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FILED
Jun 21 2011, 9:33 am
CLERK
of the supreme court, court of appeals and tax court

IN THE COURT OF APPEALS OF INDIANA

DONNETT PHILLIPS,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 49A02-1011-CR-1244
	)	
STATE OF INDIANA,	)	
	)	
Appellee.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Clark Rogers, Judge
Cause No. 49G17-1005-CM-042878

June 21, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Donnett Phillips ("Phillips") was convicted in Marion Superior Court of battery and public intoxication, both Class B misdemeanors. Phillips appeals and argues that the State presented insufficient evidence to support her convictions. We affirm.

Facts and Procedural History

Phillips and Gary Saylor ("Saylor") were married in March 2010, and the two agreed to move into Saylor's parents' house. On May 28, 2010, Saylor began packing for the move. Saylor called Phillips around noon, and they spoke of her coming to assist him after she finished work. At that time, Saylor noticed that Phillips was slurring her speech. At around 5:00 or 6:00 p.m., Phillips went to a local pub with friends. Saylor called Phillips again after discovering that she was not at work. Phillips informed Saylor that she was "out" and that she would see him shortly. Tr. p. 8. Again, Saylor noticed Phillips's speech was slurred and that she was "starting to not make sense." Id. Saylor believed that Phillips was "very intoxicated." Id. Phillips and Saylor spoke on the phone several more times throughout the evening, and Saylor went to sleep at his parents' house at approximately 3:30 a.m.

Phillips left the pub when it closed at 2:30 a.m., after having consumed between ten and twenty bottles of beer. Phillips arrived at Saylor's parents' house at approximately 2:45 a.m, where she fell asleep on the back porch. Phillips awoke around 6:30 a.m. and began banging on the door and ringing the doorbell. When Saylor answered the door, he told Phillips that she should not come in because she had been drinking. Phillips shoved the door open, causing it to hit Saylor in the head, and entered

the house. Phillips demanded "her stuff" and began shouting at Saylor when he asked her to keep her voice down and to return his cell phone. Id. at 11. Saylor waited by the door while Phillips gathered her belongings and then followed her out of the house. Once outside, Saylor asked Phillips for an explanation for her behavior. In response, Phillips punched Saylor in the nose, causing his eyes to water. Phillips then struck Saylor in the head with a plastic bag full of her belongings, causing the bag to burst. Phillips then left on foot, cutting across neighboring yards.

Because Phillips appeared to be intoxicated and was headed toward a busy road, Saylor and his mother decided to follow Phillips in Saylor's mother's truck. When they caught up with Phillips, she was "staggering in the middle of the road[.]" Id. at 14. Phillips then took off her shirt and threw it into the truck, apparently because she had borrowed it from Saylor's mother. Saylor's mother gave Phillips another shirt to put on, and Phillips continued walking down the middle of the road toward a church parking lot. Saylor was concerned for Phillips's safety, so he called the police.

At that time, Indianapolis Metropolitan Police Officer Justin Turner ("Officer Turner") was parked in the church lot. At the same time that Officer Turner received the dispatch regarding Phillips, Phillips and Saylor came into his view. Officer Turner made contact with Phillips and noticed that she was slurring her speech, her eyes were red and glassy, and her balance was unstable. He also noticed that Phillips was barefoot, her feet were grass stained, and her knees and elbows were dirty. Officer Turner concluded that Phillips was intoxicated. When Officer Turner spoke to Saylor, Saylor told him that

Phillips had punched him in the nose. Officer Turner did not notice any injuries to Saylor's face, but he did observe that Saylor's eyes were watering. Officer Turner then took Phillips into custody.

As a result of these events, the State charged Phillips with Class A misdemeanor domestic battery, Class A misdemeanor battery, and Class B misdemeanor public intoxication. A bench trial was held on October 20, 2010, at which Saylor and Officer Turner testified for the State. At the conclusion of the evidence, the trial court found Phillips guilty of public intoxication and took the battery charges under advisement. In an order issued on October 21, 2010, the trial court found Phillips not guilty of Class A misdemeanor domestic battery and guilty of Class B misdemeanor battery as a lesser included offense of the Class A misdemeanor battery charge. Phillips now appeals.

Discussion and Decision

Phillips argues that the State presented insufficient evidence to support her convictions. In reviewing a challenge to the sufficiency of the evidence, we neither reweigh the evidence nor judge the credibility of witnesses. Atteberry v. State, 911 N.E.2d 601, 609 (Ind. Ct. App. 2009). Instead, we consider only the evidence supporting the conviction and the reasonable inferences to be drawn therefrom. Id. 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 charged beyond a reasonable doubt, then the judgment will not be disturbed. Baumgartner v. State, 891 N.E.2d 1131, 1137 (Ind. Ct. App. 2008).

A. *Battery*

To establish that Phillips committed Class B misdemeanor battery, the State was required to prove that Phillips knowingly or intentionally touched Saylor "in a rude, insolent, or angry manner[.]" Ind. Code § 35-42-2-1 (2004). On appeal, Phillips acknowledges the standard of review applicable to challenges to the sufficiency of the evidence to support a conviction, but nevertheless argues that we should reverse her battery conviction based on the "incredible dubiosity" rule. In support of this argument, Phillips argues that Saylor's testimony was "completely uncorroborated" and improperly motivated by his desire to obtain an annulment of his marriage to Phillips. Appellant's Br. at 7. But this is not the standard for the application of the incredible dubiosity rule.

The incredible dubiosity rule, which allows an appellate court to judge the credibility of a witness, applies only in very narrow circumstances. Fajardo v. State, 859 N.E.2d 1201, 1208 (Ind. 2007); Love v. State, 761 N.E.2d 806, 810 (Ind. 2002). We will overturn a conviction based upon the incredible dubiosity rule only when the testimony is so incredibly dubious or inherently improbable that it runs counter to human experience and no reasonable person could believe it. Baumgartner, 891 N.E.2d at 1138. Further, application of the incredible dubiosity rule is limited to those situations in which a sole witness presents inherently contradictory testimony which is equivocal or the result of coercion and there is a complete lack of circumstantial evidence of the defendant's guilt. Id.

Here, Saylor testified that Phillips came home drunk and the couple got into an argument, during which Phillips hit Saylor in the head with the door, punched him in the nose, and hit him in the head with a bag. Nothing about this testimony was so incredibly dubious or inherently improbable that no reasonable person could believe it, and it was sufficient to establish the essential elements of Class B misdemeanor battery. Phillips's argument is simply a request for this court to reweigh the evidence and judge the credibility of a witness, which we will not do. The State presented sufficient evidence to support Phillips's conviction of Class B misdemeanor battery.

B. *Public Intoxication*

To establish that Phillips committed Class B misdemeanor public intoxication, the State was required to prove that Phillips was "in a public place or a place of public resort in a state of intoxication caused by [her] use of alcohol or a controlled substance[.]" Ind. Code § 7.1-5-1-3 (2005). Phillips does not dispute the sufficiency of the evidence regarding her presence in a public place; rather, she argues that the evidence was insufficient to establish her intoxication. We disagree.

"Intoxicated" has been defined by statute as being under the influence of alcohol "so that there is an impaired condition of thought and action and the loss of normal control of a person's faculties." Ind. Code § 9-13-2-86 (2004); Fought v. State, 898 N.E.2d 447, 451 (Ind. Ct. App. 2008) (applying the section 9-13-2-86 definition of intoxication in the context of a public intoxication conviction). Impairment may be established by evidence of: "(1) the consumption of [a] significant amount of alcohol; (2)

impaired attention and reflexes; (3) watery or bloodshot eyes; (4) the odor of alcohol on the breath; (5) unsteady balance; (6) failure of field sobriety tests; (7) slurred speech." Id.

Here, the State presented abundant evidence of Phillips's intoxication. Phillips herself testified that she remained at the pub from 5:00 or 6:00 p.m. until it closed at 2:30 a.m., during which time she consumed between ten and twenty bottles of beer. Saylor testified that Phillips's eyes were "very bloodshot" and that she was "staggering in the middle of the road[.]" Tr. pp. 10, 14. Similarly, Officer Turner testified that Phillips's eyes were "red and glassy" and that her balance was "very unstable" and that she nearly fell several times while he was talking to her. Id. at 27. Officer Turner also noticed that Phillips had dirt on her knees and elbows, as if she had fallen several times. Finally, both Officer Turner and Saylor testified that Phillips's speech was slurred and that she appeared to be intoxicated. Once again, Phillips's argument is simply a request for this court to reweigh the evidence and judge the credibility of witnesses, which we will not do on appeal. The State presented sufficient evidence to support Phillips's conviction of Class B misdemeanor public intoxication.

Affirmed.

KIRSCH, J., and VAIDIK, J., concur.