

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Brandon M. Ashby,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

July 5, 2023

Court of Appeals Case No.
22A-CR-2951

Appeal from the Franklin Circuit
Court

The Honorable Clay M.
Kellerman, Judge

Trial Court Cause No.
24C02-2101-F6-000046

Memorandum Decision by Judge May
Chief Judge Altice and Judge Foley concur.

May, Judge.

[1] Brandon M. Ashby appeals following his conviction of Level 6 felony domestic battery.¹ He argues the State did not present sufficient evidence to prove he committed domestic battery because the State’s witness provided incredibly dubious testimony. We affirm.

Facts and Procedural History

[2] Ashby and K.A. married in 2013 and filed for divorce in August 2020. Their marriage produced a son (“Son”), who was two years old in late December 2020. Ashby and K.A. had a custody arrangement whereby Ashby had custody of Son for two evenings each week and an overnight stay every other weekend. The arrangement also called for Ashby to have custody of Son on Christmas Day 2020, which was a Friday, and Ashby invited K.A. to stay at his house with Son for the week leading up to Christmas. K.A. was interested in reconciling with Ashby, and she agreed to stay at Ashby’s house to spend Christmas together.

[3] After dinner on Christmas evening, Ashby and K.A. began drinking whiskey together in the living room. At some point, Ashby exited the living room, but he left his phone behind. K.A. opened Ashby’s phone and discovered Ashby was texting with a woman named Monica even though Ashby had told K.A. he

¹ Ind. Code § 35-42-2-1.3(a)(1) & (b)(2).

was no longer dating Monica. K.A. messaged Monica “not very nice stuff.” (Tr. Vol. II at 193.)

- [4] K.A. became upset and went to Son’s room. Ashby followed her and stood in the doorway to Son’s room as K.A. confronted him about dating Monica. Ashby became upset with K.A. for texting Monica and “he started to just haul off and hit [K.A.]” (*Id.* at 234.) Ashby hit K.A. several times in the head and dragged her by the neck in a “chokehold” position into Ashby’s bedroom. (*Id.* at 196.) Son started screaming and followed K.A. and Ashby to Ashby’s bedroom. Ashby shut the door to the bedroom to keep Son out, but Son repeatedly opened the door. After a couple failed attempts to keep Son out of Ashby’s bedroom, Ashby stopped dragging K.A. and took Son to another room, leaving K.A. by herself.
- [5] K.A. went outside to sit in her parked car and attempted to call her daughter (“Daughter”) through Facetime. As she did this, K.A. accidentally took a picture of herself. Daughter did not answer the call, and K.A. sat in her car for around two hours. K.A. did not immediately call the police because at that point she was still “loyal to [Ashby]” and “wanted [her] family together.” (*Id.* at 204.) K.A. wanted to leave Ashby’s house but did not want to leave Son who “had just went [sic] through a traumatic experience[.]” (*Id.* at 205.) Eventually, K.A. went back into Ashby’s house and went to bed with Son, who was asleep with Ashby in Ashby’s bed. The next day Ashby told K.A. that her eye looked bad and that “he was concerned with [K.A.] going and family seeing it and being upset.” (*Id.* at 207.) Due to K.A. and Ashby’s custody agreement,

K.A. could not take Son from Ashby's house until Sunday evening.

Consequently, K.A. stayed at Ashby's house until late on Sunday.

[6] When K.A. and Son left Ashby's house on December 27, they went to Daughter's house. Daughter became upset when she saw K.A.'s black eye and she called the police. K.A. and Daughter went to the Franklin County Sheriff's Department in the early morning of December 28, 2020. Deputy Jeremy Noah was patrolling when dispatch informed him that he had a "possible battery case waiting in the lobby for him." (*Id.* at 157.) When Deputy Noah arrived, he immediately noticed K.A.'s black eye and redness on her cheeks and neck. Deputy Noah interviewed K.A., and she told him that Ashby injured her.

[7] K.A. and Daughter then sought medical attention for K.A. Abby Thompson, a forensic nurse examiner at Community Health Network ("Community"), assessed K.A. when she arrived. Nurse Thompson observed K.A.'s black eye and swelling to the left of her eye as well as bruising and redness on K.A.'s chin and neck area. Nurse Thompson asked K.A. a series of questions to determine what happened, and K.A. relayed the same story she told Deputy Noah. K.A.'s injuries were photographed at Community. In addition to the bruises on K.A.'s eye and neck, she also had bruises on her shoulder, the tops of her hands, arms, chest, her lower left leg, and her left foot.

[8] On January 11, 2021, the State charged Ashby with Level 6 felony domestic battery and Level 6 felony strangulation.² The trial court held a two-day jury trial, and the jury found Ashby guilty of Level 6 felony domestic battery and not guilty of Level 6 felony strangulation. On November 22, 2022, the trial court sentenced Ashby to a term of thirty months in the Department of Correction.

Discussion and Decision

[9] Ashby contends the State presented insufficient evidence to support his conviction of Level 6 felony domestic battery. When reviewing sufficiency-of-evidence claims, we consider only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We do not reweigh the evidence and we generally do not assess witness credibility. *Id.* To prove Ashby committed Level 6 felony domestic battery, the State had to prove beyond a reasonable doubt he “knowingly or intentionally touche[d] a family or household member in a rude, insolent, or angry manner. . . in the physical presence of a child less than sixteen years of age, knowing that the child was present and might be able to see or hear the offense.” Ind. Code § 35-42-2-1.3 (a)(1) & (b)(2).

[10] Ashby contends the evidence that Ashby caused K.A.’s injuries was insufficient because K.A.’s testimony was incredibly dubious. The incredible dubiousity rule

² Ind. Code § 35-42-2-9(c)(1).

“allows an appellate court to impinge upon the fact-finder’s assessment of witness credibility when the testimony at trial was so ‘unbelievable, incredible, or improbable that no reasonable person could ever reach a guilty verdict based upon that evidence alone.’” *Carter v. State*, 44 N.E.3d 47, 52 (Ind. Ct. App. 2015) (quoting *Moore v. State*, 27 N.E.3d 749, 751 (Ind. 2015)). Incredible dubiousity is a difficult standard to meet, and we will not interfere with the jury’s role as the fact-finder unless the testimony runs counter to human experience. *Edwards v. State*, 753 N.E.2d 618, 622 (Ind. 2001). There are three requirements for application of the incredible dubiousity rule: (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. Although K.A. was the sole witness who testified Ashby caused her injuries, her testimony does not meet the other two requirements for application of the incredible dubiousity rule.

[11] K.A.’s testimony was neither contradictory nor equivocal.³ Her testimony remained unchanged throughout the course of the trial and matched what she had relayed to both Deputy Noah and Nurse Thompson on December 28, 2020. Ashby asserts K.A.’s testimony that she was repeatedly hit in the head and dragged by Ashby is inconsistent with K.A. showing no injuries in the picture K.A. accidentally took of herself immediately following the incident. However, as Nurse Thompson testified, “everyone heals differently [a]nd

³ Nor is there any suggestion by Ashby or in the record that K.A.’s testimony was the result of coercion.

everyone bruises differently.” (Tr. Vol. III at 5.) K.A.’s black eye did not develop until the next day. The picture K.A. accidentally took shows a red mark on her left eye lid and red cheeks. Any alleged inconsistency between the photograph and K.A.’s testimony does not render K.A.’s testimony incredibly dubious when K.A. did not contradict herself when she testified at trial. *See Ferrell v. State*, 746, N.E.2d 48, 51 (Ind. 2001) (incredible dubiousity rule does not apply where witness did not contradict themselves on the stand). Furthermore, it is the province of the jury to resolve conflicts in the evidence. *Young v. State*, 198 N.E.3d 1172, 1176 (Ind. 2022).

[12] Nor was K.A.’s testimony outside the realm of human experience. Ashby contends K.A.’s testimony ran counter to human experience because the photo accidentally taken by K.A. immediately after the incident did not show injuries consistent with someone who received a beating like the one she described in her testimony. Ashby further argues K.A. not mentioning the beating over text message to Daughter, Ashby, or Monica while sitting in her car and then later getting into bed with Son and Ashby also runs counter to human experience. K.A. testified she became upset after discovering Ashby was still dating Monica despite him previously telling her they had broken up. After being battered, K.A. retreated to her car, but she had been drinking alcohol, she did not feel sober to drive, and she did not want to leave her son who had just witnessed a traumatic event. These facts are not beyond belief. *See Edwards v. State*, 753 N.E.2d 618, 622 (Ind. 2001) (To be incredibly dubious, testimony “must be so convoluted and/or contrary to human experience that no reasonable person

could believe it.”). Therefore, K.A.’s testimony was not inherently contradictory or equivocal.

[13] Moreover, there is circumstantial evidence from which the jury could have concluded Ashby was the source of K.A.’s injuries. Ashby provided texts that are time stamped as Friday, December 25, 2020. The texts show K.A. stating she is leaving Ashby’s house in the morning and needed to reenter Ashby’s house to retrieve her belongings. Deputy Noah and Nurse Thompson testified to the date K.A. reported the battery and the investigation they each conducted, as well as to the injuries K.A. sustained. K.A.’s documented injuries were consistent with the events she described. For all these reasons, we reject Ashby’s suggestion that we should impinge on the fact-finder’s ability to assess credibility and weigh the evidence. *See Majors v. State*, 748 N.E.2d 365, 367 (Ind. 2001) (reliance on the incredible dubiousity rule is misplaced where there is circumstantial evidence of an individual’s guilt).

[14] Because K.A.’s testimony was not incredibly dubious, her testimony was sufficient to convict Ashby of Level 6 felony domestic battery. K.A. testified that Ashby repeatedly hit her in the head and dragged her around the room in a chokehold position. K.A. also testified her two-year-old son witnessed the attack and was screaming and crying. The next day, K.A. developed a black eye along with several other bruises around her body, which were later photographed by Nurse Thompson. This evidence was sufficient to support Ashby’s conviction. *See, e.g., Holeton v. State*, 853 N.E.2d 539, 542 (Ind. Ct.

App. 2006) (affirming sufficiency of evidence for domestic battery conviction when victim testified to events and injuries).

Conclusion

[15] K.A.'s testimony was not incredibly dubious, and the State presented sufficient evidence to support Ashby's domestic battery conviction. Therefore, we affirm Ashby's conviction of Level 6 felony domestic battery.

[16] Affirmed.

Altice, C.J., and Foley, J., concur.