

STATEMENT OF THE CASE

Camiell Chest appeals his conviction following a bench trial for domestic battery as a class D felony.¹

We affirm.

ISSUE

Whether there is sufficient evidence to support the conviction.

FACTS

In the early evening of October 7, 2009, Chest went to the home of Davina Robbins' mother to visit his and Robbins' nine-month-old son, L.C. When Chest arrived, Robbins, her mother, and Robbins' sister were in the living room; Robbins' five-year-old daughter and two-year-old niece were playing in the adjacent dining room, which was visible from the living room.

As Chest stood in the living room, Robbins tried to hand L.C. to him. Chest, however, "just let [L.C.] slide down . . ." to the floor. (Tr. 10). When Robbins chided Chest, he became "[u]pset" and "[a]rgumentative." (Tr. 11).

Robbins told Chest to leave and began to walk away from him. As she did so, Chest hit her on the back of her head with his fist. Robbins "flew on top of the coffee table" and subsequently "off the coffee table onto the couch" after Chest hit her again. (Tr. 13). Chest then "started drilling on [her]." (Tr. 21). Chest struck Robbins "five or six" times as she tried to protect her head and face with her hands. (Tr. 13). During this

¹ Ind. Code § 35-42-2-1.3(b).

time, the three children “were right there . . . in the doorway that . . . divides the living room and the dining room.” (Tr. 13).

Chest then fled the house and “sped off” with his cousins, who had been waiting in a car. (Tr. 15). One of the women telephoned the police. After the police arrived, Chest telephoned Robbins on her cell phone. Chest told Robbins that if she called the police, he would “air out [her] mother’s house which is slang for he was going to shoot up [her] mom’s house.” (Tr. 16). Robbins sustained “a couple of knots on the back of [her] head” and bruises to her legs but did not seek medical treatment. (Tr. 14). Officers did not document her injuries.

On October 22, 2009, the State charged Chest with Count I, domestic battery as a class D felony; Count II, battery as a class D felony; Count III, domestic battery as a class A misdemeanor; and Count IV, battery as a class A misdemeanor. On December 15, 2009, Chest filed a notice of alibi. The trial court held a bench trial on March 8, 2010.

Robbins, her mother, and her sister testified. Robbins’ mother and sister corroborated most of Robbins’ testimony. Robbins’ sister, however, testified that Chest’s cousin, not Chest, telephoned Robbins and did so prior to the police arriving at the home. Indianapolis Metropolitan Police Officer Brent McDonald testified that Robbins received a telephone call while he was at the home and that Robbins “put it on speaker phone.” (Tr. 67). According to Officer McDonald, Robbins and Chest “were yelling back and forth at each other.” (Tr. 67).

Chest's sister testified that he was with her all day on October 7, 2009. His sister-in-law testified that she saw him at a family function that same evening. Chest testified that he never saw Robbins on the day in question.

The trial court found Chest guilty of one count of domestic battery as a class D felony. Following a sentencing hearing on April 19, 2010, the trial court sentenced Chest to 545 days, with 535 days suspended, and one year of probation.

DECISION

Chest asserts that there is insufficient evidence to support his convictions. We disagree.

When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts 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.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations and citations omitted).

Chest argues that the evidence does not support his conviction because "Robbins' testimony was inherently incredible." Chest's Br. at 4. In support, he cites to Robbins' sister's testimony regarding the telephone call. He also cites to Officer McDonald's

testimony that although Robbins received a telephone call while he was at the residence, he “didn’t exactly hear what was being said.” (Tr. 67).

Chest also argues that “[t]he second major contradiction within the State’s evidence was concerning the alleged physical injury to Robbins.” Chest’s Br. at 5. Specifically, he maintains that Robbins’ “description of a seemingly serious attack . . . does not ring true” given what he characterizes as minor injuries. *Id.*

“Under the incredible dubiousity rule, a court will impinge on the jury’s responsibility to judge the credibility of the witness only when it is confronted with inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiousity.” *Altes v. State*, 822 N.E.2d 1116, 1122 (Ind. Ct. App. 2005), *trans. denied*. We will reverse a conviction where a “sole witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence” *Id.* (quoting *White v. State*, 706 N.E.2d 1078, 1079 (Ind. 1999)). The application of the rule is rare, however, “and is limited to cases where the sole witness’ testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it.” *Id.*

Here, Robbins’ mother and sister testified for the State. The incredible dubiousity rule therefore does not apply in this case as Robbins was not the sole witness. Chest, however, seeks to expand the “incredible dubiousity” rule because “[t]he credibility of Robbins was a crucial factor in the trial court’s decision-making.” Chest’s Br. at 6. We decline to do so.

Even if we were to expand the rule, it would not be applicable to this case as Robbins' testimony was neither inherently dubious nor inherently improbable. Officer McDonald confirmed that Robbins received a telephone call. That he could not decipher what was said does not render Robbins' testimony inherently dubious or improbable.

As to Robbins' injuries, Robbins testified that Chest hit her on the back of the head approximately five to six times. We cannot say that her resulting injuries were inconsistent with being struck on the head with a fist.

Here, Chest's counsel cross-examined Robbins, and the trial court was able to independently evaluate her testimony. Furthermore, Robbins' sister and mother corroborated her testimony regarding Chest striking Robbins "in a rude, insolent, or angry manner" while "in the physical presence of [children] less than sixteen (16) years of age, knowing that the child[ren] w[ere] present and might be able to see or hear the offense." *See* I.C. § 35-42-2-1.3(b)(2). Chest's argument is nothing more than an invitation to judge the credibility of the witnesses, which we decline to do. The evidence presented at trial is sufficient to support Chest's conviction.

Affirmed.

NAJAM, J., and BAILEY, J., concur.