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FILED
Jun 22 2009, 9:09 am
CLERK
of the supreme court, court of appeals and tax court

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IN THE
COURT OF APPEALS OF INDIANA

GUISEPPI BAILEY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A03-0903-CR-101
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Jerome Frese, Judge
Cause No. 71D03-0712-FD-1390

June 22, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Guiseppi Bailey ("Bailey") appeals his convictions of Domestic Battery, as a Class A misdemeanor,[1] and Intimidation, as a Class D felony.[2] We affirm.

Issue

Bailey phrases his argument as whether there was sufficient evidence to support his convictions. We restate the issue as whether the incredible dubiosity rule applies.

Facts and Procedural History

Bailey and Sarah Gordon ("Gordon") were in a relationship, were living together, and had children together. At 3:00 a.m. on December 29, 2007, Gordon awoke when Bailey entered their apartment. The couple argued, and Bailey demanded that Gordon perform oral sex. When Gordon refused, Bailey jumped on her and repeatedly choked her and punched her in the head. When he finished beating her, he yanked the telephone out of the wall.

Later, Bailey left and returned home around 11:00 a.m. or noon. They again argued. Because Bailey went into a rage, Gordon attempted to leave with the children so that she could use a neighbor's telephone to call the police. Bailey grabbed her by the hair and tried to yank her back into their apartment. She was able to contact the police using a neighbor's telephone. When she did so, Bailey stated, "if you get me locked back up again, I'm killing you." Transcript at 176.

The State charged Bailey with Domestic Battery and Intimidation. After a three-day

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[1] Ind. Code § 35-42-2-1.3.
[2] Ind. Code § 35-45-2-1(a)(2).

trial, the jury found Bailey guilty as charged. He now appeals his two convictions.

Discussion and Decision

Bailey asserts that there was not sufficient evidence to support his convictions. However, in his Appellant's Brief, he effectively acknowledges that Gordon's testimony, if believed, supported both verdicts. See Appellant's Brief at 5. Bailey states, "[t]he only witness that directly implicates Bailey in the crimes was Gordon" and "Gordon was the sole witness to present evidence as to Bailey's guilt." Id. at 4, 6.

Thus, Bailey's appeal is limited to asking this Court to apply the incredible dubiosity rule. Bailey argues that Gordon's testimony was unreliable and contradicted by: (1) her initial police report; (2) the physical evidence; and (3) the fact that she recanted the accusations before trial.

The uncorroborated testimony of one witness may be sufficient by itself to sustain a conviction on appeal. Scott v. State, 871 N.E.2d 341, 343 (Ind. Ct. App. 2007), trans. denied. Where the incredible dubiosity rule applies, a court may impinge upon a jury's function to judge the credibility of a witness. Love v. State, 761 N.E.2d 806, 810 (Ind. 2002). The standard for the rule's application is "whether the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it." Id. The rule applies only "where a sole witness presents inherently contradictory testimony that is equivocal or coerced and there is a lack of circumstantial evidence of guilt." Whedon v. State, 765 N.E.2d 1276, 1278 (Ind. 2002). Inconsistency with a pre-trial statement does not render trial testimony incredibly dubious. Stephenson v. State, 742 N.E.2d 463, 498 (Ind. 2001), cert. denied, 534

U.S. 1105 (2002).

Here, Gordon testified that she and Bailey had children together. According to her, she awoke at 3:00 a.m. when Bailey came home. He was drunk, and they began to argue. Bailey pulled down his pants in front of Gordon's face and told her that he wanted her to engage in oral sex; she declined. Bailey "lost it," according to Gordon, and jumped on her in bed. Tr. at 170. She testified that,

> He started punching me. First it went from palming me in the face as hard as he could with his palms. It went from that to choking. It went back and forth from choking to palming me in the face. Then it went to punching me in the head. It got to the point where in order to protect myself I had to put my shoulder up over my head and ball myself up or I'd probably be dead.

Id. at 170-71. She added, "I really thought I was going to die." Id. at 171-72. Bailey yanked the telephone out of the wall.

Sometime that morning, according to Gordon, Bailey left and returned to the apartment at 11:00 a.m. or noon. Appearing drunk, Bailey told Gordon that he was going to go sledding with their four-year-old child. They again argued. According to Gordon, Bailey "went into another rage." Id. at 174. As she prepared to leave with their children to use a neighbor's phone, Bailey grabbed Gordon by her hair and tried to yank her back into the apartment. Gordon managed to bang on a neighbor's door and then used the neighbor's telephone to call the police. She testified as follows:

Q: You called the police?

A: Yes.

Q: Okay. And did [Bailey] say anything when you called the police?

A: He told me if you get me locked back up again, I'm killing you.

Q: All right. And was that in response to your calling the police.

A: Uh-huh. As he was walking down the steps.

Q: What happened?

A: He handed me his cell phone, played the nice guy and left.

Id. at 176 (emphasis added).

Gordon testified that she experienced pain and had bruising as a result of Bailey's conduct. The State's two exhibits, photographs, support Gordon's testimony. Exhibit two depicts a woman with bruising on her left shoulder and back. Exhibit one depicts purple, red, and yellow bruising on the back of the left ear. South Bend Police Department Officer Anthony Ieraci ("Officer Ieraci"), who investigated the incident, testified that Gordon had bruises and contusions around her left shoulder blade that were green, purple, and "quite large." Id. at 224-25. According to him, there was also black, blue, and green bruising behind her left ear. Just above Gordon's hair line, Officer Ieraci felt "some pretty large bruising and contusions." Id. at 225. He testified that, based upon his experience, the injuries had been sustained no more than thirty-six hours before he observed them.

Gordon's trial testimony was not equivocal or inherently contradictory. Furthermore, her testimony was supported by evidence of her injuries, including Officer Ieraci's testimony and his photographs. Finally, while she admitted on cross-examination to telling the prosecutor, orally and in writing, that Bailey had not hit her, she testified on redirect examination that she had done so because Bailey "said that he would get [her] kids taken

away" and that he would kill her. Id. at 196. For these reasons, we conclude that the incredible dubiosity rule does not apply here. Therefore, there was sufficient evidence to find Bailey guilty beyond a reasonable doubt of Domestic Battery and Intimidation.

Affirmed.

DARDEN, J., and ROBB, J., concur.