

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Leonard McKenzie,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

June 21, 2023

Court of Appeals Case No.
22A-CR-2508

Appeal from the St. Joseph
Superior Court

The Honorable Jenny Pitts Manier,
Judge

Trial Court Cause No.
71D05-1710-CM-4459

Memorandum Decision by Judge Weissmann
Judges Bailey and Brown concur.

Weissmann, Judge.

- [1] Leonard McKenzie was convicted of carrying a handgun without a license based on a police officer's testimony that he found a handgun in McKenzie's car, police photographs of the gun as it was found in the car, and an audio recording on which McKenzie admitted to purchasing the gun found in the car. McKenzie appeals, arguing that the officer's testimony was incredibly dubious. Because the incredible dubiosity rule does not apply to the officer's corroborated testimony, we affirm.

Facts

- [2] One morning in October 2017, several South Bend police officers responded to a call of a domestic dispute between McKenzie and his girlfriend. When Officer Hunter Miller arrived at the scene, he found McKenzie standing outside a house, near his car, which was illegally parked. McKenzie informed Officer Miller that he and his girlfriend had been arguing and that his girlfriend had fled into the house. Officer Miller detected a strong odor of alcohol on McKenzie, who admitted he had been drinking.
- [3] After speaking with both McKenzie and his girlfriend, Officer Miller determined that the couple needed to separate for the day to avoid further arguments. Officer Miller directed McKenzie to walk to his home, which was only a few blocks away. But first, McKenzie's car needed to be legally parked. Because McKenzie had been drinking, Officer Miller offered to move

McKenzie's car for him. McKenzie agreed and gave Officer Miller the keys. Officer Miller then drove the car to a nearby parking lot.

[4] While putting McKenzie's car in park, Officer Miller noticed the handle of a handgun protruding from the car's already-opened center console. Officer Miller ordered another police officer to detain McKenzie so the gun's legality could be investigated. Officer Miller then conducted a police records search, which revealed that McKenzie was not licensed to carry a handgun. Officer Miller proceeded to photograph the gun in the center console, read McKenzie his *Miranda* rights, and question McKenzie about the gun. McKenzie admitted to Officer Miller that he purchased the gun off the street for his personal protection and did not have a license to carry it.

[5] The State charged McKenzie with carrying a handgun without a license, a Class A misdemeanor. A jury found McKenzie guilty as charged, and the trial court sentenced him to 60 days in jail, all suspended. McKenzie now appeals, arguing that the State presented insufficient evidence to prove he carried a handgun without a license.

Discussion and Decision

[6] When reviewing the sufficiency of the evidence to support a criminal conviction, we neither reweigh evidence nor judge witness credibility. *Bailey v. State*, 907 N.E.2d 1003, 1005 (Ind. 2009). We consider only the evidence supporting the judgment and any reasonable inferences that can be drawn from such evidence. *Id.* We will affirm if there is substantial evidence of probative

value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt. *Id.*

[7] To convict McKenzie of Class A misdemeanor carrying a handgun without a license, the State was required to prove, among other things, that he carried a handgun in a vehicle or on his person. Ind. Code § 35-47-2-1(a) (2017). At trial, Officer Miller testified that, while parking McKenzie’s car, he saw a handgun in the car’s center console. The State also presented Officer Miller’s photographs depicting the gun in the center console. Additionally, the State presented an audio recording from Officer Miller’s body microphone on which McKenzie admitted to purchasing the gun found in his car.

[8] McKenzie claims Officer Miller’s testimony that he saw a handgun in the center console of McKenzie’s car was incredibly dubious and, therefore, insufficient to prove he carried a handgun in the vehicle. “The incredible dubiousity rule allows the reviewing court to impinge upon the factfinder’s responsibility to judge the credibility of witnesses when confronted with evidence that is ‘so unbelievable, incredible, or improbable that no reasonable person could ever reach a guilty verdict based upon that evidence alone.’” *Smith v. State*, 163 N.E.3d 925, 929 (Ind. Ct. App. 2021) (quoting *Moore v. State*, 27 N.E.3d 749, 751 (Ind. 2015)). The rule, however, only applies when the witness’ testimony is “wholly uncorroborated.” *McCallister v. State*, 91 N.E.3d 554, 559 (Ind. 2018).

[9] Officer Miller's testimony that he saw a handgun in the center console of McKenzie's car was corroborated by photographs of the gun as it was found in the car's center console as well as an audio recording of McKenzie admitting that he purchased the gun found in his car. Given this corroborating evidence, the incredible dubiousity rule does not apply to Officer Miller's testimony. *See Holeton v. State*, 853 N.E.2d 539, 542 (Ind. Ct. App. 2006) (holding incredible dubiousity rule did not apply to victim's testimony that defendant slammed victim's head into a glass picture frame, whipped her with a belt, and sliced her lip with a knife because victim's testimony was corroborated by photographs of victim's injuries and photographs from the scene depicting various broken items, a knife, and a belt).

[10] Finding sufficient evidence to support McKenzie's conviction for carrying a handgun without a license, we affirm the trial court's judgment.

Bailey, J., and Brown, J., concur.