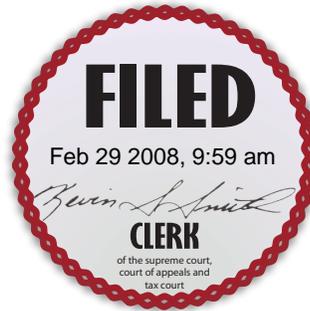


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

SHAUNA L. DAVIS,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 02A03-0706-CR-296

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Robert E. Ross, Magistrate
Cause No. 02D04-0703-CM-1357

February 29, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Shauna L. Davis appeals her conviction and sentence for one count of battery¹ as a Class B misdemeanor. On appeal, Davis contends that the “incredible dubiousity” rule renders the evidence insufficient to support her battery conviction.

We affirm.

FACTS AND PROCEDURAL HISTORY

On March 7, 2007, Davis’s daughter was involved in an incident with L.T.’s son while the children were exiting the school bus at their bus stop. Shortly thereafter, L.T. approached the bus stop and confronted Davis’s daughter about the incident. L.T. and her children then got into their truck that was parked nearby. Davis was at her house, which was near the scene of the confrontation. Upset about the confrontation, Davis went to the scene. As she approached the truck, Davis made gestures and shouted obscenities at L.T. L.T. exited the truck and exchanged words with Davis. Davis poked L.T. in the face multiple times before returning to her residence. L.T.’s son and daughter viewed the incident from their seats in the truck. Police arrived at the scene of the incident after receiving a 9-1-1 call from L.T. and were directed by L.T. to Davis’s residence where they arrested Davis for battery.

Davis was charged with one count of battery as a Class B misdemeanor and, after a jury trial, was found guilty as charged. The trial court sentenced Davis to 180 days in jail and suspended the sentence, contingent upon Davis completing an anger management program. Davis now appeals.

¹ See IC 35-45-2-1.

DISCUSSION AND DECISION

On appeal, Davis claims the evidence was insufficient to support her conviction because the evidence was “so improbable as to be reversed under the incredible dubiousity rule.” *Appellant’s Br.* at 6. Our standard of review for sufficiency of the evidence is well established. *Altes v. State*, 822 N.E.2d 1116, 1121 (Ind. Ct. App. 2005), *trans. denied*. We will neither reweigh the evidence nor assess the credibility of the witnesses. *Id.* We will look at the evidence most favorable to the judgment together with all reasonable and logical inferences to be drawn therefrom. *Id.* We will affirm the conviction if there is substantial evidence of probative value from which a reasonable trier-of-fact could have found the defendant guilty beyond a reasonable doubt. *Id.*

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.*

In order to convict Davis of battery as Class B misdemeanor, the State was required to prove beyond a reasonable doubt that Davis knowingly or intentionally touched L.T. in a rude, insolent, or angry manner. IC 35-42-2-1. Evidence of touching, however slight, is sufficient to uphold Davis’s battery conviction. *Mishler v. State*, 660

N.E.2d 343, 348 (Ind. Ct. App. 1996) (citing *Shaw v. State*, 239 Ind. 248, 156 N.E.2d 381, 382 (Ind. 1959); *Halligan v. State*, 176 Ind. App. 463, 375 N.E.2d 1151, 1157 (Ind. Ct. App. 1978)). In the case at hand, the State presented testimony from L.T. that Davis poked L.T. in the forehead multiple times with Davis's fingers. *Tr.* at 100. The State also presented testimony from L.T.'s son and daughter that Davis poked L.T. in the forehead with her fingers at least once. *Id.* at 117, 124-25.

Davis argues that the evidence was insufficient to prove beyond a reasonable doubt that Davis was guilty of battery because the State's witnesses' testimony is contradictory, rendering it inherently improbable or incredibly dubious. *Appellant's Br.* at 9. Davis contends L.T.'s testimony contradicts her pretrial statement to the police regarding the number of times Davis poked L.T. *Id.* at 7. Davis also argues L.T.'s testimony contradicts her children's testimony regarding the number of times Davis poked L.T. in the face. *Id.* Lastly, Davis asserts that the testimony of L.T. and her children is highly questionable because L.T.'s testimony differs from her children's regarding whether the truck's windows were rolled up. *Id.* These contradictions, Davis argues, renders their testimony incredibly dubious. *Id.* at 9.

The incredible dubiousity rule does not apply here. First, the rule applies to conflicts in trial testimony, not to conflicts between trial testimony and statements made to police before trial. *See Buckner v. State*, 857 N.E.2d 1011, 1018 (Ind. Ct. App. 2006). Additionally, the incredible dubiousity rule applies when a *sole* witness presents inherently improbable or coerced, equivocal, wholly uncorroborated testimony, and there is a complete lack of circumstantial evidence. *Love*, 761 N.E.2d at 810. Here, L.T. was not

the only witness that testified to the battering. L.T.'s son and daughter also testified that Davis struck L.T. *Tr.* at 117, 124-25. Consequently, the incredible dubiousity rule fails. Moreover, Davis's request that we review the contradictions in the testimony of L.T. and her children is asking us to reweigh the evidence, which we will not do. *Altes*, 822 N.E.2d at 1121.

Lastly, Davis asserts that the testimony of her witnesses was more plausible and consistent than the testimony of the State's witnesses. *Appellant's Br.* at 8. Again, we will neither engage in reweighing the evidence nor in assessing the credibility of the witnesses. *Altes*, 822 N.E.2d at 1121. Consequently, we will not consider the credibility of Davis and the State's witnesses' testimony on review.

Affirmed.

RILEY, J., and MAY, J., concur.