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IN THE
COURT OF APPEALS OF INDIANA

RONNY L. JOHNSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 64A03-0907-CR-322
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE PORTER SUPERIOR COURT
The Honorable Mary R. Harper, Judge
Cause No. 64D05-0802-FC-1940

December 30, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Ronny L. Johnson appeals his conviction after a jury trial of Battery Resulting in Serious Bodily Injury[1] as a class C felony. Johnson presents the following issues for our review:

I. Is there sufficient evidence to support Johnson's conviction?

II. Is Johnson's sentence inappropriate in light of the nature of the offense and the character of the offender?

We affirm.

In the early morning hours on February 10, 2008, Amber Perzo and her friend, Marci McColly, returned to Perzo's mother's house after spending an evening at a bar in Portage, Indiana. During the evening, Perzo received calls and text messages from Johnson. Perzo did not tell Johnson where she and McColly were, but Johnson knew they were out. Perzo had dated Johnson for two years, but ended the relationship approximately three months prior, and recently had told Johnson that she was dating someone else. Johnson had never met McColly.

Perzo's mother, Catherine Kustric, was outside the house smoking a cigarette when she saw McColly's vehicle pull into the driveway. Perzo, who was in the passenger's seat, was saying goodbye to McColly when Kustric observed a vehicle (a Ford Thunderbird) slowly drive past the house. Kustric observed someone turn the Thunderbird around and park it at the end of Kustric's driveway. Kustric saw three men, including Johnson, exit the Thunderbird and approach McColly's vehicle. Kustric then saw Johnson open McColly's

[1] Ind. Code Ann. § 35-42-2-1(a)(3) (WEST, PREMISE current through end of 2009 1st Regular Session).

driver's side door and repeatedly strike McColly in the face.

Perzo exited the car and stood by the passenger side of the vehicle while screaming at Johnson to stop. The three men left as Kustric called 911. Kustric was able to identify Johnson because of his relationship with Perzo. Kustric identified Johnson as the attacker in her call to the 911 operator. The 911 operator relayed the information to the first responding officer, Officer Chad Crosby of the Porter County Sheriff's Department. Perzo also identified Johnson as the attacker because of her prior relationship with him and because she recognized the tattoos on Johnson's arms as he was striking McColly. Johnson later left a voice message on Perzo's phone saying, "ha ha bitch, I told you what would happen." *Transcript.* at 106-07.

McColly was taken to the hospital because of her injuries, including a broken jaw which was wired shut over a period of five months. McColly could consume only liquids while her jaw was wired and now uses only one side of her mouth to chew. A permanent steel plate was installed to hold her jaw together. McColly suffered permanent nerve damage on the left side of her lip and still feels pain and numbness. McColly lost her job shortly after the incident and remains in fear as a result of the beating.

The State charged Johnson with class C felony battery resulting in serious bodily injury. At the conclusion of a jury trial, Johnson was found guilty as charged. The trial court sentenced Johnson to eight years executed to be served consecutively to the sentence imposed for a prior conviction for which Johnson's probation was revoked as a result of his commission of the instant offense. Those sentences were to be served consecutively to a

federal sentence for distributing cocaine, for which he was on pretrial supervision when he committed the instant offense. Johnson now appeals.

1.

Johnson claims that there is insufficient evidence to support his conviction and asks this Court to expand upon the incredible dubiosity rule to review the credibility of multiple witnesses. Johnson acknowledges that he can cite to no precedent for his request.

When considering a challenge to the sufficiency of evidence supporting a conviction, we neither reweigh the evidence nor judge witness credibility. *McHenry v. State*, 820 N.E.2d 124 (Ind. 2005). This review "respects 'the jury's exclusive province to weigh conflicting evidence.'" *Id.* at 126 (quoting *Alkhalidi v. State*, 753 N.E.2d 625, 627 (Ind.2001)). Considering only the probative evidence and reasonable inferences supporting the verdict, we must affirm "'if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.'" *McHenry v. State*, 820 N.E.2d at 126 (quoting *Tobar v. State*, 740 N.E.2d 109, 111-12 (Ind. 2000)).

"Within the narrow limits of the 'incredible dubiosity' rule, a court may impinge upon a jury's function to judge the credibility of a witness." *Love v. State*, 761 N.E.2d 806, 810 (Ind. 2002). For testimony of a sole witness to be disregarded based on a finding of "incredible dubiosity," it must be inherently contradictory, wholly equivocal, or the result of coercion. *Love v. State*, 761 N.E.2d 806. Moreover, there must also be a complete lack of

circumstantial evidence of the defendant's guilt. *Id*. This rule is rarely applicable. *Id*. We conclude that the rule does not apply here and should not be expanded.

It is well-established that the uncorroborated testimony of one witness or victim is sufficient to sustain a conviction. *Pinkston v. State*, 821 N.E.2d 830 (Ind. Ct. App. 2004), *trans. denied*. Here, there were two witnesses who were able to identify Johnson as McColly's attacker. Johnson argues that Perzo and Kustric had "powerful motivations to fabricate his involvement in the battery upon McColly." *Appellant's Brief* at 8. He further contends that the State did not refute his alibi evidence. *Id*. at 9. We disagree, as the testimony of Perzo and Kustric directly refuted Johnson's alibi evidence, and Johnson had the opportunity to cross-examine Perzo and Kustric about their potential bias against Johnson and the consistency of their statements and testimony. It is the jury's task to weigh the evidence and determine the credibility of the witnesses. *Badelle v. State*, 754 N.E.2d 510 (Ind. Ct. App. 2001), *trans. denied*.

Because we decline the invitation to extend the incredible dubiosity rule here, and Johnson concedes that the evidence is otherwise sufficient to sustain his conviction for battery resulting in serious bodily injury, we find no error.

2.

Johnson argues that the trial court erred by imposing a sentence of eight years for Johnson's class C felony conviction. He claims that the sentence is inappropriate in light of the nature of the offense and the character of the offender as he is not "the worst of the worst." *Appellant's Brief* at 11.

Pursuant to Indiana Appellate Rule 7(B), we may revise a sentence authorized by statute if, after due consideration of the trial court's decision, we find the sentence is inappropriate in light of the nature of the offense and the offender's character. *Reyes v. State*, 848 N.E.2d 1081 (Ind. 2006). Although we are not required under App. R. 7(B) to be "extremely" deferential to a trial court's sentencing decision, we recognize the unique perspective a trial court brings to such determinations. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). Moreover, we observe that Johnson bears the burden of persuading this court that his sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867.

The sentencing range for a class C felony is between two and eight years with an advisory sentence of four years. Ind. Code Ann. § 35-50-2-6 (West, PREMISE current through end of 2009 1st Regular Sess.). Here, the trial court sentenced Johnson to eight years executed to be served consecutively to two separate causes.

As to the nature of the offense, Johnson, without provocation, attacked an unsuspecting McColly, whom Johnson had never met, as she sat in her car. Johnson struck her in the face with such force that her jaw was broken and wired shut for five months, ultimately requiring the installation of a permanent steel plate to hold her jaw together. McColly could consume only liquids while her jaw was wired and now uses just one side of her mouth while chewing. The brutal nature of Johnson's crime belies his claim that his sentence is inappropriate.

As for the character of the offender, Johnson has a criminal history including assault, battery on a police officer, operating a vehicle while intoxicated endangering a person, and

domestic battery, with two of his convictions having probation revocations. The trial court noted that Johnson's criminal history was comprised of battery-related charges. Although Johnson suggests that one of his positive attributes is the absence of substance abuse, Johnson was on pretrial release for a federal charge of distributing cocaine when he committed the instant offense. Indeed, Johnson was on probation for another offense at the time of the commission of this offense. Considering Johnson's criminal history, and the fact that he was on probation and pretrial release for two separate additional offenses at the time he committed the current offense, we find his sentence is not inappropriate based on his character.

Judgment affirmed.

NAJAM, J., and BRADFORD, J., concur.