MEMORANDUM DECISION

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

C.G.,

Appellant-Defendant,

v.

State of Indiana,

Appellee-Plaintiff

May 27, 2008

Court of Appeals Case No. 49A04-0711-CR-632

Appeal from the Marion Superior Court

The Honorable Clark Rogers, Judge

Trial Court Cause No. 49G16-0505-FD-80817

Bradford, Judge.

Case Summary

[1] In this belated appeal, Appellant-Defendant C.G. challenges his convictions, following a bench trial, for Pointing a Firearm as a Class D felony[1] and Domestic Battery as a Class A misdemeanor.[2] C.G. claims there was insufficient evidence to support each conviction. We affirm.

Facts and Procedural History

[2] On May 13, 2005, Indianapolis Police Department Officers David Drane and Charles Rhodes responded to a call at 3127 East 38th Street, which was C.G.'s residence. Upon arriving, Officer Drane observed Retta Kizer, who is C.G.'s ex-wife, and their nine-year-old daughter, Camirra, approaching him and crying. Both Officers Drane and Rhodes noticed Kizer's face and neck were red, most noticeably along the sides of her neck. According to Kizer, C.G. had choked her by placing his hands around her neck, which caused her to feel pain, have difficulty breathing, and feel like blacking out. Kizer further reported that C.G. had pointed a gun at her following the choking incident. Officer Drane approached C.G. and patted him down, whereupon he found a gun holster on C.G.'s right ankle. Upon performing a protective sweep, Officer Drane found a handgun in C.G.'s bedroom closet. Kizer identified the handgun as the one C.G. pointed at her. Officer Drane also found a shotgun in the same closet.

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[1] Ind. Code § 35-47-4-3 (2004).

[2] Ind. Code § 35-42-2-1.3 (2004).

[3] On May 14, 2005, the State charged C.G. with pointing a firearm, domestic battery, and battery. Following a December 6-7, 2005 bench trial, the trial court found C.G. guilty of pointing a firearm and domestic battery.[3] On January 17, 2006, the trial court sentenced C.G. to concurrent sentences of 545 days, with 535 days suspended to probation, for pointing a firearm; and to 365 days, with 355 days suspended to probation, for domestic battery. In addition, the court ordered C.G. to complete twenty-six weeks of domestic violence counseling and issued a no-contact order. On October 18, 2007, C.G. filed a motion to file a belated notice of appeal, which the trial court granted. This appeal follows.

Discussion and Decision

[4] On appeal, C.G. challenges the sufficiency of the evidence to support his convictions for pointing a firearm and domestic battery. Our standard of review for sufficiency-of-the-evidence claims is well-settled. We do not reweigh the evidence or judge the credibility of the witnesses. *Kien v. State*, 782 N.E.2d 398, 407 (Ind. Ct. App. 2003), *trans. denied*. We consider only the evidence which supports the conviction and any reasonable inferences which the trier of fact may have drawn from the evidence. *Id*. We will affirm the conviction if there is substantial evidence of probative value from which a reasonable trier of fact could have drawn the conclusion that the defendant was guilty of the crime

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[3] The trial court found C.G. not guilty of battery based upon double jeopardy considerations.

charged beyond a reasonable doubt. *Id*. It is the function of the trier of fact to resolve conflicts of testimony and to determine the weight of the evidence and the credibility of the witnesses. *Jones v. State*, 701 N.E.2d 863, 867 (Ind. Ct. App. 1998). A conviction may rest upon the uncorroborated testimony of the victim. *Ludy v. State*, 784 N.E.2d 459, 461 (Ind. 2003).

I. Pointing a Firearm

[5] Indiana Code section 35-47-4-3(b) provides that "[a] person who knowingly or intentionally points a firearm at another person commits a Class D felony." Here, Kizer testified that C.G. pointed a gun at her. C.G.'s challenge to the credibility of Kizer's testimony on this point is simply an invitation to reweigh the evidence, which we decline to do. Additionally, Officer Drane found C.G. wearing a gun holster on his right ankle and a handgun in C.G.'s bedroom closet, corroborating Kizer's report. C.G.'s challenge to his conviction for pointing a firearm is without merit.

II. Domestic Battery

[6] Indiana Code section 35-42-2-1.3 provides that "[a] person who knowingly or intentionally touches an individual who … is or was a spouse of the other person … or … has a child in common with the other person … in a rude, insolent, or angry manner that results in bodily injury[4] … commits domestic

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[4] "Bodily injury" means any impairment of physical condition, including physical pain. *See* Ind. Code § 35-41-1-4 (2004).

battery, a Class A misdemeanor." Here, Kizer testified that C.G., her ex-husband with whom she shares a daughter, was angry with her and choked her with his hands, causing her pain. Shortly after the incident, both Officers Drane and Rhodes found red marks on Kizer's neck. C.G.'s challenge to his conviction based upon what he claims was the incredible dubiosity of Kizer's version of the events is simply another invitation to reweigh the evidence, which we decline to do. While a reviewing court will impinge upon the fact-finder's credibility judgments when confronted with testimony of inherent improbability, or coerced, equivocal, wholly uncorroborated testimony of incredible dubiosity, this exception applies only where a single witness testifies and there is a complete lack of circumstantial evidence of guilt. *Bowles v. State*, 737 N.E.2d 1150, 1152 (Ind. 2000). Here, Kizer's testimony was corroborated by Officers Drane's and Rhodes's observations of red marks on her neck. We conclude C.G.'s challenge to his conviction for domestic battery is without merit.

[7] The judgment of the trial court is affirmed.

Barnes, J., and Crone, J., concur.