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IN THE
COURT OF APPEALS OF INDIANA

JEROME FORD,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0911-CR-1067
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Kimberly J. Brown, Judge
The Honorable Israel Cruz, Commissioner
Cause No. 49G16-0907-CM-62613

June 9, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Jerome Ford appeals his conviction for Battery, as a Class A misdemeanor,[1] claiming that the testimony supporting the conviction is insufficient because it is incredibly dubious. We affirm.

Facts and Procedural History

On June 27, 2009, J.D. saw Ford walking on a street near her home in Marion County. J.D. and Ford were in a relationship at the time. When J.D. approached Ford, they began to argue because Ford had heard that J.D. had been with another man that Ford did not like. The argument became physical when J.D. started pushing Ford and smacking him in the head. Ford then "snatched [J.D.] up real quick and just threw [her] on the ground." Trial transcript at 9. J.D. testified that she hit her head on the curb when she was thrown to the ground. The impact caused swelling, scratches and bruising. Ford fled the scene.

When J.D. arrived home shortly thereafter, her father called the police. Officer Charles Lewis, who responded to the call, noticed that J.D. was crying and holding an ice pack over her eye. J.D. was visibly upset and her hair was disheveled. After J.D. began to calm down, she told Officer Lewis that Ford became upset about the guy J.D. was allegedly currently with and after a verbal altercation Ford punched her.

On July 9, 2009, the State charged Ford with Battery, as a Class A misdemeanor. After a bench trial, Ford was found guilty as charged. He was sentenced to one year with 180 days suspended.

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[1] Ind. Code § 35-42-2-1(a)(1).

Ford now appeals.

Discussion and Decision

Ford contends that there is insufficient evidence to support his conviction because the testimony of the single victim witness was inherently contradictory and equivocal. In addressing a claim of insufficient evidence, we do not reweigh the evidence nor do we reevaluate the credibility of witnesses. Rohr v. State, 866 N.E.2d 242, 248 (Ind. 2007), reh'g denied. We view the evidence most favorable to the verdict and the reasonable inferences therefrom and will affirm the conviction if there is substantial evidence of probative value from which a reasonable jury could find the defendant guilty beyond a reasonable doubt. Id. In general, the uncorroborated testimony of one witness is sufficient to sustain a conviction on appeal. Seketa v. State, 817 N.E.2d 690, 696 (Ind. Ct. App. 2004). However, appellate courts may apply the "incredible dubiosity" rule to impinge on the jury's function to judge the credibility of a witness. Fajardo v. State, 859 N.E.2d 1201, 1208 (Ind. 2007). The rule is as follows:

> If a sole witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence, a defendant's conviction may be reversed. This is appropriate only where the court has confronted inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiosity. 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)).

To convict Ford of Battery, as a Class A misdemeanor, as charged, the State was required to prove that Ford did knowingly in a rude, insolent or angry manner touch J.D. and

that it resulted in bodily injury to J.D. See Ind. Code § 35-42-2-1(a)(1). Ford contends that J.D.'s testimony was inherently contradictory and equivocal because she testified that Ford threw her to the ground but did not remember telling Officer Lewis on the day of the incident that Ford had punched her. At trial, J.D. repeatedly denied that Ford punched her. On cross-examination when prompted by defense counsel, J.D. agreed that maybe she simply lost her balance and fell. Ford contends that this inconsistency makes J.D.'s testimony incredibly dubious.

For testimony to be incredibly dubious, there must be a complete lack of corroborating circumstantial evidence. Such is not the case here. First, there was photographic evidence presented of J.D.'s injuries, which are consistent with her testimony of incurring some impact to her left eye area. Second, Officer Lewis testified that, when he interviewed J.D. shortly after the encounter, she was visibly upset and crying and had disheveled hair that would indicate she had been in a physical altercation. For the incredible dubiosity rule to apply, the court must be presented with testimony that "runs counter to human experience" and that reasonable persons could not believe. Edwards v. State, 753 N.E.2d 618, 622 (Ind. 2001). J.D.'s testimony does not run counter to human experience. Furthermore, the corroborating circumstantial evidence of J.D. being assailed by Ford prohibits the application of the incredible dubiosity rule. See Govan v. State, 913 N.E.2d 237, 243 n.6 (Ind. Ct. App. 2009) (In addition to victim's testimony and defendant's later admission, photographs of the victim's injuries, the weapon and testimony demonstrating the victim's state of mind shortly after the incident combined to make the incredible dubiosity rule inapplicable.), trans. denied.

Moreover, it is clear that the trial court carefully considered and assessed the witnesses' credibility:

> And this case comes down to credibility. Who do I believe? One of the distinct advantages the trial court has is the ability to observe the demeanor of the witnesses as they are testifying. Almost on a play by play basis, the expressions on a witness['s] face while they're testifying, while they're agreeing or disagreeing with the examiner when questions are being asked and I made sure that I looked and paid very close attention as the victim in this case testified. And it was clear to me that [J.D.] was making the efforts to minimize what occurred in this case. I don't know why. Maybe she was intimidated.[2] . . . And there were times that she minimized her testimony in efforts to I think assist the Defendant. . . . [The officer's testimony] corroborated what I learned from you and what I learned from her. He talked about her physical condition when he arrived; his specific observations. He said she was real upset, angry, frustrated, using her hands, could hardly speak, talking, real upset, verbally upset, crying. . . . It was difficult to get her statement.

Tr. at 63-64. The trial court is in the best position to make the credibility determination as to the witnesses, and we will neither reweigh evidence nor assess witness credibility.

Ford also contends in his brief that the State was required to prove that he punched J.D. However, this is incorrect as the charges and statute upon which he was charged only require proof that he knowingly touched J.D. in a rude, insolent or angry manner. Therefore, the testimonial evidence of Ford throwing J.D. to the ground is sufficient.

Affirmed.

MAY, J., and BARNES, J., concur.

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[2] At the beginning of her testimony, J.D. stated that she wanted to "plead the Fifth" because she did not want to testify. Tr. at 6. After explanation and direction from the trial court, she continued testifying. Later during her testimony, the trial court admonished Ford for attempting to communicate with J.D. while she was testifying. Tr. 12.