MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Tim Halter,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

October 27, 2023

Court of Appeals Case No.
23A-CR-620

Appeal from the
Knox Superior Court

The Honorable
Brian M. Johnson, Judge

Trial Court Cause No.
42D02-2012-CM-936

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

Foley, Judge.

[1] Following a bench trial, Tim Halter ("Halter") was convicted of Class A misdemeanor domestic battery.[1] He now appeals. We restate the issue as whether the "incredible dubiosity" rule requires disregarding the testimony of the victim, resulting in insufficient evidence to support the conviction. Concluding that the "incredible dubiosity" rule does not apply under the circumstances and that the State presented sufficient evidence, we affirm.

Facts and Procedural History

[2] In December 2020, the State charged Halter with Class A misdemeanor domestic battery, and a bench trial was held in February 2023. At trial, the State called two witnesses. T.G. testified that, on October 27, 2020, she and her husband, Halter, had been arguing because he recently returned after being "gone for about a month and a half, two months, on a drug binge," and Halter "was saying that he was sick." Tr. Vol. 2 p. 17. T.G. said: "Of course, I was feeling angry. I was yelling, wanted answers, you know[.]" *Id.* T.G. testified that she and Halter were arguing in the bedroom, and she left when Halter "got really mad" and "got up and . . . started calling [her] names." *Id.* T.G. said that she "started walking down the hallway" while a verbal argument ensued. *Id.* She said the argument turned physical when Halter swore at her and "pushed [her] from behind really hard." *Id.* T.G. said that, because of the

[1] Ind. Code § 35-42-2-1.3.

push, she "flew across the living room floor and tumbled." *Id.* T.G. then called 9-1-1.

[3] On cross-examination, Halter focused on T.G.'s statement that she "flew" across the living room after being pushed, asking: "So you were airborne? Is that what you're saying?" *Id.* at 22. T.G. responded: "He knocked . . . me off my feet, yes, I have a bad back, and when he pushed me hard, yes, I flew forward and I landed on my knee." *Id.* When asked how far she traveled as a result of the push, T.G. said: "Probably about three or four feet." *Id.* Halter sought to clarify T.G.'s testimony, asking whether Halter "made contact with you that knocked you off your feet where you flew three or four feet." *Id.* T.G. said: "Yes, I flew forward and landed on my knee and tumbled across the floor, yes." *Id.* T.G. testified about an abrasion on her knee, explaining that her knee had "a red mark" that resembled "when your skin gets, like, rubbed." *Id.* at 23.

[4] Deputy Logan Clore of the Knox County Sheriff's Office ("Deputy Clore") responded to T.G.'s 9-1-1 call and spoke with T.G. outside the residence. He testified that T.G. told him Halter "pushed her down" during an argument, causing "an abrasion on her knee." *Id.* at 8. Deputy Clore observed T.G.'s knee, which was "red" and "scratched up." *Id.* He said that the injury "looked fresh," as though it happened "[i]mmediately prior to [his] arrival." *Id.*

[5] Halter testified in his defense, giving a conflicting version of the events. According to Halter, he was sick in bed with COVID-19 and having respiratory issues when an argument arose about T.G. smoking in the bedroom. Halter

said that T.G. was intentionally blowing smoke in his face. Halter admitted that, at one point, he "used the door to usher [T.G.] out of the room." *Id.* at 30. Halter explained that he had asked T.G. to leave the room "three or four times, and she finally did." *Id.* at 35. Halter said T.G. "was trying to come back in," at which point he "used the door to push her" before he ultimately locked the door. *Id.* When asked whether he pushed T.G. and "threw her across the room," Halter said: "No, . . . I couldn't even have done it as bad as I felt." *Id.*

[6] The trial court found Halter guilty. The court later sentenced Halter to 360 days in jail, suspending the sentence to probation. Halter now appeals.

Discussion and Decision

[7] Halter challenges the sufficiency of the evidence supporting his conviction. When reviewing this type of claim, "we neither reweigh the evidence nor assess the credibility of witnesses." *Fix v. State*, 186 N.E.3d 1134, 1138 (Ind. 2022). Rather, we consider "only the probative evidence and the reasonable inferences supporting" the conviction. *Id.* We affirm the conviction "unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Id.* (quoting *Jackson v. State*, 50 N.E.3d 767, 770 (Ind. 2016)).

[8] Here, Halter was convicted of Class A misdemeanor domestic battery against T.G. To obtain a conviction for this offense, the State must prove that the defendant "knowingly or intentionally . . . touch[ed] a family or household member in a rude, insolent, or angry manner[.]" Ind. Code § 35-42-2-1.3. "A person engages in conduct 'knowingly' if, when he engages in the conduct, he is

aware of a high probability that he is doing so." I.C. § 35-41-2-2(b). "A person engages in conduct 'intentionally' if, when he engages in the conduct, it is his conscious objective to do so." I.C. § 35-41-2-2(a). A touching that is rude, insolent, or angry includes a touching that is discourteous or offensive in manner or action. *In re Hill*, 144 N.E.3d 184, 188 (Ind. 2020) (referring to dictionary definitions, noting the battery statute does not define these terms).

[9] On appeal, Halter focuses on his version of the events, directing us to favorable evidence indicating that Halter did not push T.G. from behind, but pushed the bedroom door shut when T.G. was trying to reenter the room. He claims this conduct did not amount to a knowing or intentional battery under the statute. However, independent of the testimony Halter gave in his defense, the State presented two witnesses. One witness was T.G., who recounted that Halter—her husband—"pushed [her] from behind really hard" during an argument, leading her to call 9-1-1. Tr. Vol. 2 p. 17. T.G. described an injury to her knee, and the other witness, Deputy Clore, testified that he observed a fresh injury on T.G.'s knee.

[10] Based on the testimony from T.G. and Deputy Clore, a reasonable fact-finder could conclude, beyond a reasonable doubt, that Halter committed the charged offense. *See, e.g.*, *Williams v. State*, 241 N.E.2d 1209 (Ind. 2001) (pointing out that "testimony from a single eyewitness is sufficient to sustain a conviction"). However, Halter argues that we should disregard T.G.'s testimony and focus on his version of the events. In so arguing, Halter invokes a rule known as the "incredible dubiosity" rule. This rule allows us to "invade the [fact-finder's]

province for judging witness credibility" in "exceptionally rare circumstances." *McCallister v. State*, 91 N.E.3d 554, 559 (Ind. 2018). For the rule to apply, the case must satisfy three "stringent" requirements. *Id.* at 557. That is, the evidence supporting the conviction must have been (1) "offered by a sole witness"; (2) "the witness's testimony must have been coerced, equivocal, and wholly uncorroborated; it must have been 'inherently improbable' or of dubious credibility"; and (3) "there must have been no circumstantial evidence of the defendant's guilt." *Id.* at 559; *see also Moore v. State*, 27 N.E.3d 749, 754–56 (Ind. 2015) (collecting cases and providing background on the function of the rule). All three requirements must be satisfied. *McCallister*, 91 N.E.3d at 559.

[11] In asking us to apply the "incredible dubiosity" rule, Halter focuses on the second requirement, claiming T.G. gave testimony that was of dubious credibility. He asserts we should disregard T.G.'s testimony because—among other things—it was undisputed Halter was sick, and it is "improbable" that someone as sick as Halter "could have pushed [T.G.] so hard as to cause her to fly three or four feet across the room as she testified." Appellant's Br. p. 12.

[12] Yet, regardless of the second requirement, because this case did not involve a sole witness, the case does not satisfy the first requirement for application of the rule. *See*, *e.g., Moore*, 27 N.E.3d at 758 ("[T]he testimony of multiple witnesses alone precludes the application of the incredible dubiosity rule[.]"); *Stephenson v. State*, 53 N.E.3d 557, 560 (Ind. Ct. App. 2016) (noting the rule did not apply because "the State presented more than one witness"). Furthermore, even if this case had satisfied the first requirement, this case does not satisfy the third

requirement for application of the rule because Deputy Clore's testimony about T.G.'s knee injury constituted circumstantial evidence of Halter's guilt.

[13] Under the circumstances, the "incredible dubiosity" rule does not apply. Therefore, we must decline Halter's invitation to disregard T.G.'s testimony. Viewing the evidence in a light favorable to the judgment, we conclude the State presented sufficient evidence to support the domestic battery conviction.

[14] Affirmed.

Altice, C.J., and May, J., concur.