

Case Summary

Riselle Bonner appeals his convictions for strangulation and domestic battery. Bonner contends the evidence is insufficient to support his convictions because the victim's testimony is incredibly dubious. Bonner also contends that his convictions violate Indiana's prohibition against double jeopardy. Finding that there is sufficient evidence to support his convictions but that the convictions violate the prohibition against double jeopardy, we affirm in part, reverse in part, and remand with instructions for the trial court to vacate the domestic battery conviction and sentence.

Facts and Procedural History

On February 21, 2008, Laura Spiller, the mother of Bonner's son, offered Bonner a ride home after they had attended proceedings in the Allen County Juvenile Court regarding their son. On the way to Bonner's home, Laura stopped at a gas station so the pair could purchase food and drinks. After leaving the gas station, Laura and Bonner began arguing about their son. As the argument escalated, Laura drove to an alley behind Bonner's home and ordered him to exit from her car. When he refused, Laura threatened to drive him to the police station. Bonner then ordered her to stop the car. When Laura stopped the car, Bonner grabbed her around her throat. Laura could not breathe or swallow. Bonner then left the car, and Laura called the police. When the police arrived, they found Laura crying, shaking, and nervous. Laura was taken to the hospital, where a physician's assistant noticed discoloration on Laura's neck. Laura was treated with pain and nausea medication and released.

The State charged Bonner with strangulation as a Class D felony¹ and domestic battery as a Class A misdemeanor.² After a bench trial, Bonner was found guilty of both counts. On Count I, the trial court sentenced Bonner to one-and-one-half years in the Department of Correction, with 180 days executed and one year suspended, along with one-and-one-half years on probation. On Count II, the trial court sentenced Bonner to 180 days executed in the Department of Correction. The trial court ordered the sentences to be served concurrently. Bonner now appeals.

Discussion and Decision

On appeal, Bonner argues that the evidence is insufficient to support his conviction because Laura's testimony is incredibly dubious. Bonner also argues that his two convictions violate Indiana's prohibition against double jeopardy.

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. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). It is the factfinder'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. *Id.* To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider only the evidence most favorable to the trial court's ruling. *Id.* Appellate courts affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Id.* (quotation omitted). It is therefore not necessary that the evidence "overcome every reasonable hypothesis of innocence." *Id.* at 147 (quotation

¹ Ind. Code § 35-42-2-9.

² Ind. Code § 35-42-2-1.3(a).

omitted). The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. *Id.*

To support Bonner's conviction for strangulation as a Class D felony, the state must prove that Bonner knowingly or intentionally, and in a rude, angry, or insolent manner, applied pressure to Laura's throat or neck or obstructed Laura's nose or mouth in a manner that impeded normal breathing or blood circulation. I.C. § 35-42-2-9. To support Bonner's conviction for domestic battery as a Class A misdemeanor, the state must prove that Bonner has a child with Laura and knowingly or intentionally touched Laura in a rude, insolent, or angry manner that resulted in bodily injury to Laura. I.C. § 35-42-2-1.3.

The incredible dubiousity rule applies where a sole witness presents inherently contradictory testimony that is equivocal or the result of coercion and there is a complete lack of circumstantial evidence of the defendant's guilt. *James v. State*, 755 N.E.2d 226, 231 (Ind. Ct. App. 2001), *trans. denied*. "[A]pplication of this rule is rare and . . . the standard to be applied is whether the testimony is so incredibly dubious or inherently improbable that no person could believe it." *Stephenson v. State*, 742 N.E.2d 463, 497 (Ind. 2001) (citation omitted).

Bonner contends that Laura's testimony was incredibly dubious because there was no evidence in the record other than Laura's testimony proving that Bonner strangled and battered her. Because there is corroborative evidence of his guilt, Bonner is mistaken that the incredible dubiousity rule applies. Police officers responding to Laura's call for help found her crying, shaking, and nervous. A physician's assistant treating Laura at the

hospital observed discoloration on Laura's neck. Further, we note that Bonner has failed to point to any inconsistency in Laura's testimony. Bonner's argument is an invitation for us to reweigh the evidence supporting his convictions, and we decline to do so.

Bonner also argues that his two convictions violate Indiana's double jeopardy prohibition. Article I, § 14 of the Indiana Constitution provides in part, "No person shall be put in jeopardy twice for the same offense." If, with respect to either the statutory elements of the challenged crimes or the actual evidence used to convict a defendant, the essential elements of one challenged offense also establish the elements of another challenged offense, the offenses violate Indiana's prohibition against double jeopardy. *Richardson v. State*, 717 N.E.2d 32, 49-50 (Ind. 1999).

The State concedes that the same evidence was used to convict Bonner of strangulation and domestic battery based on one act, namely, Bonner's act of placing and tightening his hands around Laura's neck. We agree and remand to the trial court with instructions to vacate Bonner's conviction and sentence for domestic battery as a Class A misdemeanor.

Affirmed in part, reversed in part, and remanded.

RILEY, J., and DARDEN, J., concur.