

Case Summary

Bryant Carr appeals his convictions for Class D felony strangulation and Class A misdemeanor battery. We affirm.

Issue

The sole issue before us is whether there is sufficient evidence to support Carr's convictions.

Facts

The evidence most favorable to the convictions is that, on June 18, 2010, K.J. was at home celebrating her birthday with Carr, her boyfriend at the time. K.J. and Carr had been drinking alcohol that day, and later they both smoked crack cocaine. K.J. and Carr began arguing, and Carr repeatedly struck K.J. in the face with his fists. K.J. asked Carr to stop hitting her, and Carr replied, "The more you cry b****, the more I'm gonna hit you." Tr. p. 10. The punching caused K.J. pain and swelling and bruising on her face. After Carr had repeatedly punched K.J., he placed his hands around her neck and squeezed until K.J. was unable to breathe. Finally, Carr allowed K.J. to go to the restroom, where she managed to escape through a window and sought help from a neighbor.

The State charged Carr with Class D felony strangulation, Class D felony battery, and Class A misdemeanor battery. The State later dismissed the Class D felony battery charge. On July 26, 2010, a bench trial was held, after which the trial court found Carr guilty as charged. Carr now appeals.

Analysis

Carr challenges the sufficiency of the evidence supporting both of his convictions. When reviewing the sufficiency of the evidence to support a conviction, we do not reweigh the evidence or judge the credibility of the witnesses, and respect the fact-finder's exclusive province to weigh conflicting evidence. Jackson v. State, 925 N.E.2d 369, 375 (Ind. 2010). We consider only the probative evidence and reasonable inferences therefrom that support the conviction. Id. We will affirm if the probative evidence and reasonable inferences from that evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. Id.

Carr acknowledges that K.J. testified as to facts that would support convictions for Class D felony strangulation and Class A misdemeanor battery. Regardless, he contends that K.J.'s testimony was incredibly dubious and should be disregarded. Under the "incredible dubiousity" rule, an appellate court may impinge upon the fact-finder's function of judging witness credibility if a conviction is based upon the testimony of a single witness whose testimony is inherently improbable, and there is a complete lack of circumstantial evidence. Fajardo v. State, 859 N.E.2d 1201, 1208 (Ind. 2007). To be "incredibly dubious," testimony must be inherently improbable or coerced, equivocal, and wholly uncorroborated. 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. (quoting Love v. State, 761 N.E.2d 806, 810 (Ind. 2002)).

The main thrust of Carr's argument is that K.J.'s testimony regarding what occurred was incredibly dubious because K.J. admitted to drinking alcohol and ingesting cocaine before the attack occurred. However, it is clear that assessing the impact of drug or alcohol use on a witness's capacity to observe and testify is the fact-finder's job, not that of an appellate court. Appleton v. State, 740 N.E.2d 122, 128 (Ind. 2001). "That a witness might be impaired at the time of the crime should not cast such a shadow on his or her testimony as to render it incredibly dubious." Id. Here, K.J. testified that she was able to clearly recall what had happened on June 18, 2010, despite her drug and alcohol usage. It was the trial court's duty as fact-finder to gauge K.J.'s credibility, not ours.

Similarly, Carr makes an argument that K.J.'s testimony regarding the strangulation was incredibly dubious because there was some confusion in her testimony about whether a mark on her neck photographed by police resulted from the strangulation, or was a "passion mark." Tr. p. 17. Regardless of what caused the mark, however, K.J.'s unequivocal testimony was that Carr placed his hands around her neck and squeezed until she could not breathe, which by itself was sufficient to support Carr's strangulation conviction. See Ind. Code § 35-42-2-9(b) (providing that a person commits strangulation when he or she applies pressure to the throat or neck of another person in a manner that impedes the other person's normal breathing). K.J.'s testimony was not inherently improbable. The trial court was in the appropriate position to weigh evidence and judge witness credibility, and we will not second-guess its determinations.

Conclusion

There is sufficient evidence to support Carr's convictions for Class D felony strangulation and Class A misdemeanor battery. We affirm.

Affirmed.

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