

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Megan M. Smith,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 20, 2023

Court of Appeals Case No.
22A-CR-1171

Appeal from the Knox Superior
Court

The Honorable Brian M. Johnson,
Judge

Trial Court Cause No.
42D02-2105-CM-379

Memorandum Decision by Judge Robb
Judges Crone and Kenworthy concur.

Robb, Judge.

Case Summary and Issues

- [1] Following an altercation with her spouse, Megan Smith was charged with Class A misdemeanor domestic battery. Smith timely filed a demand for a jury trial but subsequently pleaded guilty. At sentencing, Smith withdrew her guilty plea, and the trial court reset the matter for a bench trial. Smith was convicted as charged. On appeal, Smith raises several issues for our review. Finding two issues dispositive, we address: 1) whether the trial court committed reversible error by failing to reset the matter for a jury trial; and 2) whether the State presented sufficient evidence to support Smith’s domestic battery conviction.
- [2] We conclude the evidence was sufficient to support the conviction. However, because we also conclude, and the State concedes, that reversible error occurred when the trial court failed to reset this matter for a jury trial, we vacate Smith’s conviction and reverse and remand for a jury trial.

Facts and Procedural History

- [3] In April 2021, Smith and M.H. were married but separated. M.H. was living in the marital home; Smith had moved from the home but had not removed all of her belongings. On April 14, Smith went to the marital home to gather some of her clothing and borrow a “food card” from M.H. Transcript of Evidence, Volume 2 at 40. M.H. had been drinking alcohol all day and was “very angry.” *Id.* Soon after Smith arrived and started putting her belongings in bags, she and M.H. began to argue and yell at each other. M.H. called the police.

[4] When Knox County Sheriff's Deputy Kevin Stein arrived, he entered the home and encountered Smith and M.H. in the kitchen, "arguing over items in the house[.]" *Id.* at 31. M.H. wanted to "kick [Smith] out" of the home, but Deputy Stein informed him that "it couldn't happen" because the couple had not yet filed for divorce. *Id.* Deputy Stein told Smith to "just get what you need" and leave. *Id.*

[5] A short time later, Smith and M.H. began to argue over stereo equipment. Deputy Stein told them repeatedly to "stop arguing over this stuff[.]" and stated emphatically that the equipment would not be removed from the home that evening. *Id.* at 32. Despite the pronouncement, Smith picked up a tall metal microphone stand and carried it out the kitchen door and onto the steps of the back deck. M.H., already outside and on one of the steps, asked Smith, "[W]hy are you taking that?" *Id.* at 10. Smith then shoved the stand into M.H.'s forehead, leaving a mark and drawing blood; and M.H. felt pain. Smith fell backward, and M.H. fell off the step on which he had been standing.

[6] Deputy Stein "heard a commotion[.]" exited the home, and found Smith and M.H. "on the ground . . . physically fighting over [the] microphone stand." *Id.* at 33. The deputy arrested both Smith and M.H. and transported them to jail.

- [7] On May 3, 2021, the State charged Smith with domestic battery as a Class A misdemeanor.¹ On June 14, Smith appeared for an initial hearing and was advised of her right to demand a jury trial. She filed her demand on August 11, and the trial court set the matter for a jury trial to take place in December.
- [8] However, on October 14, 2021, Smith entered into an “open plea [agreement]” and pleaded guilty as charged. Appellant’s Verified Appendix, Volume II at 5. The trial court took Smith’s guilty plea under advisement and set a sentencing hearing for November 18. On November 18, the trial court canceled the December jury trial. The November sentencing hearing was continued to January 13, 2022.²
- [9] At the January 13 sentencing hearing, Smith withdrew her guilty plea, and the trial court set a bench trial to take place on April 7. Smith did not object to the setting of the bench trial. At the conclusion of the bench trial, the trial court found Smith guilty as charged. The trial court sentenced Smith to 365 days, with three days’ credit for time served and 359 days suspended to probation. Smith now appeals. Additional facts will be provided as necessary.

¹ The State also charged M.H. with Class A misdemeanor domestic battery. M.H. pleaded guilty to the charge, admitting that after Smith struck him with the microphone stand, he physically “[went] back at her.” Transcript of Evidence, Volume 2 at 16.

² In October 2021, Smith’s counsel withdrew his appearance. The trial court subsequently appointed new counsel and continued Smith’s sentencing hearing to January 13, 2022.

Discussion and Decision

I. Right to Trial By Jury

[10] Smith contends the trial court committed reversible error when, after Smith withdrew her guilty plea, the trial court set a bench trial to take place instead of setting the matter for a jury trial. Smith argues her conviction must therefore be vacated and her case remanded for a jury trial on the domestic battery count on which she was convicted. The State concedes that Smith should have received a jury trial. Thus, the State acknowledges that this court should remand the case to the trial court. We must agree.

[11] The right of an accused to have a trial by jury is guaranteed by the Indiana and United States Constitutions. U.S. Const. amend. VI; Ind. Const. art. 1, § 13;³ *Dadouch v. State*, 126 N.E.3d 802, 804 (Ind. 2019). In criminal cases, the procedure for asserting the right is codified in Indiana Code section 35-37-1-2 (“The defendant and prosecuting attorney, with the assent of the court, may submit the trial to the court. Unless a defendant waives the right to a jury trial . . . , all other trials must be by jury.”). While the Constitution does not differentiate between felonies and misdemeanors, in Indiana the procedure for

³ The Sixth Amendment to the United States Constitution provides, in relevant part, “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed[.]” Article 1, Section 13 of the Indiana Constitution provides, in relevant part, “[i]n all criminal prosecutions, the accused shall have the right to a public trial, by an impartial jury”

asserting the right to a jury trial in misdemeanor cases is controlled by Indiana Criminal Rule 22. Rule 22 states, in relevant part:

A defendant charged with a misdemeanor may demand trial by jury by filing a written demand therefor not later than ten (10) days before his first scheduled trial date. The failure of a defendant to demand a trial by jury as required by this rule shall constitute a waiver by him of trial by jury unless the defendant has not had at least fifteen (15) days advance notice of his scheduled trial date and of the consequences of his failure to demand a trial by jury.

[12] The right to trial by jury is a fundamental right, and while the manner of preserving that right is altered by Criminal Rule 22, it is not diminished. *Pryor v. State*, 973 N.E.2d 629, 633 (Ind. Ct. App. 2012); *Stevens v. State*, 689 N.E.2d 487, 489 (Ind. Ct. App. 1997). And while a defendant charged with a misdemeanor can waive his right to a jury trial by inaction, the waiver must nonetheless be knowing, voluntary, and intelligent. *Dadouch*, 126 N.E.3d at 804. However, where, as here, a defendant preserves her right to a jury trial, failure to object to a bench trial is insufficient to constitute waiver. *See Perkins v. State*, 541 N.E.2d at 927, 928 (Ind. 1989) (refusing to find that appellant had waived his right to a jury trial, even though appellant failed to object at the bench trial, because the record did not indicate that appellant “expressed a conscious choice” to give up the right to trial by jury).

[13] Here, Smith timely filed her demand for a jury trial. She later agreed to plead guilty as charged and waived her right to a jury trial.⁴ However, after obtaining new counsel, Smith requested – and the trial court allowed Smith – to withdraw her guilty plea. The effect of the withdrawal was to return Smith to the original position she occupied prior to entering her plea.⁵ Thus, the trial court should have set Smith’s matter for a jury trial following the withdrawal of her guilty plea, and committed reversible error by failing to do so. Therefore, we vacate Smith’s conviction for Class A misdemeanor domestic battery and remand with instructions that the trial court grant Smith a jury trial.

[14] Because we remand for a jury trial, we address the following issue raised by Smith in this appeal, namely: whether sufficient evidence supports Smith’s domestic battery conviction.

⁴ The record on appeal does not contain the transcript from Smith’s guilty plea hearing, but we presume the trial court properly advised Smith of the rights she waived by pleading guilty to the domestic battery offense. *See Myers v. Myers*, 560 N.E.2d 39, 42 (Ind. 1990) (“One of the strongest presumptions on appeal is the trial court acted correctly.”).

⁵ *See generally State v. Olish*, 164 W. Va. 712, 717, 266 S.E.2d 134, 137 (1980) (noting, withdrawal of guilty plea prior to sentencing places both parties in their original positions and enables the State to try defendant on all charges); *State v. Munoz*, 305 Mont. 139, 143, 23 P.3d 922, 925 (2001) (noting, “Circumstances may require that a defendant be allowed to withdraw his or her guilty plea and then face trial on the original charges as if the plea agreement had never been entered – which also means that the defendant’s ‘performance’ is returned; i.e., his or her constitutional rights that were waived by the guilty plea are thereafter reinstated.”); *State v. Patrick*, 816 S.W.2d 955, 958 (Mo. Ct. App. 1991) (noting, “While it is firmly established that a plea of guilty waives several constitutional rights including the right to trial by jury, . . . the trial court in the instant case allowed defendant to withdraw his guilty plea[, and t]he effect of the withdrawal was to restore defendant to the position he occupied prior to entering such plea.”).

II. Sufficiency of the Evidence

[15] We address Smith’s sufficiency of the evidence argument to dispel any question as to the State’s ability to retry her on the domestic battery charge. *See Dexter v. State*, 959 N.E.2d 235, 240 (Ind. 2012) (noting, the “Double Jeopardy Clause bars retrial when the defendant’s conviction is reversed due to insufficient evidence because such a reversal is tantamount to an acquittal.”). Smith contends the State presented insufficient evidence to support her Class A misdemeanor domestic battery conviction. As our supreme court has made clear:

For sufficiency of the evidence challenges, we consider only probative evidence and reasonable inferences that support the judgment of the trier of fact. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). On sufficiency challenges, we will neither reweigh evidence nor judge witness credibility. *Love v. State*, 73 N.E.3d 693, 696 (Ind. 2017). We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Id.*

Hall v. State, 177 N.E.3d 1183, 1191 (Ind. 2021). To prove Smith committed Class A misdemeanor domestic battery, the State was required to show Smith “knowingly or intentionally . . . touche[d] a family or household member in a rude, insolent, or angry manner[.]” Ind. Code § 35-42-2-1.3(a)(1).

A. Incredible Dubiosity

[16] First, Smith argues there was insufficient evidence to support her conviction because, according to Smith, M.H.’s testimony was incredibly dubious. In *McCallister v. State*, our Supreme Court explained:

Under our “incredible dubiousity” rule, we will invade the [fact-finder’s] province for judging witness credibility only in exceptionally rare circumstances. The evidence supporting the conviction must have been offered by a sole witness; the witness’s testimony must have been coerced, equivocal, and wholly uncorroborated; it must have been “inherently improbable” or of dubious credibility; and there must have been no circumstantial evidence of the defendant’s guilt.

91 N.E.3d 554, 559 (Ind. 2018). Simply put, application of the incredible dubiousity rule requires that there 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 v. State*, 27 N.E.3d 749, 756 (Ind. 2015). “[W]hile incredible dubiousity provides a standard that is ‘not impossible’ to meet, it is a ‘difficult standard to meet, [and] one that requires great ambiguity and inconsistency in the evidence.’” *Id.* (quoting *Edwards v. State*, 753 N.E.2d 618, 622 (Ind. 2001)). “The testimony must be so convoluted and/or contrary to human experience that no reasonable person could believe it.” *Id.* (quoting *Edwards*, 753 N.E.2d at 622).

[17] Here, we find Smith has failed to meet any of the required elements of the incredible dubiousity rule. As for the first element, M.H. was not the sole

witness to offer evidence supporting the conviction. While M.H. was the only witness to the violent act itself – Smith shoving the microphone stand into M.H.’s forehead – Deputy Stein testified he “heard a commotion” and then saw Smith and M.H. physically fighting over the microphone stand. Tr., Vol. 2 at 33.

[18] As for the second element, Smith has failed to persuade us that any inconsistencies in M.H.’s testimony rose to the level of incredible dubiousity. M.H. testified unequivocally that Smith shoved the microphone stand into his forehead. And although Smith argues that M.H. had been drinking on the day the incident occurred, showed “enmity” toward Smith, and offered conflicting dates regarding when Smith moved out of the marital home and when the altercation occurred, none of these factors render M.H.’s testimony incredibly dubious. Brief of Appellant at 25; *see also Toles v. State*, 151 N.E.3d 805, 809 (Ind. Ct. App. 2020) (concluding witness’s intoxication and alleged enmity did not necessarily render her testimony incredibly dubious), *trans. denied*. Regarding the third element, circumstantial evidence supports Smith’s conviction, as Deputy Stein’s testimony corroborated M.H.’s testimony.

[19] We find that none of the required elements of the incredible dubiousity rule are present. Therefore, we decline to apply the rule to M.H.’s testimony.

B. Mental State

[20] Next, Smith contends the State failed to present sufficient evidence to show that she knowingly or intentionally touched M.H., as required to prove Class A misdemeanor domestic battery. *See* Ind. Code § 35-42-2-1.3(a)(1). However,

M.H.'s testimony alone sufficed to show that Smith knowingly or intentionally touched him. The uncorroborated testimony of one witness is sufficient to sustain a conviction, even if the witness is the victim. *Ferrell v. State*, 565 N.E.2d 1070, 1072-73 (Ind. 1991). Smith's argument to the contrary is merely a request for this court to reweigh the evidence, which we will not do. *See Love*, 73 N.E.3d at 696.

Conclusion

[21] We conclude that sufficient evidence appears in the record to support Smith's conviction for Class A misdemeanor domestic battery. However, because we also conclude that the trial court committed reversible error by failing to reset this matter for a jury trial following the withdrawal of Smith's guilty plea, we reverse the judgment of the trial court and remand with instructions to vacate Smith's conviction and grant Smith a jury trial.

[22] Reversed and remanded for a jury trial.⁶

Crone, J., and Kenworthy, J., concur.

⁶ Because we remand for a jury trial, we do not address Smith's additional claims regarding whether Smith properly raised the affirmative defenses of self-defense and defense of property and whether the trial court failed to provide an adequate sentencing order that specified the number of credit-days owed to Smith.