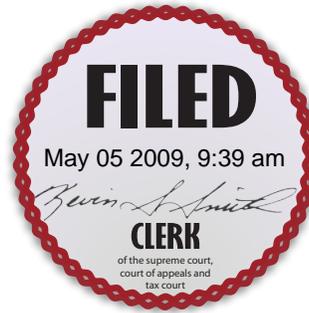


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

NATHAN BROCK,)
)
Appellant-Defendant,)
)
vs.) No. 38A04-0812-CR-715
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE JAY SUPERIOR COURT
The Honorable Joel D. Roberts, Judge
Cause No. 38D01-0704-FC-2

May 5, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Nathan Brock (Brock), appeals his conviction for operating a vehicle after forfeiture of license for life, a Class C felony, Ind. Code § 9-30-10-17.

We affirm.

ISSUE

Brock raises one issue on appeal, which we restate as follows: Whether the State presented sufficient evidence beyond a reasonable doubt to sustain his conviction.

FACTS AND PROCEDURAL HISTORY

On April 21, 2007, at approximately midnight, Chief Deputy Marshal Tracy Layman of the Redkey Police Department (Officer Layman) observed a silver Pontiac Fiero parked at the Pak-a-Sak parking lot in Redkey, Indiana. He noticed a tall male with dark hair, later identified as Brock, exit the driver's side of the vehicle, while a shorter male with blond hair, later identified as Michael LeMaster, exit the passenger's side. Both men stepped away from the vehicle for about a minute and when they returned, Brock entered the driver's side of the vehicle.

Leaving the Pak-a-Sak parking lot, Brock turned onto State Road 67, with Officer Layman following the Pontiac. After the car came to a three-way stop on Main Street, the vehicle stalled in the intersection. Officer Layman activated his emergency lights, came to a stop behind the Pontiac, and watched Brock exit from the driver's side. Officer Layman informed dispatch of his location, exited his vehicle, and walked over to Brock who was checking the vehicle's engine. Brock told Officer Layman that he was driving the car when

it stalled. After verifying Brock's name and date of birth with dispatch, Officer Layman was informed that Brock's license had been suspended for life. Officer Layman placed Brock under arrest.

On April 26, 2007, the State filed an Information charging Brock with operating a motor vehicle after forfeiture of license for life, a Class C felony, I.C. § 9-30-10-17. On October 24, 2008, after hearing the evidence, the jury found Brock guilty as charged. On November 20, 2008, the trial court sentenced Brock to three years executed.

Brock now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Brock contends that the evidence presented by the State is insufficient to support his conviction because Officer Layman's testimony was unreliable. Our standard of review with regard to sufficiency claims is well settled. In reviewing sufficiency of the evidence claims, this court does not reweigh the evidence or judge the credibility of the witnesses. *Williams v. State*, 714 N.E.2d 671, 672-73 (Ind. Ct. App. 1999). We only consider the evidence most favorable to the verdict and the reasonable inferences therefrom and will affirm if there is substantial evidence of probative value to support the conclusion of the trier-of-fact. *Id.* at 673. Reversal is only appropriate when reasonable persons would be unable to form inferences as to each material element of the offense. *Mabbitt v. State*, 703 N.E.2d 698, 700 (Ind. Ct. App. 1998).

Brock now asserts that Officer Layman's testimony was incredibly dubious. Specifically, he claims that the Officer's testimony was contradicted by the location of the

Pak-a-Sak and by the dispatch log. Under the incredible dubiousity rule, a court will impinge on the jury's responsibility to judge the credibility of the witness only when it is confronted with inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiousity. *White v State*, 706 N.E.2d 1078, 1079 (Ind. 1999) (quoting *Tillman v. State*, 642 N.E.2d 221, 223 (Ind. 1994) (internal quotation omitted)); *Stephenson v. State*, 742 N.E.2d 463, 497 (Ind. 2001) *cert. denied* 128 S.Ct. 1871 (2007). "When a sole witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence, a defendant's conviction may be reversed." *White*, 706 N.E.2d at 1079. However, we have recognized that the application of this rule is rare and is limited to cases where the sole witness' testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it. *Stephenson*, 742 N.E.2d at 497.

First, Brock claims that Officer Layman would not have had an unobstructed view of the Pak-a-Sak parking lot as the Officer was half a block away and there were trees, shrubs, and buildings in his line of sight. However, Brock's claim amounts to a request to reweigh Officer Layman's credibility. During his entire testimony, Officer Layman maintained that even though there were trees and a building between him and the Pak-a-Sak's parking lot, he noticed Brock exit the driver's side of the Pontiac and LeMaster exit the passenger's side. Brock does not point to any inherent contradiction within Officer Layman's testimony.

Next, Brock references the dispatch log to point to discrepancies between the timing on the dispatch log and Officer Layman's testimony. In particular, Brock notes that the times indicated on the dispatch log amount to a much longer stop than Officer Layman testified to.

Again, we conclude that the incredible dubiousity rule does not apply. As we stated before, the rule only concerns inherent contradictions in the in-court testimony of a single witness. The rule does not apply where there are inconsistencies between the testimony of a witness and a document, used to impeach the witness' testimony. Even when Officer Layman was confronted in cross-examination with the time delays, as evidenced in the dispatch log, he never contradicted his testimony that he saw Brock exit the driver's side of the Pontiac.

Based on the evidence before us, we do not conclude that Officer Layman presented inherently improbable testimony. *See White*, 706 N.E.2d at 1079. Accordingly, we hold that there is substantial evidence of probative value to support the conclusion of the trier-of-fact. *See Williams*, 714 N.E.2d at 673.

CONCLUSION

Based on the foregoing, we conclude that the State presented sufficient evidence beyond a reasonable doubt to sustain Brock's conviction.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.