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FILED
Jun 16 2011, 9:21 am
CLERK
of the supreme court, court of appeals and tax court

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IN THE
COURT OF APPEALS OF INDIANA

KATHLEEN M. BROCKMAN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 40A01-1011-CR-645
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE JENNINGS SUPERIOR COURT
The Honorable Gary L. Smith, Judge
Cause No. 40D01-0908-CM-506

June 16, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Kathleen M. Brockman appeals her conviction for false informing as a class B misdemeanor.[1] Brockman raises one issue which we revise and restate as whether the evidence is sufficient to sustain her conviction. We affirm.

The facts most favorable to Brockman's conviction follow. On June 28, 2009, Jennings County Sheriff's Deputy Karen McCoy was dispatched to a home in Jennings County in response to a call that a male subject was hitting a female subject in a yard outside in front of children. After Deputy McCoy arrived at the scene where a number of adults and children were around, A.B., the alleged victim, came up to Deputy McCoy crying and stated that nothing happened and that Deputy McCoy did not need to be there. Deputy McCoy began to question witnesses regarding what had occurred.

Deputy McCoy spoke with Brockman, who was sitting on a swing on the front porch, and Brockman told Deputy McCoy that "she'd been sitting there and that her son, Tom got angry with [A.B.] when she messed the car door up" and "they were screaming, yelling at each other outside," but "swore on the [B]ible that Tom did not hit her." Transcript at 4-5. Deputy McCoy asked Brockman "where Tom was," and Brockman "told [Deputy McCoy] that she had heard that he had left and she didn't know." Id. at 5.

Deputy McCoy then spoke with Brockman's daughter, who stated that "she hadn't seen anything but, she came over because she had received a text from her mother . . . that said Tom just hit [A.B.] . . . get here now." Id. at 7. Brockman's daughter permitted Deputy McCoy to view and take a picture of the text message. Brockman's daughter stated "that the stuff needed to stop." Id. at 8.

[1] Ind. Code § 35-44-2-2 (Supp. 2007).

Deputy McCoy approached Brockman to confront her regarding the fact that she had sent the text message and that she had lied about Tom hitting A.B., and Brockman responded "well she hit him too." Id. at 9. Deputy McCoy then asked A.B. in the presence of Brockman "where Tom went," and A.B. stated that he "walked down the road and a ride picked him up . . . ." Id. at 10. Deputy McCoy then confronted Brockman regarding her statement that she had been sitting on the swing the "whole time" and that she "had to have seen" Tom walk down the road and asked "[h]ow could you have just heard that he left?" Id. at 11. Brockman did not respond.

Deputy McCoy stated that she believed that Tom was in the house hiding and asked Brockman if Deputy McCoy could go into the home to look for Tom, and Brockman answered "nope, not without a search warrant." Id. at 11-12. Deputy McCoy started to have people come outside and asked a young child if she had "seen Uncle Tommy," and the child stated "yea, he is back there in the bedroom." Id. at 12. Deputy McCoy asked "[r]ight now?" and the child replied "[y]ep." Id. Deputy McCoy found Tom hiding in the bedroom.

On August 13, 2009, the State charged Brockman with false informing as a class B misdemeanor.[2] After a bench trial on September 16, 2010, the court found Brockman guilty as charged. The court imposed a suspended sentence of 180 days and placed Brockman on probation for a period of six months.

[2] The charging information alleged that Brockman "gave a false report of a crime or false information in the official investigation of a crime, specifically: falsely reported that Thomas Brockman was not present at the residence." Appellant's Appendix at 17.

The issue is whether the evidence is sufficient to sustain Brockman's conviction. When reviewing the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). We do not assess witness credibility or reweigh the evidence. Id. We consider conflicting evidence most favorably to the trial court's ruling. Id. We affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." Id. (quoting Jenkins v. State, 726 N.E.2d 268, 270 (Ind. 2000)). It is not necessary that the evidence overcome every reasonable hypothesis of innocence. Id. at 147. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. Id.

The offense of false informing is governed by Ind. Code § 35-44-2-2, which provides in part: "A person who . . . gives a false report of the commission of a crime or gives false information in the official investigation of the commission of a crime, knowing the report or information to be false . . . commits false informing, a Class B misdemeanor." Ind. Code § 35-44-2-2(d). A person engages in conduct "knowingly" if, when the person engages in the conduct, the person is aware of a high probability that he or she is doing so. Ind. Code § 35-41-2-2(b).

Brockman argues that the evidence is insufficient and that "[a]t a minimum the State must demonstrate a contradiction between the information given and the reality of the situation." Appellant's Brief at 5. Brockman argues that the State failed to present any evidence of contradiction, including any evidence that Brockman ever contradicted her statement that "she had heard that he had left and she didn't know," gave inconsistent

information, admitted that the information she gave was false, or modified or otherwise changed her statement. Id. Brockman also argues that the police "spoke to other witnesses who told her that [Tom] had in fact left and walked down the road," that one witness in Brockman's presence stated she saw Tom walking down a street, and "[n]o one contradicted Brockman's statement [that Tom] had left." Id. at 6-7. Finally, Brockman argues that "[t]he only evidence the State offered to refute Brockman's statement was that Brockman was sitting outside when [Tom] must have reentered the residence" but that Tom "was found in 'Tommy's room,' a location that had its own entrance." Id. at 7.

The State argues that "while it is not dispositive to the instant case whether [Brockman] lied about whether her son struck A.B., it does speak towards her proclivity to lie" and that "[t]hus, the court could properly infer that [Brockman], who had a motive and inclination to lie, did indeed lie to Deputy McCoy during her investigation of a crime." Appellee's Brief at 4. The State argues that Tom had a broken leg on the day of the incident, that he had been lying down when A.B. damaged the car, and that he admitted that he never walked down the road. The State further points to Tom's testimony that he entered a door located approximately twenty feet, and thus within earshot, from where Brockman sat in her porch swing. The State also points to A.B.'s statement to Deputy McCoy that Tom had walked down the road and a ride picked him up and the fact that Deputy McCoy confronted Brockman and said that if what A.B. said was true, from where Brockman sat, "she must have seen [Tom] leave." Id. at 5. The State asserts that Tom admitted to the court that A.B. lied to police when she said that he

had left and argues that "[i]nstead of telling the truth to [Deputy] McCoy, [Brockman] furthered A.B.'s lies by her prevarications" and Brockman "knew [Tom] was at home, and she had not seen him leave." Id. at 6.

Brockman's arguments invite us to assess the credibility of the witnesses and reweigh the evidence, which we cannot do. See Drane, 867 N.E.2d at 146. The court heard evidence regarding Brockman's initial statement to Deputy McCoy that Tom had not hit A.B., the contents of the text message Brockman's daughter received stating that Tom had just hit A.B., and Brockman's subsequent statement of "well she hit him too." See Transcript at 9. The court heard evidence regarding A.B.'s statement that Tom had walked down the road and a ride picked him up and Tom's testimony that it was untrue that he took off and got in a car, that he believed A.B. knew he was in the house, and that A.B. did not want to see him get in trouble. Deputy McCoy testified that, from her observation, if A.B. had seen Tom "walk off to get a ride," then Brockman "would have seen the same thing." See Transcript at 11. Tom further testified that warrants were out for his arrest for failure to pay child support and that he had a broken leg. Evidence was presented regarding the layout and features of the home and surrounding area, including the porch where Brockman was located, the locations of the two doorways by which Tom could have entered or exited the home, and the distances between the porch and the doorways. The prosecutor and defense counsel questioned Brockman, Deputy McCoy, and Tom regarding what had occurred and the proximity of the doorways and locations where the argument between Tom and A.B. had occurred to where Brockman was located on the front porch swing.

Based upon our review of the evidence as set forth in the record, we conclude that sufficient evidence exists from which the court could find Brockman guilty beyond a reasonable doubt of false informing as a class B misdemeanor. See Smith v. State, 660 N.E.2d 357, 359 (Ind. Ct. App. 1996) (holding that the evidence was sufficient to support the defendant's conviction for false informing as a class B misdemeanor and specifically finding the evidence sufficient to establish that the information the defendant gave to the police officer was false and that the false answers were intentional and material).

For the foregoing reasons, we affirm Brockman's conviction for false informing as a class B misdemeanor.

Affirmed.

FRIEDLANDER, J., and BAILEY, J., concur.