

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Michael Bart Pritz,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 19, 2021

Court of Appeals Case No.
20A-CR-2367

Appeal from the LaPorte Superior
Court

The Honorable Greta Stirling
Friedman, Judge

Trial Court Cause No.
46D04-1904-CM-1055

Sharpnack, Senior Judge.

Statement of the Case

- [1] Michael Bart Pritz appeals his conviction of domestic battery, a Class A misdemeanor.¹ We affirm.

Issue

- [2] Pritz presents one issue for our review, which we restate as: whether there is sufficient evidence to support his conviction.

Facts and Procedural History

- [3] The facts most favorable to the judgment follow. In April 2019, Pritz and his wife, Paige, had a divorce pending, but they were living together because Paige had been in a car accident that had left her without a car and with difficulty walking due to a leg injury.

- [4] On April 2, Paige went to bed at approximately 9:00 p.m. At 2:00 a.m. she was awakened by Pritz taking her phone. Pritz was upset because Paige had changed the password on her phone, and he was not able to access it. Paige followed Pritz to retrieve her phone, but when she got near him, he kicked her injured leg. Eventually she gave up and went back to bed.

- [5] On April 3, when Paige awoke she found that a perfume bottle had been shattered, and there was broken glass on the bed and the floor. As she was

¹ Ind. Code § 35-42-2-1.3 (2016).

getting ready for work, she and Pritz began arguing again. Pritz was attempting to throw her belongings outside, and Paige was standing on the landing of the stairway trying to prevent him from doing so. Pritz tried to push Paige down the stairs, but she was able to prevent herself from falling by grabbing the railing. Pritz also attempted to hit Paige with a broomstick, but their four-year-old son interrupted the altercation. Paige took their two boys and left. Once she dropped off the boys at daycare and got to work, she called the police. A co-worker helped to pull glass out of Paige's feet.

[6] The State charged Pritz with domestic battery, a Class A misdemeanor. At a bench trial, Pritz presented an alibi defense, and his friend, Ian Campbell, testified in his defense. The court took the matter under advisement and several weeks later announced its decision, questioning the veracity of both Pritz and Campbell and finding Pritz guilty as charged. The court sentenced Pritz to 365 days in jail, all suspended to probation. Pritz now appeals.

Discussion and Decision

[7] Pritz's sole contention on appeal is that the evidence is insufficient to sustain his conviction. In reviewing such challenges, we neither reweigh the evidence nor judge the credibility of the witnesses. *Sandleben v. State*, 29 N.E.3d 126, 131 (Ind. Ct. App. 2015), *trans. denied*. Instead, we consider only the evidence most favorable to the judgment and any reasonable inferences drawn therefrom. *Id.* If there is substantial evidence of probative value from which a reasonable factfinder could have found the defendant guilty beyond a reasonable doubt, the

judgment will not be disturbed. *Labarr v. State*, 36 N.E.3d 501, 502 (Ind. Ct. App. 2015).

[8] In order to convict Pritz of domestic battery in this case, the State was required to prove beyond a reasonable doubt that he knowingly or intentionally touched Paige, a family or household member, in a rude, insolent, or angry manner by grabbing and pushing her. *See* Appellant's App. Vol. 2, p. 10; *see also* Ind. Code § 35-42-2-1.3. Pritz's insufficiency claim is based on his allegation that Paige's testimony was incredibly dubious, specifically that her testimony was inconsistent regarding the timing of Pritz kicking her; her testimony included facts she had not told the police; and her testimony of the incident on the morning of April 3 was implausible.

[9] Appellate courts may apply the incredible dubiousity rule to impinge upon the factfinder's function to judge the credibility of a witness only when confronted with inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiousity. *Whatley v. State*, 908 N.E.2d 276, 282 (Ind. Ct. App. 2009), *trans. denied*. Application of this rule is rare and is limited to cases where a single witness presents inherently contradictory testimony which is equivocal or the result of coercion and there is a complete lack of circumstantial evidence of guilt. *Id.* The standard to be applied for this rule is whether the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it. *Fancher v. State*, 918 N.E.2d 16, 22 (Ind. Ct. App. 2009).

[10] Pritz asserts that Paige’s testimony was incredibly dubious because she testified at one point that he kicked her around 2:00 a.m. and then testified that the incident occurred earlier in the night between 10:30 and 11:00 p.m. Whether the incredible dubiousity rule applies to this testimony matters not because Pritz was not charged with kicking Paige; he was charged with having “grabbed and pushed” her. Appellant’s App. Vol. 2, p. 10. Nevertheless, we note that the rule does not apply because the inconsistency actually involves trial testimony and an out of court statement. Paige testified at trial that the kicking incident occurred around 2:00 a.m. She did not *also testify* that the incident occurred earlier in the evening; rather, on cross-examination she was questioned about the statement she gave to police on April 3 in which she identified the incident as occurring between 10:30 and 11:00 p.m. Discrepancies between pretrial statements and trial testimony pertain to the weight of the testimony and the credibility of the witness, but they do not render the testimony incredibly dubious. *Chambless v. State*, 119 N.E.3d 182, 193 (Ind. Ct. App. 2019), *trans. denied*.

[11] Next, Pritz contends that Paige’s testimony was incredibly dubious because, although she testified at trial about the broken glass, she did not tell the police about it. For our analysis of the sufficiency of the evidence to support Pritz’s conviction, it is of no moment whether the incredible dubiousity rule applies to this testimony because Pritz was not charged with injuring Paige with broken glass. Nonetheless, the discrepancy between Paige’s trial testimony and her

pretrial statement does not render her testimony incredibly dubious but bears on the weight of the testimony and her credibility. *See id.*

[12] Finally, Pritz alleges that Paige’s testimony was incredibly dubious because it is “simply implausible that Mr. Pritz could have grabbed and battered his wife some time within the thirty minutes when they were awake together” on the morning of April 3. Appellant’s Br. p. 9. We invoke the rule of incredible dubiousity when faced with testimony that “runs counter to human experience” and which “no reasonable person could believe.” *Campbell v. State*, 732 N.E.2d 197, 207 (Ind. Ct. App. 2000).

[13] Here, we see no indication of any such testimony on the part of Paige. At trial, Paige testified unequivocally that “while I was standing on the landing, there was a point in time where he tried to push me down the stairs. The only reason that I did not go down the stairs is because I grabbed the railing and I --- I prevented myself from falling.” Tr. Vol. 2, p. 10. Defense counsel extensively cross examined Paige about the timing of their morning routine and concluded by asking: “So tell me how – how in this 30-minute window of time that any of the version of events could have even been possible? They couldn’t have; am I correct?” *Id.* at 22. Paige responded that she did not leave the house at her usual time and was late to work that day, and later, in response to a question by the court, she clarified that she was at least thirty minutes late to work. On redirect, the State further pointed out that it takes mere seconds to be shoved.

[14] Nothing about Paige’s testimony runs counter to human experience, and reasonable persons could certainly believe it. Moreover, Pritz’s conviction was not based solely on Paige’s testimony; the State also introduced circumstantial evidence of the altercation. Officer Isaac Murray of the Michigan City Police Department testified to observing bruises on both of Paige’s arms and a minor cut on her right wrist on the morning of April 3. Likewise, State’s Exhibits 1 and 2 are photos of Paige’s arms showing bruises and a cut. Thus, Paige’s testimony does not fit into the incredible dubiousity rule, and the factfinder merely carried out its well-recognized duty when it chose to believe Paige and not Pritz or Campbell. *See Klaff v. State*, 884 N.E.2d 272, 274 (Ind. Ct. App. 2008) (result of trier of fact carrying out its function of determining credibility of witnesses is that it is free to believe whomever it wishes). Pritz’s argument is merely an invitation for this Court to invade the province of the trier of fact by reassessing witness credibility, and we must decline the invitation.

Conclusion

[15] For the reasons stated, we conclude there was sufficient evidence to support Pritz’s conviction.

Mathias, J., and Crone, J., concur.