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IN THE
COURT OF APPEALS OF INDIANA

ANTHONY MCCOY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-1007-CR-746
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Lisa F. Borges, Judge
Cause No. 49G04-1003-FB-20765

February 22, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Anthony McCoy appeals his convictions for robbery as a class B felony,[1] criminal recklessness as a class A misdemeanor,[2] and intimidation as a class A misdemeanor.[3] McCoy raises one issue which we revise and restate as whether the evidence is sufficient to sustain his convictions. We affirm.

The facts most favorable to McCoy's convictions follow. At about 3:30 or 4:00 p.m. on March 1, 2010, Jonathon Slayton was involved in an automobile accident with two other cars, one of which was a maroon 1990 Cadillac driven by McCoy, near the intersection of Keystone Avenue and 38th Street in Marion County. McCoy was "very irate" after the accident and "was threatening" Slayton. Transcript at 12. Slayton and McCoy exchanged phone numbers, the police were called, and a police report was prepared. McCoy stated that he wanted $300 from Slayton, and Slayton agreed and asked to "get that in writing." Id. at 30. Slayton asked for paperwork and "wanted to see the registration of the car and some ID." Id. at 30-31. A few minutes later, McCoy said he wanted $500. Slayton did not "make . . . a time or a date" that he was going to pay McCoy. McCoy "wouldn't let [Slayton] speak," "just kept threatening" him, and said that he "was gonna kill everybody in [Slayton's] house" during the heated conversation. Id. at 33. After leaving the scene of the accident, McCoy followed Slayton home and gave Slayton his sister's business card.

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[1] Ind. Code § 35-42-5-1 (2004).

[2] Ind. Code § 35-42-2-2 (Supp. 2006).

[3] Ind. Code § 35-45-2-1 (Supp. 2006).

During the week following the accident, between March 1, 2010 and March 9, 2010, McCoy "must have contacted [Slayton] fifty times" and threatened him. Id. at 32. During one phone conversation, Slayton offered to fix McCoy's car himself. During the calls, McCoy "just want[ed] more stuff and [said] there's more things wrong with his car . . . ." Id. at 34.

At about 2:00 p.m. on March 9, 2010, Slayton, who was riding a moped, pulled into a parking lot near the intersection of Keystone Avenue and 38th Street to cash his paycheck. Slayton heard a car horn honk and noticed McCoy's maroon Cadillac behind his moped. McCoy followed closely behind Slayton's moped, and Slayton was "scared to turn or hit the brake at all." Id. at 14. McCoy "accelerated after [Slayton] so quick that [Slayton] was scared [he] was gonna get hit." Id. at 16. Slayton "full-throttled" down an alley and McCoy continued to chase him. Id. Slayton went down an alley that "was grass pretty much" and "didn't think [McCoy] would even go down" the alley. Id. Slayton temporarily lost McCoy in some apartments until McCoy eventually appeared and "cut [Slayton] off." Id. McCoy continued to chase Slayton and pulled up beside Slayton's moped and swerved at him, which forced Slayton to go over a curb at about "thirty-five, forty mile [sic] an hour," causing damage to the moped. Id. At some point during the chase, Slayton called his brother on his cell phone to tell him that he was being chased and "to let him know if I don't make it home who the guy was that killed me or whatever . . . ." Id. at 22.

Slayton drove his moped into an alley and noticed a blue car pull up behind him and McCoy pull in approximately twelve to fifteen feet in front of him so that he was

blocked in the alley. McCoy exited his vehicle, said "[t]hat scooter's mine," and "came running at [Slayton]." Id. at 18. Slayton put his hands up, but McCoy choked and hit Slayton in the face causing him to fall to the ground. McCoy then began "going in [Slayton's] pockets" and took a cell phone out of a small pocket in Slayton's pants. Id. at 19. Slayton attempted to hide the money he had with him by taking the money out of a pocket and holding it in his hand. McCoy ripped the money, which was at least $460, out of Slayton's hand, and pulled Slayton's jacket off over his head. McCoy told the driver of the other car: "Just take his shit, he's a fag." Id. at 20. Slayton fought the driver of the other car to prevent him from taking the moped.

The police were dispatched to the area after receiving information that someone was being chased by a vehicle and discovered Slayton bleeding and walking through a gas station. Slayton reported what had happened to the police. After Slayton spoke to the police, McCoy, using the cell phone he had taken from Slayton, called Slayton's brother and stated: "You know I have goons at the gas station. I have goons everywhere. I was sitting across the lot watching you talk to the police and that's not healthy" and "You talking to the police, that's not healthy." Id. at 23. Slayton's injuries included a swollen mouth, cuts inside his mouth, and scrapes and cuts to his hands, elbow, and neck. Slayton left Indianapolis because McCoy had threatened to burn his house down. Slayton later identified McCoy in a photo lineup.

On March 18, 2010, the State filed an information charging McCoy with: Count I, robbery as a class B felony; Count II, criminal recklessness as a class A misdemeanor; and Count III, intimidation as a class A misdemeanor. On June 11, 2010, the trial court

conducted a bench trial, at which the State introduced the testimony of Slayton and two police officers and other evidence including photographs of Slayton's moped, the injuries to Slayton's face, neck, arm, and hands, and Slayton's previous photo-lineup identification of McCoy. After the trial, the court found McCoy guilty as charged. The court sentenced McCoy to eight years with two years suspended for the conviction under Count I, one year suspended to probation for his conviction under Count II to be served consecutive to the sentence under Count I, and one year suspended for the conviction under Count III to run concurrent with the sentence under Count II.

The issue is whether the evidence is sufficient to sustain McCoy's convictions. When reviewing the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). 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. (quoting Jenkins v. State, 726 N.E.2d 268, 270 (Ind. 2000)). It is not necessary that the evidence overcome every reasonable hypothesis of innocence. Id. at 147. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. Id. "It is well-established that 'the uncorroborated testimony of one witness may be sufficient by itself to sustain a conviction on appeal.'" Scott v. State, 871 N.E.2d 341, 343 (Ind. Ct. App. 2007) (quoting Toney v. State, 715 N.E.2d 367, 369 (Ind. 1999)), trans. denied.

McCoy argues that the evidence presented at trial was insufficient to establish that he "took the property in question from [Slayton,] intimidated him, or placed him at risk while driving a vehicle;" that "[i]nstead, the evidence is consistent with a simple disagreement between [McCoy] and [Slayton];" and that "[t]he testimony of [Slayton] was incredibly dubious and cannot be relied upon to sustain the conviction in this cause." Appellant's Brief at 10. McCoy asserts that "[t]he testimony of each man tracks the other's up until that point of the confrontation in the alley." Id. McCoy argues that Slayton acknowledged "a debt of three hundred dollars" to McCoy, that "[t]he evidence is clear that [Slayton] had been unwilling or unable to satisfy the debt . . . ," and that Slayton's "version of events are [sic] inherently improbable on their face." Id. at 11. Specifically, McCoy argues that "[t]he idea that a car chased a moped for any distance without catching it or running it over is difficult to grasp" and that "running through grass, over a curb, and the mysterious second car just in time to block the alley are likewise inherently improbable." Id. McCoy also argues there were no eyewitnesses to the events that occurred in the alley, that Slayton was "[t]he only witness who placed blame on" McCoy, that there was a lack of circumstantial evidence pointing to him, and that "[t]he entire case comes down to [Slayton's] credibility." Id. at 11-12.

The State argues that the evidence presented at trial was sufficient to establish beyond a reasonable doubt that McCoy committed the three offenses for which he was convicted. The State argues that Slayton's testimony "was not wholly uncorroborated" because Slayton "called his brother while he was being chased by McCoy" and "[h]is brother came to the scene and spoke to police." Appellee's Brief at 8. The State argues

that there was nothing incredibly dubious or inherently improbable about Slayton's testimony, that Slayton's "account of the attack did not run counter to human experience and was not such that no reasonable person could believe it," and that Slayton's version "simply conflicted with McCoy's version of the incident." Id.

McCoy appears to argue that the evidence is insufficient to support his three convictions under the incredible dubiosity rule. The incredible dubiosity rule applies only in very narrow circumstances. See Love v. State, 761 N.E.2d 806, 810 (Ind. 2002). The rule is expressed as follows:

> If a sole witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence, a defendant's conviction may be reversed. This is appropriate only where the court has confronted inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiosity. 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.

Fajardo v. State, 859 N.E.2d 1201, 1208 (Ind. 2007) (quoting Love, 761 N.E.2d at 810), superseded in part by statute on other grounds.

McCoy fails to show that the testimony of Slayton was inherently contradictory. To the extent McCoy points to Slayton's testimony to show that it conflicted with McCoy's testimony or that McCoy's testimony was more believable, we note that this is an issue of witness credibility. The function of weighing witness credibility lies with the trier of fact, not this court. Whited v. State, 645 N.E.2d 1138, 1141 (Ind. Ct. App. 1995). We cannot reweigh the evidence and judge the credibility of the witnesses. See Drane, 867 N.E.2d at 146. Also, to the extent that certain evidence supporting the crimes was

presented by the testimony of Slayton only, we note as previously mentioned that "the uncorroborated testimony of one witness may be sufficient by itself to sustain a conviction on appeal." Scott, 871 N.E.2d at 343 (quoting Toney, 715 N.E.2d at 369). Further, we cannot say that Slayton's testimony regarding the events of March 9, 2010, including the testimony that McCoy pursued or chased Slayton, who was riding a moped, through alleys, over grass areas and over a curb, and that eventually McCoy's vehicle and another vehicle blocked Slayton in an alley, was so inherently improbable that no reasonable person could believe it. McCoy does not point to Slayton's testimony to show that Slayton contradicted himself or that Slayton's testimony was otherwise somehow internally inconsistent. We find that McCoy has not shown Slayton's testimony to be incredibly dubious. See Surber v. State, 884 N.E.2d 856, 869 (Ind. Ct. App. 2008) (holding that the testimony of the victim was not so incredibly dubious or inherently improbable that no reasonable person could believe it), trans. denied.

Based upon our review of the evidence as set forth in the record and above, we conclude that sufficient evidence exists from which the court could find McCoy guilty beyond a reasonable doubt of robbery, criminal recklessness, and intimidation. See Griffith v. State, 898 N.E.2d 412, 416-418 (Ind. Ct. App. 2008) (holding that the evidence was sufficient to support the defendant's convictions for criminal recklessness and intimidation); Proffit v. State, 817 N.E.2d 675, 682 (Ind. Ct. App. 2004) (holding that the evidence was sufficient to sustain the defendant's conviction for robbery as a class B felony), trans. denied.

For the foregoing reasons, we affirm McCoy's convictions for robbery as a class B felony, criminal recklessness as a class A misdemeanor, and intimidation as a class A misdemeanor.

Affirmed.

ROBB, C.J., and RILEY, J., concur.