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IN THE
COURT OF APPEALS OF INDIANA

LATOYIA TUGGLES,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-1012-CR-1366
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robert R. Altice, Judge
The Honorable Amy Barbar, Magistrate
Cause No. 49G02-1004-FC-32132

June 22, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Latoyia Tuggles appeals her conviction of Forgery,[1] a class C felony, and Theft,[2] a class D felony, challenging the sufficiency of the evidence supporting the convictions as the sole issue on appeal.

We affirm.

The facts favorable to the convictions are that on March 22, 2010, Tuggles picked up her paycheck from Pizza Hut, her place of employment. She also took the paycheck of her co-worker, Joyce Dunn, without Dunn's knowledge or permission. She then traveled to Doc's Liquors (Doc's), went inside, and cashed the check made out to Dunn. The check was cashed by store employee Zachariah Buhneing. Following established procedures, Buhneing cashed the check for Tuggles even though she was not able to produce identification to verify that she was Dunn, because Tuggles was a repeat customer. He entered into a logbook the name of the company that issued the check, as well as the amount of the check and the commission charged by Doc's for cashing the check. He watched as Tuggles signed the name "Joyce Dunn" on the back of the check. A video surveillance camera inside the store recorded Tuggles inside the store at approximately 11:28 a.m., and another surveillance camera recorded Tuggles's car in the parking lot of Doc's at that time.

Several hours later, Dunn went to the Pizza Hut to pick up her check. Restaurant manager Michelle McDaniel could not find the check, so she phoned the Pizza Hut corporate office and confirmed that the check had been sent. After receiving this information, McDaniel put a stop-payment on the missing check. When he learned that a stop-payment

[1] Ind. Code Ann. § 35-43-5-2 (West, Westlaw through 2011 Pub. Laws approved & effective through 5/10/2011).

had been placed on the check, the owner of Doc's, Dan Tiplick, contacted McDaniel and informed her that someone had cashed the check at Doc's. Meanwhile, Tiplick and Buhneing reviewed the video and Buhneing identified the woman in the video as the person who cashed the Dunn check. McDaniel went to Doc's and she and Tiplick reviewed the surveillance video from the transaction in question. McDaniel identified the woman in the video – the one Buhneing had identified as the person who cashed Dunn's check – as Tuggles.

On April 21, 2010, Tuggles was charged with one count of forgery and two counts of theft. She was convicted as set out above following a bench trial and sentenced to four years, with two years executed and two years suspended to probation.

Tuggles contends the evidence was not sufficient to support her convictions. Specifically, she contends that the evidence was not sufficient to prove her identity as the person who cashed Dunn's check. Our standard of review in this case is well settled.

> When reviewing the sufficiency of the evidence needed to support a criminal conviction, we neither reweigh evidence nor judge witness credibility. *Henley v. State*, 881 N.E.2d 639, 652 (Ind. 2008). "We consider only the evidence supporting the judgment and any reasonable inferences that can be drawn from such evidence." *Id*. We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt. *Id*.

Bailey v. State, 907 N.E.2d 1003, 1005 (Ind. 2009).

We begin by noting that Tuggles has narrowed the issue to a single question: was Buhneing's identification of Tuggles as the person who cashed Dunn's check credible? In so doing, Tuggles notes that she conceded she was the person depicted in the surveillance tape

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[2] I.C. § 35-43-4-2 (West, Westlaw through 2011 Pub. Laws approved & effective through 5/10/2011).

at Doc's on the morning of March 22, 2010. She claimed, however, that she was present at Doc's that morning to cash a paycheck from her other employer, i.e., the Foundry. She also notes that by the time of trial, the surveillance video in question had been erased, as Tiplick did not know how to copy the video off of the system and it was replaced every two weeks. Thus, there is no video evidence showing Tuggles cashing Dunn's check.

In light of the above, Tuggles concludes that the only evidence identifying her as the forger is Buhneing's testimony that he recognized her as the person who cashed Dunn's check. She contends, however, that Buhneing's testimony should be discounted by application of the incredible dubiosity rule. Under the incredible dubiosity rule, a defendant's conviction may be reversed if a sole witness presents inherently improbable testimony, and there is a complete lack of circumstantial evidence. *Love v. State*, 761 N.E.2d 806 (Ind. 2002). The rule is applicable only where the court has confronted inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiosity. *Id.* 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.*

We conclude that the incredible dubiosity rule does not apply here because Buhneing's identification testimony was not uncorroborated. After her release from jury duty at the City-County Building in Indianapolis at 11:02 a.m. on March 22, Tuggles drove to Pizza Hut to pick up her check. At that time, all the employees' checks were kept unsecured by the register and sometimes left unattended. Those checks that were not picked up by the end of the day were placed in the safe. Tuggles picked up her check at the Pizza

Hut and then drove to Doc's, entering the store at approximately 11:28 a.m. Doc's log book used to record such transactions reflected that Dunn's check was cashed at Doc's that day. Tuggles admitting cashing a paycheck at Doc's on March 22, but claimed that it was the one issued by her other employer, i.e., the Foundry. The log book reflects that no checks were cashed from the Foundry on that day. Buhneing remembered cashing the Dunn check, and unequivocally identified Tuggles as the person for whom he did so. Taken together, the foregoing circumstantial evidence corroborated Buhneing's identification testimony so as to render the incredible dubiosity rule inapplicable. Considering only the evidence and reasonable inferences supporting the judgment, and without reweighing the evidence or judging witness credibility, we conclude there is substantial evidence of probative value such that a reasonable trier of fact could have concluded that Tuggles was guilty beyond a reasonable doubt. *See Bailey v. State*, 907 N.E.2d 1003.

Judgment affirmed.

BAILEY, J., and BROWN, J., concur.