MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Raymond L. Harper,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 6, 2022

Court of Appeals Case No. 22A-CR-1034

Appeal from the St. Joseph Superior Court

The Honorable Jenny Pitts Manier, Judge

Trial Court Cause No. 71D05-2009-CM-2790

Tavitas, Judge.

Case Summary

[1] Raymond Lemond Harper appeals his conviction for domestic battery, a Class A misdemeanor. Harper argues the evidence was insufficient to sustain his conviction pursuant to the doctrine of incredible dubiosity. Finding that doctrine inapplicable and the evidence sufficient to sustain Harper's conviction, we affirm.

Issue

[2] Harper raises one issue on appeal, which we restate as whether the evidence was insufficient to sustain his conviction pursuant to the doctrine of incredible dubiosity.

Facts

[3] On September 24, 2020, J.N. lived in a cabin at the Kenrose Motel in St. Joseph County with Harper, with whom she had an intimate relationship. In the early morning hours, J.N. was getting ready to leave for work and learned that Harper "was having someone else come over to the cabin after [she] left[.]" Tr. Vol. II p. 26. J.N. told Harper that he should pack his things and leave. Harper became "angry" and threw J.N. "across the room onto the bed." *Id*. at 26-27. Harper got on top of J.N. and began applying pressure with "both hands" around her neck until she "started seeing stars." *Id*. at 27. Harper told J.N. she could not leave.

[4] J.N. "kicked [Harper] off" her and tried to call her daughter, but Harper "threw" or "pushed" her into the bathroom doorway. *Id*. at 28. Harper then

"closed-hand fist punched [J.N.] in [her] eye, hard enough to make a contact come out all the way." *Id*. J.N. did not remember how many times Harper hit her, but remembered it was "[i]n the face at least once" and in her ribs. *Id*.

[5] Harper then permitted J.N. to leave, but told her that if she chose to leave, she would have to take all of her belongings or abandon them "because [she] was never coming back to [her] own home." *Id*. at 28. J.N. grabbed what she could and left in her car. J.N. called her daughter, who worked "right around the corner" and then called 911 when she arrived at her daughter's work. *Id*. at 29. J.N. arrived at her daughter's work "by probably around three o'clock" in the morning. *Id*. at 33.

[6] Officers Jake Mumm and Thomas Ginter of the St. Joseph County Police Department arrived on the scene at "around 3:30."[1] *Id*. at 33. Officer Mumm observed, "When I first saw [J.N.] she appeared to have dark coloring around her right eye that would be consistent with a bruise." *Id*. at 67. Officer Ginter also observed J.N. had a "black eye . . . as well as swelling on her forehead, and some scratch marks on her face." *Id*. at 81.

[7] The officers knocked on the door to J.N.'s cabin, but Harper did not answer. The officers obtained a key from the motel staff and gained entry. Harper told

[1] Officer Mumm testified he was dispatched "around 2:00, 2:30 [a.m.]" Tr. Vol. II p. 66. Officer Ginter testified, "[W]e got on the scene at 3:35 [a.m.], we were dispatched at 3:25 [a.m.]" *Id*. at 80.

the officers "he knew [they] were there for [a] domestic related issue." *Id*. at 70. The officers escorted Harper off the property.

[8] Officer Ginter then took photos of J.N. depicting J.N.'s injuries. The photos showed: bruising "completely covering the top part of [J.N.'s right] eyelid and just underneath her eye"; a scratch above the same eye; "swelling right in the middle of her forehead"; "a bruise just on her right rib cage"; and scratching and "bruising already from either some type of friction burn or squeezing" on her neck." *Id*. at 87-89.

[9] After the officers took the photos, J.N. went to her place of employment, where she works as a saw operator. J.N. was at work from "seven o'clock in the morning, give or take a little bit, until 2:00 [p.m.]." *Id*. at 32. J.N. testified she "on occasion" got bumps and bruises at work and that the scratches she receives at work "look nothing like the ones" in the photographs. *Id*. at 58.

[10] After her shift, J.N. went to the emergency room because she "knew something was really bad [sic] hurt" and she was feeling pain "[e]verywhere." *Id*. at 34. At the hospital, a nurse took photos of J.N.'s injuries, which included a black eye with "[t]he inside . . . all red"; marks from "fingernails on [her] neck"; scratch marks on her chest and breast; "[f]ingerprints on both arms, on [her] forearms, and scratches from being held down"; a mark on her elbow from when she "got thrown into the bathroom doorway"; and a bruise on her ribs. *Id*. at 36-37. At a follow-up appointment at the hospital three days later, J.N. was "partially" still in pain and her "eye was definitely . . . messed up." *Id*. at 38, 112. The attending nurse took photographs of J.N., which showed

"bruising around the right eye"; "bruising in the white of the eye"; and "bruising to [J.N.'s] arms." *Id*. at 116-17.

[11] The State charged Harper with domestic battery, a class A misdemeanor. A jury trial was held in April 2022, in which Harper elected to represent himself. The following exchange took place during Harper's cross examination of J.N.:

> Harper: You have testified that I had hit you . . . one time; correct?
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> *****
>
> J.N.: No. I said you hit me one time in the eye. But I do not recall how many times you actually hit me.

Id. at 43. The jury found Harper guilty of domestic battery, a Class A misdemeanor, and the trial court entered judgment of conviction accordingly. Harper now appeals.

Discussion and Decision

[12] Harper argues the evidence is insufficient to sustain his conviction under the doctrine of incredible dubiosity. We disagree.

[13] Sufficiency of evidence claims "warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility." *Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020) (citing *Perry v. State*, 638 N.E.2d 1236, 1242 (Ind. 1994)). We consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. *Id.* (citing *Brantley v. State*, 91

N.E.3d 566, 570 (Ind. 2018), *cert. denied*). "We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt." *Id.* at 263. We affirm the conviction "unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict." *Sutton v. State*, 167 N.E.3d 800, 801 (Ind. Ct. App. 2021) (quoting *Drane v. State*, 867 N.E.2d 144, 146-47 (Ind. 2007)).

[14] Here, Harper was charged with domestic battery pursuant to Indiana Code Section 35-42-2-1.3(a)(1), which provides: "a person who knowingly or intentionally . . . touches a family or household member in a rude, insolent, or angry manner . . . commits domestic battery, a Class A misdemeanor." Harper argues that J.N. is the one sole true witness to the incident; that her "testimony was both contradictory and equivocal," Appellant's Br. p. 8; and that J.N.'s testimony was "not supported by any circumstantial evidence." *Id*.

[15] "Under the incredible dubiosity rule, a court will impinge upon the jury's responsibility to judge the credibility of witnesses only when confronted with inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiosity." *Murray v. State*, 761 N.E.2d 406, 408 (Ind. 2002). Application of the incredible dubiosity doctrine, thus, 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 dubiosity 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).

[16] We find the incredible dubiosity doctrine inapplicable to the instant case because none of the required elements are met. As for the first element, J.N. was not the sole testifying witness. Though J.N. was the only witness to the domestic violence itself, Officer Mumm and Officer Ginter saw J.N.'s injuries and identified Harper in J.N.'s cabin shortly after the incident, where Harper told the officers that Harper knew they were there for a domestic incident. *See Moore*, 27 N.E.3d at 757 (noting that, although there was only one eyewitness to the shooting, another witness placed Moore at the scene). Obviously, the fact that the battery was not perpetrated in front of third-party witnesses does not render the victim's testimony incredibly dubious.

[17] As for the second element, none of the testimony was inherently contradictory or equivocal. Harper first argues J.N. contradicted herself regarding how many times Harper hit her in the face. But we find no inconsistency—J.N. consistently testified that Harper hit her once in the eye and that she was not sure how many times he hit her in the face, but it was "at least once." Tr. Vol. pp. 28, 44. J.N. consistently testified that Harper battered her and that he hit

her multiple times; a slight inconsistency with regards to exactly how many times Harper struck J.N. in the face does not render J.N.'s testimony "so convoluted and/or contrary to human experience that no reasonable person could believe it.'" *Moore,* 27 N.E.3d at 756 (citation omitted).[2]

[18] Harper next argues that the officers did not corroborate J.N.'s testimony because of the differing accounts regarding the time the police were dispatched. Officer Mumm testified that he was dispatched at between 2:00 and 2:30 a.m. in response to J.N.'s report of domestic battery, whereas Officer Ginter testified that he was dispatched at 3:25. But as our Supreme Court has explained, "[i]t is for the trier of fact to resolve conflicts in the evidence and to decide which witnesses to believe or disbelieve." *Id*. at 758 (citation omitted).[3] Moreover, the discrepancies as to when the officers were dispatched do not relate to whether the State proved the elements of the domestic battery beyond a reasonable doubt.

[19] Finally, as for the third element, circumstantial evidence supports the conviction. Photographs taken by Officer Ginter at the scene and by the

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[2] The same can be said for Harper's argument that J.N. contradicted herself "when she testified that Harper would not let her leave the cabin, when . . . she told an officer that she in fact could leave." Appellant's Br. p. 8; *see Holeton v. State*, 853 N.E.2d 539, 542 (Ind. Ct. App. 2006) (declining to apply incredible dubiosity doctrine based on a "few inconsistent statements that Daugherty made to the police when compared to her trial testimony" and reserving that question of credibility for the jury). Moreover, J.N. consistently testified that Harper permitted her to leave after the incident.

[3] Harper also argues J.N.'s testimony is contradictory because she testified that the incident occurred between 1:30 and 2:30 a.m., that she was at her daughter's work at 3:00 a.m., and that "her daughter's work was just around the corner . . . so there is a lapse in time that is not accounted for." Appellant's Br. p. 8. We note that Harper never asked J.N. where she was during this supposed "lapse in time" at trial. Moreover, J.N.'s inability to recall her precise whereabouts to the minute does not render her testimony incredibly dubious.

attending nurse at the hospital all corroborated J.N.'s testimony regarding her injuries. *See Holeton*, 853 N.E.2d at 542 (photographic evidence supported victim's testimony). In addition, the fact that Harper told the police that Harper knew they were there for a domestic incident supports the fact that an incident of domestic violence did occur. Tr. Vol. II p. 70. Harper suggests J.N. could have been injured at work, but J.N. denied that in her testimony, and we will not reweigh the evidence here. Harper also points out there are "large lapses in time that are unaccounted for" after J.N. spoke to the officers and when she was at work, which is irrelevant to the elements of domestic battery and the credibility of J.N. Appellant's Br. p. 9. Moreover, Officer Ginter took photographs of J.N. before J.N. went to work, and it is the province of the jury to weigh the evidence.

[20] Accordingly, none of the required elements of the incredible dubiosity rule are present, and thus the doctrine is inapplicable. Moreover, there is sufficient evidence to sustain Harper's conviction of domestic battery, a Class A misdemeanor.

Conclusion

[21] The incredible dubiosity rule is inapplicable, and the evidence is sufficient to sustain Harper's conviction. Accordingly, we affirm.

[22] Affirmed.

Brown, J., and Altice, J., concur.