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IN THE
COURT OF APPEALS OF INDIANA

TERMAINE G. BROWN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A03-0906-CR-269
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Kenneth R. Scheibenberger, Judge
Cause No. 02D04-0902-FD-105

January 27, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Termaine Brown appeals his conviction for invasion of privacy as a class D felony.[1]

We affirm.

ISSUE

Whether there is sufficient evidence to support the conviction.

FACTS

As a condition of Brown's probation following his conviction for class D felony battery, the Allen Superior Court issued a no contact order on December 31, 2008. The order prohibited Brown from having contact with Amanda Shafer "in person, by telephone or letter, through an intermediary, or in any other way, directly or indirectly, except through an attorney of record, while on probation." (State's Ex. 1). The order further prohibited Brown from visiting any location where he knew Shafer "to be located[.]" *Id.*

At approximately 1:00 a.m. on January 29, 2009, Shafer heard someone knocking on her door. Looking through a peephole, she saw Brown standing at her door. She observed that Brown was wearing "a black skull cap, [and] a black hooded sweatshirt with [a] rainbow stripe across it . . . ." (Tr. 64).

Brown continued knocking so hard that "[i]t sounded like he was kicking [her] door." (Tr. 62). Shafer sent Brown a text message, "asking him to leave." (Tr. 63). She

[1] Ind. Code § 35-46-1-15.1.

then telephoned police and described Brown, his clothing, and his vehicle. While Shafer was on the telephone, Brown left. Shafer told police the direction Brown was driving.

Fort Wayne Police Officer Michael Bell received a dispatch regarding a violation of a no contact order. The dispatch described Brown, his vehicle, and the direction in which he was driving. Shortly thereafter, Officer Bell observed Brown exiting Shafer's apartment complex. Officer Bell followed Brown into a parking lot, whereupon he placed Brown under arrest.

On February 3, 2009, the State charged Brown with class D felony invasion of privacy. The trial court commenced a jury trial on April 21, 2009. Detective Wayne Kelly testified that during the investigation, Shafer denied having contact with Brown the morning of January 29, 2009.

Shafer also testified, admitting that she sent Brown several text messages following the issuance of the no contact order. Officer David Bush testified that when he questioned Shafer regarding the text messages, she informed him that she had deleted them. Shafer, however, testified that she did not delete the text messages "until [she] moved everything over to [her] new phone." (Tr. 70).

The jury found Brown guilty. Following a sentencing hearing on May 18, 2009, the trial court sentenced Brown to one and a half years.

DECISION

Brown asserts that the evidence is insufficient to support his conviction for invasion of privacy. Specifically, he invokes the incredible dubiosity rule as to Shafer's testimony and also claims that Shafer consented to the contact.

> 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).

1. Incredible Dubiosity Rule

Brown argues that the incredible dubiosity rule applies to Shafer's testimony. We disagree.

"Under the incredible dubiosity 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 dubiosity." *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, Brown argues that Shafer's testimony was incredibly dubious because it conflicted with her pre-trial statements to the police. The incredible dubiosity rule, however, does not apply to conflicts that exist between trial testimony and statements made to the police before trial. *Buckner v. State*, 857 N.E.2d 1011, 1018 (Ind. Ct. App. 2006). Rather, it only applies to conflicts in trial testimony. *Id.* We therefore find this argument unavailing.

Furthermore, the incredible dubiosity rule applies only when there is a complete lack of circumstantial evidence. *Altes*, 822 N.E.2d at 1122. We cannot say that there is a complete lack of circumstantial evidence in this case, where Officer Bell testified that he observed Brown exiting the parking lot of Shafer's apartment complex and that Brown's clothing and vehicle matched the description given by Shafer to police dispatch.

Brown is asking this Court to reweigh the evidence and judge the witnesses' credibility, which we will not do. We find the evidence presented at trial is sufficient to support his conviction.

2. Consent to Contact

Brown also asserts that the State failed to disprove that Shafer consented to the contact. He argues that Shafer's consent to the contact "negates an element" of invasion of privacy. Brown's Br. at 13.

Indiana Code section 35-46-1-15.1(6) provides that a person who knowingly or intentionally violates a no contact order issued as a condition of probation commits invasion of privacy. Lack of consent is not an element of invasion of privacy. *See* I.C. § 35-46-1-15.1; *Dixon v. State*, 869 N.E.2d 516, 520 (Ind. Ct. App. 2007). Thus, there is no element of that offense that Shafer's consent would negate.

Moreover, the no contact order is between Brown and the State. The record is void of any evidence that Brown did not knowingly or intentionally violate the court's protective order. Therefore, even if Shafer had initiated and encouraged contact with Brown, he still, of his own volition, violated the State's no contact order against him. *See Dixon*, 869 N.E.2d at 520 (holding that in determining whether a defendant has committed invasion of privacy by violating a protective order, "we do not consider whether the victim knowingly ignored the protective order but, rather, whether the defendant knowingly violated the protective order"). Accordingly, we find the evidence sufficient to convict Brown of invasion of privacy.

Affirmed.

MAY, J., and KIRSCH, J., concur.