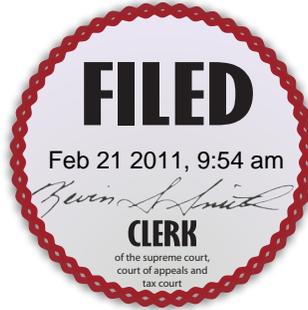


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JUAN STALLWORTH,
Appellant- Defendant,

vs.

STATE OF INDIANA,
Appellee- Plaintiff,

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No. 49A05-1007-CR-401

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Judge Clark H. Rogers, Judge
The Honorable Melissa H. Kramer, Commissioner
Cause No. 49G17-0910-FD-085686

February 21, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Chief Judge

Case Summary and Issues

Juan Stallworth appeals following a bench trial his convictions of battery and intimidation, Class D felonies, and criminal recklessness and driving while suspended, Class A misdemeanors. For our review, Stallworth raises one issue which we expand and restate as four: 1) whether sufficient evidence supports Stallworth's battery conviction; 2) whether sufficient evidence supports his intimidation conviction; 3) whether sufficient evidence supports his conviction of criminal recklessness; and 4) whether sufficient evidence supports his conviction of driving while suspended. Concluding the evidence is sufficient to support each of Stallworth's convictions, we affirm.

Facts and Procedural History¹

Stallworth had a five-year relationship with Dawn Coleman, which ended in September of 2009. On the evening of October 3, 2009, Stallworth called Coleman on her cell phone while she was driving home with her twelve-year-old daughter, S.D. Stallworth told Coleman he was waiting for her in front of her house, and she told him he needed to leave. Upon arriving home, Coleman pulled her vehicle into the driveway and saw Stallworth sitting in his parked vehicle across the street. Stallworth then got out of his vehicle and approached Coleman's vehicle, which Coleman and S.D. exited. S.D. went inside the house while Coleman tried to calm Stallworth, who was "cussing [] out" and "fussing" with Coleman. Transcript at 18. Coleman then began to walk toward the house but Stallworth shoved her back. S.D. opened the garage door, was crying, and held a knife in her hand. Coleman testified S.D. "just stood there and looked at [Stallworth]."

¹ The bench trial and sentencing were conducted by Master Commissioner Melissa Kramer. By statute, a master commissioner in Marion County "has the powers and duties prescribed for a magistrate," Ind. Code § 33-33-49-16(e), which include entering final judgment and sentence in a criminal case, Ind. Code §§ 33-23-5-5, 33-23-5-9.

Id. at 21. Stallworth “looked at [S.D.] and said, ‘I’m not scared of no knife,’” and “‘I will fuck you and your momma up.’” Id. S.D. testified she was “[k]ind of” afraid when Stallworth made this threat. Id. at 46.

While S.D. stood looking on, Stallworth and Coleman approached each other and Stallworth punched Coleman in the head, causing her pain. Stallworth also grabbed Coleman by her shirt and tried to throw her to the ground. He then started walking toward S.D., whereupon Coleman gathered herself and pushed Stallworth. Stallworth pulled Coleman’s hair, causing her pain. He then got into his vehicle and drove it “full force” in the direction of S.D., who was still standing in the driveway. Id. at 25-26. As Coleman was preparing to pull her vehicle into the garage, she heard the acceleration and turned to see Stallworth’s vehicle come within a few inches, or at most an arm’s reach, of striking S.D.

Stallworth drove away and Coleman called the police. An officer who responded to the call and received a description of Stallworth’s vehicle pulled Stallworth over as he was driving on West Washington Street. The officer requested and obtained Stallworth’s identification and noted his license was suspended.

At Stallworth’s bench trial, the trial court admitted into evidence Stallworth’s driving record from the Bureau of Motor Vehicles (“BMV”), as well as a petition for a protective order Stallworth sought against Coleman on October 16, 2009. The trial court found Stallworth guilty of battery as a Class D felony, intimidation as a Class D felony, criminal recklessness as a Class A misdemeanor, and driving while suspended as a Class A misdemeanor. The trial court held a sentencing hearing and sentenced Stallworth to

910 days, with 365 days executed on home detention through community corrections and 545 days suspended to probation. Stallworth now appeals.

Discussion and Decision

In reviewing claims of insufficient evidence, we neither reweigh the evidence nor judge the credibility of witnesses. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). We consider only the evidence most favorable to the verdict and the reasonable inferences therefrom. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). We affirm the conviction unless no reasonable trier of fact could find each element of the crime proven beyond a reasonable doubt. Id. “The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.” Id. at 147 (quotation omitted).

I. Battery

To convict Stallworth of battery, a Class D felony, as charged in the information, the State must prove beyond a reasonable doubt: 1) Stallworth knowingly, and in a rude, insolent or angry manner, touched Coleman; 2) Stallworth was at least eighteen years old; 3) Coleman was Stallworth’s family or household member; 4) the touching resulted in bodily injury to Coleman; and 5) Stallworth committed the battery in the physical presence of S.D., who was less than sixteen years old, knowing she was present and might be able to see or hear the offense. See Ind. Code § 35-42-2-1(a)(2)(M); Appellant’s Appendix at 22. Stallworth argues the State failed to prove Coleman was a “family or household member” within the meaning of the statute, as referenced at Indiana Code section 35-42-2-1(a)(2)(M) and defined in Indiana Code section 35-41-1-10.6. This definition of “family or household member” includes someone whom the defendant “is dating or has dated” or with whom the defendant “is or was engaged in a sexual

relationship.” Ind. Code § 35-41-1-10.6(a)(2), -(3). Coleman testified she and Stallworth had been in a “relationship,” tr. at 8, and Stallworth testified he went to Coleman’s house to “break up with her” id. at 92. In his petition for a protective order, Stallworth affirmed under penalty of perjury that he and Coleman 1) were, or had been, engaged in a sexual relationship, and 2) were dating or had dated each other. Exhibit Volume at 5. Thus, the evidence is sufficient to prove the nature of the former dating or sexual relationship between Stallworth and Coleman, and to support his conviction of battery.

II. Intimidation

To convict Stallworth of intimidation, a Class D felony, as charged in the information, the State must prove beyond a reasonable doubt Stallworth communicated a threat to S.D., with the intent to place S.D. in fear of retaliation for a prior lawful act, “to wit: for [Coleman] ending her earlier conversation with [Stallworth],” and the threat was to commit a forcible felony. Appellant’s App. at 24; see Ind. Code § 35-45-2-1. Stallworth acknowledges he communicated a threat, but argues the State failed to prove he did so in retaliation for a lawful act. He contends the evidence shows he threatened S.D. in response to seeing her with a knife or her actually threatening him with a knife. Stallworth’s argument might be a reasonable interpretation if the evidence regarding the knife were viewed in isolation. Looking at the whole picture and viewing the evidence most favorably to the verdict, however, S.D. displayed the knife only after Stallworth came uninvited onto Coleman’s property and shoved Coleman back as she tried to retreat inside the house. S.D. had the legal right to use reasonable force to defend Coleman and the property from Stallworth’s trespass. See Ind. Code § 35-41-3-2. According to Coleman’s testimony, S.D. did not point or swing the knife but merely held it while she

“stood there and looked at [Stallworth].” Tr. at 21. Moreover, the trial court could reasonably have found Stallworth threatened to “fuck . . . up” S.D. and Coleman not only because S.D. displayed the knife but also in retaliation for Coleman’s lawful act of trying to end the confrontation by retreating inside the house. Therefore, the evidence is sufficient to support Stallworth’s conviction of intimidation.

III. Criminal Recklessness

To convict Stallworth of criminal recklessness as a Class A misdemeanor, the State must prove beyond a reasonable doubt Stallworth recklessly, knowingly, or intentionally performed an act that created a substantial risk of bodily injury to S.D., and the conduct included use of a vehicle. See Ind. Code § 35-42-2-2(b), (c); Appellant’s App. at 25. Both Coleman and S.D. testified Stallworth drove his vehicle in the direction of S.D. at high speed, nearly striking her. Stallworth argues this testimony should be disregarded under the incredible dubiousity exception to the sufficiency standard of review.

Under this exception, testimony is incredibly dubious and may be disregarded on appeal only in “cases . . . where a sole witness presents inherently contradictory testimony which is equivocal or the result of coercion and there is a complete lack of circumstantial evidence of the appellant’s guilt.” Tillman v. State, 642 N.E.2d 221, 223 (Ind. 1994). Incredible dubiousity “is rare and the standard utilized is whether the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it.” Bradford v. State, 675 N.E.2d 296, 300 (Ind. 1996) (quotation omitted). There is nothing inherently improbable or contradictory about Stallworth accelerating his vehicle in the direction of S.D. and nearly striking her. To the extent

Stallworth challenges the ability of Coleman or S.D. to accurately perceive the event or recount the precise speed at which his vehicle traveled or its exact proximity to S.D., his argument amounts to an ordinary challenge to witness credibility such as we may not entertain on appeal. The evidence is sufficient to support Stallworth's conviction of criminal recklessness.

IV. Driving While Suspended

To convict Stallworth of driving while suspended as a Class A misdemeanor, the State must prove beyond a reasonable doubt Stallworth operated a vehicle upon a highway when he knew his license was suspended and when less than ten years had elapsed since the date judgment was entered for a prior unrelated offense of driving while suspended. See Ind. Code § 9-24-19-2; Appellant's App. at 27. Stallworth argues the State failed to prove that he knew his license was suspended.

A defendant's knowledge of his license suspension can be inferred from the printout of his BMV driving record showing a notice of suspension was mailed to him. Nasser v. State, 727 N.E.2d 1105, 1109 (Ind. Ct. App. 2000), trans. denied. An entry in the BMV record stating notice of suspension was mailed "constitutes prima facie evidence that the notice was mailed to the defendant's address as shown in the official driving record." Ind. Code § 9-14-3-7(c). Stallworth's BMV record shows his license was suspended indefinitely effective September 18, 2009.² This entry has a "Mail Date" of September 7, 2009. Ex. Vol. at 2. The BMV record also lists the history of Stallworth's addresses, the most recent being an address on Carpenter Circle, in

² The section of Stallworth's BMV record titled "Driver Remarks" has an entry stating, "License Effective: 09/25/2009, Duplicate ID Card, REGULAR ID CARD." Ex. Vol. at 4. This entry appears to indicate Stallworth received a non-license photo identification card from the BMV. The top of the BMV record gives his current "License Status" as "SUSPENDED - PRIOR." Id. at 2.

Indianapolis, with an “Effective Date” of September 28, 2004. Id. at 3. Thus, the BMV record established a prima facie case that notice of suspension was mailed to Stallworth at his most recent address on file with the BMV. The mailing of notice in turn permitted the trial court to infer Stallworth’s knowledge of his suspension. The trial court, as the judge of witness credibility, was not obligated to credit Stallworth’s testimony that he never received notice. While he testified the Carpenter Circle address was not his present residence, it was his obligation to keep the BMV apprised of his current address. See Ind. Code § 9-24-13-4; Fields v. State, 679 N.E.2d 898, 900 (Ind. 1997) (“The [BMV] may rely on the address which was last provided by the driver. . . . [T]he driver is required to provide it with an updated address. If the driver has not, the [BMV] may assume the address last given is the correct address to which to send a notice.”) (quotation omitted). Therefore, the evidence is sufficient to support Stallworth’s conviction of driving while suspended.

Conclusion

Sufficient evidence supports Stallworth’s convictions of battery, intimidation, criminal recklessness, and driving while suspended. The convictions are therefore affirmed.

Affirmed.

RILEY, J., and BROWN, J., concur.