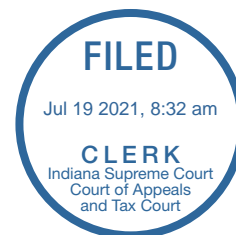


MEMORANDUM DECISION

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

Ovie Omofurhieta,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 19, 2021

Court of Appeals Case No.
21A-CR-98

Appeal from the Marion Superior
Court

The Honorable Christina R.
Klineman, Judge

Trial Court Cause No.
49G17-2001-CM-2173

Najam, Judge.

Statement of the Case

- [1] Ovie Omofurhieta appeals his conviction for domestic battery, as a Class A misdemeanor, following a bench trial. Omofurhieta raises one issue for our review, namely, whether the State presented sufficient evidence to support his conviction.
- [2] We affirm.

Facts and Procedural History

- [3] In January 2020, Omofurhieta was in a relationship with M.A., and M.A. was pregnant. At some point, M.A. “found out” some “information” about Omofurhieta, and she realized that he was not “who [she] thought he was.” Tr. at 7. On the morning of January 14, M.A. was speaking with her sister on the phone while lying in bed. M.A. told her sister that she and Omofurhieta “were done.” *Id.* At that point, Omofurhieta, who was also in the bed, “lunge[d]” at M.A. and put his hands “on [her] neck.” *Id.* Omofurhieta then “pulled” M.A. off the bed. *Id.* M.A. “was struggling,” and Omofurhieta “accidental[ly]” hit her in the stomach. *Id.* M.A. “screamed” at Omofurhieta, and he stopped fighting her. *Id.*
- [4] M.A. started talking to her sister again, but Omofurhieta “grab[bed]” the phone from her hand. *Id.* Omofurhieta then dropped the phone and “slap[ped]” M.A. “hard” on her cheek. *Id.* He “put[] his hands on [her] neck again” and attempted to “drag” her back onto the bed. *Id.* But Omofurhieta hit his back

on a table, at which point M.A. was able to grab her phone, run to the bathroom, and call the police.

[5] The State charged Omofurhieta with one count of domestic battery and one count of battery, both as Class A misdemeanors. The court held a two-day bench trial on October 21 and December 16. During the first day of trial, M.A. testified that Omofurhieta had “physically assaulted” her and that he had “cause[d] pain.” *Id.* at 6, 8. In addition, the State admitted as evidence photographs of M.A. from the night of the offense. M.A. testified that those pictures depicted a “scratch” on her neck and “bruising” on her arm. *Id.* at 9.

[6] On the second day of trial, Omofurhieta testified in his defense. Specifically, he testified that M.A. had hit him and that he had acted in self-defense. In addition, Omofurhieta called his friend, Oluwadamilare Idris, who testified that M.A. told him that she had hit Omofurhieta. The State then recalled M.A. as a witness. M.A. testified that she had told her sister that she could not “be with someone like” Omofurhieta because she had discovered that he had a wife and because she “discovered he had child pornography.” *Id.* at 43. She then reiterated that Omofurhieta had gotten “upset” when she told her sister that she could not be with him and that he “started hitting” her. *Id.*

[7] At the conclusion of the trial, the court stated that it “believe[d]” M.A.’s version of the events. *Id.* at 51. Accordingly, the court entered judgment of conviction against Omofurhieta on both counts but vacated the conviction for battery, as a Class A misdemeanor. The court sentenced Omofurhieta accordingly. This appeal ensued.

Discussion and Decision

[8] Omofurhieta contends that the State failed to present sufficient evidence to support his conviction for domestic battery.¹ Specifically, Omofurhieta asserts that there was insufficient evidence because his conviction was based only on the testimony of M.A., which he contends was incredibly dubious. Under the incredible dubiousity rule, “a court will impinge on the [fact-finder’s] responsibility to judge the credibility of witnesses only when it has confronted ‘inherently improbable’ testimony or coerced, equivocal, wholly uncorroborated testimony of ‘incredible dubiousity.’” *Moore v. State*, 27 N.E.3d 749, 755 (Ind. 2015) (quoting *Tillman v. State*, 642 N.E.2d 221, 223 (Ind. 1994)). “Application of the incredible dubiousity rule is limited to cases with very specific circumstances because we are extremely hesitant to invade the province of” the fact-finder. *Smith v. State*, 34 N.E.3d 1211, 1221 (Ind. 2015). For the incredible dubiousity rule to apply, there must be: “1) a sole testifying witness; 2) testimony that is inherently contradictory, equivocal, or the result of coercion, and 3) a complete absence of circumstantial evidence.” *Moore*, 27 N.E.3d at 756.

[9] Here, Omofurhieta contends that M.A.’s testimony was incredibly dubious because she contradicted herself between the first and second days of trial and because the State “declined” to present any evidence to support M.A.’s

¹ Omofurhieta also purports to appeal his conviction for battery, as a Class A misdemeanor. See Appellant’s Br. at 8, 16. However, the trial court vacated that conviction. See Appellant’s App. Vol. 2 at 12.

testimony, which he asserts “highlights the improbability” of that testimony. Appellant’s Br. at 10. But we agree with the State that the “incredible dubiousity rule does not apply here.” Appellee’s Br. at 9.

[10] First, M.A.’s testimony was not inherently contradictory. We acknowledge that M.A.’s testimony was not exactly the same on both days. For example, on the second day of trial, M.A. testified about her discovery of Omofurhieta’s marital status and alleged possession of child pornography, which she did not include in her testimony during the first day of trial. And, on the first day of trial, M.A. testified that her injuries included a “scratch” on her neck and “some bruising” on her arm, while on second day of trial, she only testified to a scratch of her neck. Tr. at 9, 44. However, those minor differences do not equate to contradictory statements. Rather, on both days of trial, M.A. consistently testified that Omofurhieta got upset and started hitting her after M.A. had said that she no longer wanted to be in a relationship with him. And M.A. testified on both days of trial that Omofurhieta’s actions had caused her to sustain minor injuries.

[11] Second, there was not a complete lack of circumstantial evidence. The State presented as evidence photographs of M.A. from “immediately” after the offense, which M.A. testified depicted a “scratch” on her neck and “bruising” on her arm. *Id.* at 9. And even Omofurhieta acknowledges that two of the photographs show “a small scratch” on her neck and that some of the photographs show a “marking that might be bruising.” Appellant’s Br. at 12. Thus, contrary to Omofurhieta’s arguments on appeal, those photographs are

circumstantial evidence that corroborated M.A.'s testimony. Because M.A.'s testimony was not inherently contradictory and because there was not a complete lack of circumstantial evidence, the incredible dubiousity rule does not apply.

[12] In addition, Omofurhietta asserts that the State failed to present sufficient evidence to rebut his claim of self-defense. Specifically, Omofurhietta contends that, “[d]ue to the lack of credibility behind” M.A.’s testimony, the trial court was only left “with evidence that [M.A.] was the initial aggressor” and that he had “acted without fault.” *Id.* at 15, 16. In other words, Omofurhietta’s argument on this question is based on the premise that M.A.’s testimony was incredibly dubious.

[13] But, as discussed above, the incredible dubiousity rule does not apply, and we decline to impinge on the fact-finder’s responsibility to judge M.A.’s credibility. Rather, the evidence most favorable to the trial court’s judgment demonstrates that Omofurhietta was the initial aggressor. Omofurhietta’s arguments on appeal merely seek to have this Court reassess the weight and credibility of the evidence, which we will not do. We therefore hold that the State presented sufficient evidence to support Omofurhietta’s conviction.

[14] Affirmed.

Pyle, J., and Tavitas, J., concur.