



Donald Baker, III (“Baker”) appeals from his convictions of battery<sup>1</sup> and trespass,<sup>2</sup> each as a Class A misdemeanor. Baker presents the following issue for our review: Whether the incredible dubiousity rule renders the evidence insufficient to support his convictions.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

The facts most favorable to the conviction reveal that Chelsea Wilson (“Wilson”) and Baker had been in a tempestuous relationship for nearly a year and a half prior to July 2009, but did not live together. On July 13, 2009, Wilson returned to her apartment and observed that her front window was broken and that her door had been kicked in. Wilson believed that her apartment might have been burglarized and called the police. While the investigating officer was at Wilson’s apartment, Baker entered the apartment through the sliding glass door in the rear of the apartment. Baker admitted to Wilson that he had broken the window and kicked in the door of her Wilson’s apartment, told her that he did not want the police to be involved, and offered to pay for the repairs to Wilson’s apartment door and window. Wilson did not give Baker permission to break the window or kick in the door to her apartment. The officer left without arresting Baker at that time.

Baker returned to Wilson’s apartment on July 17, 2009 in order to pay her the agreed-upon amount for the repairs to her apartment window and door. After Baker arrived, he and Wilson argued about aspects of their relationship. During the argument, Baker struck Wilson

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<sup>1</sup> Ind. Code § 35-42-2-1(a)(1)(A).

<sup>2</sup> Ind. Code § 35-43-2-2(a)(2).

in the left eye region with his closed fist, and she fell to the couch. Wilson's injury caused her pain and resulted in bruising and a black eye that lasted for approximately two months. Wilson asked Baker to leave her apartment, but he refused, instead suggesting that she put some ice on her injury. Wilson estimated that she made four to five requests that Baker leave her apartment before she locked herself in the bathroom of the apartment. Baker left Wilson's apartment approximately fifteen to twenty minutes after Wilson first requested that he leave.

Wilson was confused as to how to proceed after being injured by Baker, and delayed contacting the police because she was skeptical that they would proceed against him as they had not done so when she contacted them about the broken door and window. Wilson did take photographs of the injuries to her face on the date of the argument, however, and contacted the police to report the incident a week later, on July 24, 2009.

The State charged Baker with domestic battery, battery, trespass, and criminal mischief. The officer who responded to the initial burglary investigation, Wilson, and Baker each testified at Baker's bench trial. Baker denied hitting Wilson and claimed that he had immediately left the apartment when Wilson requested that he leave. Wilson's testimony was consistent with the facts described above. The officer testified that he heard Baker tell Wilson that he was not worried about the broken window as he could pay for it.

At the conclusion of the State's case, the trial court granted Baker's motion for judgment on the evidence as to the domestic battery count. At the conclusion of the bench trial, the trial court found Baker guilty of trespass and battery and not guilty of criminal

mischief. Baker was sentenced to 365 days imprisonment, with 361 days suspended to probation and credit for four days executed for the battery conviction, and to a concurrent term of 365 days imprisonment, with 361 days suspended to probation and credit for four days executed for the trespass conviction. Baker now appeals.

### **DISCUSSION AND DECISION**

Baker claims that the evidence is insufficient to support his convictions. Our standard of review for such claims is well-settled. When reviewing the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the conviction. *Boyd v. State*, 889 N.E.2d 321, 325 (Ind. Ct. App. 2008). We do not assess witness credibility or reweigh the evidence. *Id.* We consider conflicting evidence most favorably to the trial court's ruling. *Id.* We affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Id.* It is not necessary that the evidence overcome every reasonable hypothesis of innocence. *Id.* The evidence is sufficient if an inference may reasonably be drawn from it to support the conviction. *Id.*

In order to establish that Baker committed the offense of Class A misdemeanor battery, the State was required to prove beyond a reasonable doubt that Baker knowingly or intentionally touched Wilson in a rude, insolent, or angry manner resulting in bodily injury to Wilson. *See* Ind. Code § 35-42-2-1(a)(1)(A). In order to establish that Baker committed the offense of Class A misdemeanor trespass, the State was required to prove beyond a reasonable doubt that Baker, who did not have a contractual interest in Wilson's property,

knowingly or intentionally refused to leave Wilson's property after having been asked to leave by Wilson. *See* Ind. Code § 35-43-2-2(a)(2).

Our review of the record leads us to the conclusion that the trial court correctly determined that the State had sufficiently established that Baker hit Wilson in the left eye area with a closed fist causing her to have pain, swelling, bruising, and a black eye. The record also demonstrates that the State sufficiently established that Wilson made four to five separate requests of Baker to leave her apartment, and that Baker refused to comply until some fifteen to twenty minutes later. The evidence is sufficient to support Baker's convictions.

Baker argues that the evidence is not sufficient because Wilson's testimony was incredibly dubious. Under the incredible dubiousity rule, a defendant's conviction may be reversed if a sole witness presents inherently improbable testimony, and there is a complete lack of circumstantial evidence. *Love v. State*, 761 N.E.2d 806, 810 (Ind. 2002). The rule is applicable only where the court has confronted inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiousity. *Id.* Application of this rule is rare and the standard to be applied is whether the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it. *Id.*

Baker supports his argument by pointing to what he claims are inconsistencies in Wilson's testimony. We disagree with Baker's characterization of her testimony. Wilson was consistent in her claims that Baker hit her with a closed fist in the left eye area and that he refused to leave her apartment after she repeatedly requested that he do so. Furthermore,

the fact that Wilson waited for approximately a week to report the battery is consistent with her testimony that her relationship with Baker was tumultuous and not solid. She offered the explanation that she waited to report the crime because she was skeptical about what the police officers would do if she did make such a report. This testimony is not improbable.

Baker admitted that he came to Wilson's apartment on the date of the battery to pay for the broken window. That testimony was consistent with that of Wilson and the police officer who investigated the earlier suspected burglary. The only inconsistencies in the testimony are the contradictions between Wilson's version and Baker's version of the events. These contradictions do not amount to incredibly dubious testimony.

Additionally, incredibly dubious testimony lacks corroborating circumstantial evidence. *Love*, 761 N.E.2d at 810. Here, there was photographic evidence of Wilson's injuries that corroborated her testimony about the injuries to her left eye.

In sum, Baker's argument that Wilson's testimony was incredibly dubious is merely a request for us to reweigh the evidence and reassess the credibility of the witnesses, a task we are forbidden to undertake. We will not reweigh the evidence and reassess the credibility of witnesses when the claim involves contradictory evidence between witnesses rather than inherent contradiction of a witness's own testimony. *Altes v. State*, 822 N.E.2d 1116, 1123 (Ind. Ct. App. 2005).

Affirmed.

CRONE, J., and BRADFORD, J., concur.