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IN THE
COURT OF APPEALS OF INDIANA

DOUGLAS MOWRY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-1009-CR-1017
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable David M. Hooper, Judge Pro Tempore
Cause No. 49G17-1006-FD-49798

July 6, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Douglas Mowry appeals his conviction for domestic battery, a class A misdemeanor.[1]

We affirm.

ISSUE

Whether there is sufficient evidence to support the conviction.

FACTS

At approximately 1:00 pm. on June 23, 2010, Douglas Mowry and Kimberly Bray walked to the Gas Light Inn Bar to celebrate Mowry's birthday. After consuming alcoholic beverages over two hours, both Bray and Mowry left the Gas Light Inn Bar and started to argue while walking back to the home they shared.

As Bray and Mowry were walking home, Mowry grabbed Bray's purse from her shoulder, causing her to fall to the ground. As a result of her fall, Bray sustained minor abrasions on both knees and lower legs. Mowry continued walking home, leaving Bray sitting on the ground on a bridge.

A female pedestrian flagged down Deputy Ronald Metcalf of the Marion County Sheriff's Department and informed him of the incident between Mowry and Bray. Deputy Metcalf found Mowry with Bray's purse. Mowry admitted to Deputy Metcalf that the purse belonged to his girlfriend, Bray. As Deputy Metcalf was talking to Mowry, Officer Michael Ollanekto of the Indianapolis Metropolitan Police Department arrived,

[1] Ind. Code § 35-42-2-1.3

and he observed that Bray appeared disheveled and had minor abrasions on both knees and lower legs. Officer Ollanekto then placed Mowry under arrest.

On June 24, 2010, the State charged Mowry with count I, theft, a class D felony, count II, domestic battery, a class A misdemeanor, and count III, battery, a class A misdemeanor. The trial court commenced a bench trial on July 28, 2010.

Bray testified that she thought she and Mowry had been arguing in the bar and continued arguing on the walk to their home. Bray also testified that Mowry then grabbed her purse without her permission, causing her to fall to the ground where she suffered abrasions on her knees and legs. Bray testified that she was intoxicated and did not remember anything else from the walk home. Deputy Metcalf testified that Mowry told him that he took Bray's purse because she was having a hard time walking. Officer Ollanekto testified that he saw Bray sitting on a bridge with knee and leg abrasions while Mowry was walking away from her.

The trial court found Mowry not guilty of theft but guilty of domestic battery and battery. Following a sentencing hearing on July 28, 2010, the trial court merged the domestic battery and battery convictions and imposed a sentence of time served with no probation.

DECISION

Mowry asserts that there is insufficient evidence to support his conviction for domestic battery. We disagree.

> When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations and citations omitted).

> Indiana Code section 35-42-2-1.3 provides that "a person who knowingly or intentionally touches an individual who is or was a spouse of the other person; is or was living as if a spouse of the other person as provided in subsection (c); or has a child in common with the other person in a rude, insolent, or angry manner that results in bodily injury to the person described in subdivision (1), (2), or (3) commits domestic battery, a Class A misdemeanor."

Touching no matter how slight may be a battery. *Impson v. State*, 721 N.E.2d 1275, 1285 (Ind. Ct. App. 2000). "Indeed, a person may commit the touching necessary for battery by touching another's apparel because it is intimately connected with the person and is regarded as part of a person for purposes of the battery statute." *Id.*

Mowry argues that his conviction for domestic battery should be reversed "because there was no evidence that he touched Bray in a rude, insolent or angry manner at any time." (Mowry's Br. at 6). He states that "Bray testified that he did not hit her or push her," and that he was trying to help Bray arrive home, not hurt her. *Id.* Here, the evidence shows that Mowry grabbed Bray's purse without her permission which caused

her to fall and suffer abrasions on her knees and legs. This evidence supports a reasonable inference that Mowry touched Bray in a rude, insolent, or angry manner.

Mowry also argues that the evidence does not support his conviction because "Bray's testimony was incredibly dubious because she was intoxicated at the time of the incident and her testimony conflicted with his own trial testimony." (Mowry's Br. at 7.). In support, he cites to Bray's testimony that, because she was intoxicated, she could not recall anything from the walk home except that Mowry grabbed her purse and she fell to the ground. *Id.* Bray also cites to Officer Metcalf and Ollanekto's testimony that they did not observe any physical altercation between Mowry and Bray. Furthermore, Officer Ollanekto testified that Bray appeared to be intoxicated and had a hard time walking.

Under the incredible dubiosity rule, a court will impinge on the fact-finder's responsibility to judge the credibility of the witness only when it is confronted with inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiosity. *Altes v. State*, 822 N.E.2d 1116, 1122 (Ind. Ct. App. 2005), *trans. denied*. We will reverse a conviction where a "'sole witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence . . . .'" *Id.* (quoting *White v. State*, 706 N.E.2d 1078, 1079 (Ind. 1999)). The application of the rule is rare, however, "and is limited to cases where the sole witness' testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it." *Id.*

Although Bray testified that she did not remember much while walking home because she had been drinking, she also testified that she remembered Mowry grabbing her purse from her shoulder which caused her to fall to the ground and suffer abrasions on her knees and legs. Further, the trial court heard Bray's testimony that she and Mowry had been arguing on the way home, but could not remember the substance of the argument. She also testified that Mowry continued to walk home while she was sitting on the ground near the bridge. Also, Officer Ollanekto observed Bray with scrapes on her knees and legs and Mowry down the street with a purse around his neck. The fact that Bray could not remember much else from walking home beside Mowry grabbing her purse causing her to fall down and leaving her on the ground while he continued walking does not render Bray's testimony inherently dubious or improbable. `

Furthermore, the incredible dubiosity rule only applies when there is a complete lack of circumstantial evidence. *Altes*, 822 N.E.2d at 1122. We cannot say that there is a complete lack of circumstantial evidence in this case when both Officer Metcalf and Ollanekto testified that they saw Mowry with Bray's purse walking away from her while she was sitting on the ground with abrasions on her knees and legs.

Here, Mowry's counsel cross-examined Bray, and the trial court was able to independently evaluate her testimony. Mowry's argument is nothing more than an invitation to judge the credibility of the witness, which we decline to do. The evidence presented at trial is sufficient to support Mowry's conviction.

We affirm.

RILEY, J., and BARNES, J., concur.