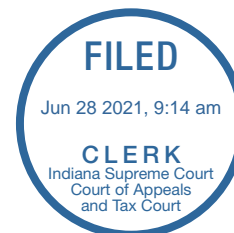


MEMORANDUM DECISION

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

Shawn Behrens,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 28, 2021

Court of Appeals Case No.
21A-CR-285

Appeal from the St. Joseph
Superior Court

The Honorable Julie P. Verheye,
Judge

Trial Court Cause No.
71D08-1910-CM-3552

Bradford, Chief Judge

Case Summary

- [1] On the morning of September 29, 2019, Shawn Behrens engaged in a domestic altercation with his girlfriend, S.L., during which Behrens punched, pushed, and struck S.L. with a water bottle and broke her phone. S.L. sustained minor injuries, which were documented by hospital staff when she arrived at the hospital a short time after the altercation. Behrens was subsequently charged with and convicted of Class A misdemeanor domestic battery and Class B misdemeanor criminal mischief. Behrens challenges his convictions on appeal, arguing that the evidence is insufficient to sustain his convictions because S.L.’s testimony was incredibly dubious. We affirm.

Facts and Procedural History

- [2] On September 29, 2019, S.L. was living with Behrens and their three-week old child. At some point that morning, S.L. confronted Behrens about the fact that he “had been drinking that morning and [S.L.] knew where that would go.” Tr. Vol. II p. 8. After S.L. turned to leave the room, Behrens followed and punched S.L. in the back. S.L. then retreated to the bedroom with the couple’s child. The couple continued to argue after Behrens followed S.L. into the bedroom.
- [3] Once in the bedroom, using “very strong” force, Behrens repeatedly threw a water bottle at S.L., striking her in the back. Tr. Vol. II p. 11. S.L. made numerous requests for Behrens to stop, all of which he ignored. When S.L.

attempted to leave the room, Behrens pushed her in the back, causing her to fall into the wall “head first.” Tr. Vol. II p. 11. S.L.’s head hit the wall with sufficient force to leave a hole in the wall.

[4] S.L. was unable to call for help after Behrens broke her phone by “slamming” it into the wall. Tr. Vol. II p. 12. Despite Behrens apparently taking her keys, S.L. eventually managed to leave the residence and go to the hospital. At the hospital, S.L.’s injuries, which included scrapes and bruises, were documented.

[5] On October 3, 2019, the State charged Behrens with Class A misdemeanor domestic battery and Class B misdemeanor criminal mischief. A bench trial was held on January 21, 2021, after which the trial court found Behrens guilty as charged. The trial court subsequently sentenced Behrens to an aggregate 120-day term, all of which was suspended. The trial court also ordered Behrens to have no contact with S.L.

Discussion and Decision

[6] Behrens contends that the evidence is insufficient to sustain his convictions for Class A misdemeanor domestic battery and Class B misdemeanor criminal mischief.

When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder’s role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure,

when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court’s ruling. Appellate courts affirm the conviction unless no reasonable factfinder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146–47 (Ind. 2007) (cleaned up). Stated differently, “[w]e affirm the judgment unless no reasonable factfinder could find the defendant guilty.” *Mardis v. State*, 72 N.E.3d 936, 938 (Ind. Ct. App. 2017) (quoting *Griffith v. State*, 59 N.E.3d 947, 958 (Ind. 2016)).

[7] In challenging his convictions, Behrens does not dispute that the State presented sufficient evidence to prove that he committed either Class A misdemeanor domestic battery or Class B misdemeanor criminal mischief.¹ Instead, he claims that S.L.’s testimony was incredibly dubious. We disagree.

[8] Under the incredible dubiousity rule, this court may impinge upon the jury’s responsibility to judge the credibility of witnesses when confronted with inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony. If a sole witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence, a defendant’s conviction may be reversed. Application of this rule is rare, though, and the

¹ In order to prove that Behrens committed Class A misdemeanor domestic battery, the State was required to prove that he knowingly or intentionally touched a family or household member in a rude, insolent, or angry manner. Ind. Code § 35-42-2-1.3. In order to prove that Behrens committed Class B misdemeanor criminal mischief, the State was required to prove that he recklessly, knowingly, or intentionally damaged or defaced another’s property without the other person’s consent. Ind. Code § 35-43-1-2(a).

standard to be applied is whether the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it. This incredible dubiousity rule applies only when a witness contradicts himself or herself in a single statement or while testifying, and does not apply to conflicts between multiple statements.

Livers v. State, 994 N.E.2d 1251, 1256 (Ind. Ct. App. 2013) (internal citations and quotation omitted).

- [9] In arguing that S.L.'s testimony was incredibly dubious, Behrens points to alleged inconsistencies regarding what time the altercation occurred, an alleged gap in time between the altercation and her arrival at the hospital, and confusion about whether he took her car keys or simply her house key away from her before she fled. He also points out that S.L. could not definitely state how many times he struck her.
- [10] S.L. unequivocally testified that during the morning hours of September 29, 2019, Behrens pushed and struck her during an altercation. Behrens used sufficient force to cause S.L. to fall head-first into the wall and to sustain minor injuries. Although S.L. could not recall the exact timing of or how many times Behrens struck her during the altercation, her testimony regarding Behrens's actions was consistent and was corroborated by evidence depicting the injuries she sustained during the altercation. Furthermore, S.L.'s apparent initial confusion about what keys Behrens took as she attempted to flee the altercation does not render her testimony so improbable as to render it unbelievable. As

such, we conclude that S.L.'s testimony was not incredibly dubious as it was not so inherently improbable that no reasonable person could believe it. *See id.*

[11] The judgment of the trial court is affirmed.

Crone, J., and Brown, J., concur.