inference that a crime was committed. Willoughby v. State, 552 N.E.2d 462, 466 (Ind. 1990). The purpose of this rule is to reduce the risk of convicting a defendant

[5] The confession tape set forth in the record included the start time, 2:36 p.m., but failed to contain the end time of the interview. However, the interview appears to have lasted only a few minutes, in that the entire transcript of the tape filled only twelve pages of the record. See Tr. pp. 70-81. Additionally, Detective Hatfield testified that after a "matter of minutes" in interrogation, Judge admitted he put his finger inside of A.C. Tr. p. 94.

based on his confession for a crime that did not occur, to prevent coercive interrogation tactics, and to encourage thorough criminal investigations. Oberst, 748 N.E.2d at 874.

Our review of the record leaves us convinced that there was sufficient evidence of corpus delicti to show a crime, namely, child molestation, was committed. A.C. testified at trial that "Billy" touched her private with "[h]is hand" on the inside of her clothes. Tr. p. 29. She further testified that at some point, he put his finger inside her. Id. at 30. A conviction for child molesting may rest solely upon the uncorroborated testimony of the victim. Turner v. State, 720 N.E.2d 440, 447 (Ind. Ct. App. 1999). Thus, A.C.'s testimony, standing alone, satisfies the corpus delicti requirement. Additional evidence was also provided by Smith who testified that A.C. had complained of pain between her legs when she was giving her a bath, and that A.C. had told her that "Billy" had touched her on her "pee pee." Tr. p. 52. Likewise, Amanda's testimony that A.C. did not have any sores or infections on or about her vagina in March of 2005 also corroborated A.C.'s testimony. Thus, contrary to Judge's arguments on appeal, it is clear that the State did in fact establish corpus delicti for child molesting; therefore, admission of Judge's confession does not constitute fundamental error.

C. *Indiana Evidence Rule 704(b)*

Judge next alleges that admission of his taped confession violates Indiana Evidence Rule 704(b). Specifically, Judge points to comments Detective Hatfield made on the tape during his interview of Judge that Judge was "lying" and that the things the little girls were saying Judge did to them "aint [sic] something that little five – six year-

old girls make up." Appellant's Br. p. 10. Judge correctly argues that these comments contained inadmissible opinion testimony as to Judge's guilt.

Indiana Evidence Rule 704(b) states that "[w]itnesses may not testify to opinions concerning intent, guilt, or innocence in a criminal case; the truth or falsity of allegations; whether a witness has testified truthfully; or legal conclusions." Evid. Rule 704(b) (2007). Such testimony is an invasion of the province of the jurors in determining what weight they should place upon a witness's testimony. Rose v. State, 846 N.E.2d 363, 367 (Ind. Ct. App. 2006). Our supreme court has further held that "[t]he same reasoning underlying Rule 704(b)'s prohibition of opinions of guilt during live in-court testimony applies to statements offered at trial that were made at another time or place." Smith v. State, 721 N.E.2d 213, 217 (Ind. 1999). Thus, the statements at issue made by Detective Hatfield during his interview with Judge should not have been admitted at trial.[6]

However, an improper denial of a defendant's Sixth Amendment right to have a jury determine all facts legally essential to his or her conviction is subject to the harmless error analysis. Weis v. State, 825 N.E.2d 896, 907 (Ind. Ct. App. 2005). Thus, errors in the admission of evidence will not result in reversal if the error is harmless; that is, if the probable impact of the evidence upon the jury is sufficiently minor so as not to affect a party's substantial rights. Holden v. State, 815 N.E.2d 1049, 1054 (Ind. Ct. App. 2004), trans. denied.

[6] In this case we note that neither Judge nor the State objected to the admission of the tape, nor did either party request a limiting instruction or admonishment that Detective Hatfield's statements were not to be used for the truth of the matters asserted, thus no admonishment was given. Although a trial court has no affirmative duty to consider giving an admonishment absent a party's request to do so, see Smith, 721 N.E.2d at 216, the lack of an admonishment in this case combined with the fact that the statements appear to be assertions of fact by the detective, not mere questions, renders their admission error.

A review of the record leaves us convinced that the probable impact of Detective Hatfield's statements complained of herein did not affect Judge's substantial rights. At trial, A.C. unequivocally identified Judge and further testified that Judge had touched her private area. Tr. p. 29. She explained that Judge did so with his hand, and that he did so on the inside of her clothes. Id. at 29. A.C. further testified that Judge put his finger inside of her. Id. at 30. A.C. also testified that she subsequently told her aunt what had happened, and that she also told Detective Hatfield what had happened. Tr. p. 31.

Our supreme court has repeatedly held that a conviction may rest solely upon the uncorroborated testimony of the victim. Ludy v. State, 784 N.E.2d 459, 461 (Ind. 2003); Garner v. State, 777 N.E.2d 721, 725 (Ind. 2002); Stewert v. State, 768 N.E.2d 433, 436 (Ind. 2002); Jackson v. State, 735 N.E.2d 1146, 1152 (Ind. 2000); Spurlock v. State, 675 N.E.2d 312, 316 n.4 (Ind. 1996). However, we do not have to rely on A.C.'s uncorroborated testimony. Rather, her testimony was corroborated by her mother and aunt's testimony, as well as Judge's properly admitted confession. Thus, erroneous admission of Detective Hatfield's ancillary opinion statements contained on the tape does not warrant reversal in this case.

II. Sufficiency of Evidence – Inconsistent Statements

Next Judge points to inconsistencies in A.C.'s testimony regarding whether he touched her "inside" her clothing to assert that there was insufficient evidence to support his convictions. Specifically, he states that in a pre-trial hearing, A.C. testified that Judge touched her on the "outside" of her clothing, while at trial she stated that he touched her

"inside" her clothing. Thus, Judge asserts that his conviction "should not be upheld based upon perjured testimony[.]" Appellant's Br. p. 13.

In order to convict Judge for Class A felony child molesting, the State was required to prove that Judge was at least twenty-one years of age, and that he performed a deviate sexual act[7] with A.C., a child under fourteen years of age. See Ind. Code § 35-42-4-3(a)(1)(2004). When reviewing a challenge to the sufficiency of the evidence, this court neither reweighs the evidence nor judges the credibility of witnesses. Collins v. State, 835 N.E.2d 1010, 1015 (Ind. Ct. App. 2005), trans. denied. We consider only the probative evidence supporting the verdict and reasonable inferences therefrom to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

After examining the trial transcripts and A.C.'s pre-trial statements, there is no doubt that A.C.'s pre-trial statements contained inconsistencies regarding whether Judge touched her inside or outside her clothing, and whether the act occurred in the front room or the bedroom. However, at trial, A.C. clearly and unequivocally testified, both on direct and cross examination, that Judge touched her inside her clothing and put his finger inside her. Tr. pp. 29-30, 33. Inconsistencies do not necessarily dictate reversal. Hill v. State, 646 N.E.2d 374, 378 (Ind. Ct. App. 1995). This court will only overturn a conviction if the trial court was "confronted with inherently improbable testimony, or equivocal, wholly uncorroborated testimony of incredible dubiosity." Id.

[7] A deviate sexual act occurs when a sex organ or anus of one person is penetrated by an object. See Ind. Code § 35-41-1-9 (2004).

Here, the events as described by A.C. at trial were neither uncorroborated, nor inherently improbable. Not only did Judge confess to performing the prohibited conduct, but A.C.'s mother's testimony regarding the absence of any sores in A.C.'s vaginal area and A.C.'s aunt's testimony concerning the pain between A.C.'s legs further corroborated A.C.'s testimony. Moreover, it is "not surprising that a young child in an adversary courtroom setting may demonstrate a degree of confusion and inconsistency." Hill, 646 N.E.2d at 378; see also Lowe v. State, 534 N.E.2d 1099, 1100 (Ind. 1989) (stating that it is not surprising that a thirteen-year-old girl, who was being cross examined by a veteran defense attorney, would become confused at times while testifying and that her testimony in its entirety presented a believable story).

It was well within the province of the trier of fact to observe A.C.'s demeanor and to determine her credibility and the plausibility of her testimony, taking into account any inconsistencies between A.C.'s prior statements and her trial testimony. See id. at 1100; see also Hill, 646 N.E.2d at 378; In re JLT, 712 N.E.2d 7, 11 (Ind. Ct. App. 1999) (concluding that it is precisely within the domain of the trier of fact to sift through conflicting accounts of events and determine not only whom to believe, but also what portions of conflicting testimony to believe); Tague v. State, 539 N.E.2d 480, 482 (Ind. 1989) (holding that conflicts in the victim's testimony, stemming from fear, naiveté, or embarrassment, are clearly for the jury to determine). After the jury carefully considered all of the evidence, we decline Judge's invitation to reweigh it.

In sum, we hold that Judge's confession was properly admitted at trial and that sufficient evidence existed upon each and every element of the crime charged from which a rational trier of fact could have found Judge guilty beyond a reasonable doubt.

Affirmed.

SHARPNACK, J., and KIRSCH, J., concur.