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IN THE
COURT OF APPEALS OF INDIANA

VICTOR RYBOLT,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-1012-CR-1392
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Barbara Cook Crawford, Judge
Cause No. 49G21-1007-FD-55166

July 19, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant, Victor Rybolt appeals his two convictions for Invasion of Privacy,[1] a class D felony, challenging the sufficiency of the evidence. Rybolt argues that the convictions must be set aside because the testimony of the State's sole witness about the sequence of events and the dates that led to the charges was contradictory. In essence, Rybolt is invoking the "incredible dubiosity" rule and contends that the witness's testimony was so confusing that no reasonable fact-finder could have found him guilty beyond a reasonable doubt. Concluding that the evidence was sufficient, we affirm.

FACTS

On May 27, 2010, the trial court entered an ex parte order of protection against Rybolt for the protection of Shonna, Rybolt's ex-wife. The protective order prohibited Rybolt from "harassing, annoying, telephoning, contacting directly or indirectly communicating [with] Shonna." State's Ex. 1. However, the order did not interfere with the child visitation orders and permitted contact between Shonna and Rybolt that related to the exchange of J.A.R., their ten-year-old son, with regard to the visitation schedule.

At some point prior to a hearing on June 28, 2010, Rybolt called Shonna about the possibility of reconciling. At the hearing, the trial court determined that Rybolt was permitted to communicate with Shonna regarding the exchange of J.A.R. as it related to visitation.

[1] Ind. Code § 35-46-1-15.1

After the hearing, Shonna delivered J.A.R. to Rybolt for a scheduled visitation. Rybolt then sent Shonna a text message, inquiring as whether she would join him and J.A.R. for dinner so the two of them might reconcile. The next day, Shonna received phone calls and "several" text messages from Rybolt urging her to plan family gatherings that included him. Rybolt indicated that he wanted "to go to the boat" or "go with the kids to Kings [sic] Island." Tr. p. 19. Those conversations did not involve visitation with J.A.R.

Sometime after June 29, 2010, Shonna filed a complaint with the Indianapolis Metropolitan Police Department (IMPD).[2] Shonna alleged that Rybolt had violated the ex parte protection order when he called her prior to the June 28 hearing to discuss the possibility of reconciling their marriage. Shonna also claimed that after the hearing, Rybolt called her and sent text messages that were unrelated to visitation matters.

Rybolt was arrested and charged with two counts of class A misdemeanor invasion of privacy. However, Part II of the State's charging information sought to elevate the charges to class D felonies because Rybolt had prior convictions for the same offense. More specifically, Count I of the charging information read:

> Victor Rybolt, on or about June 28, 2010, did knowingly violate an order of protection, that is: a protective order issued to prevent domestic or family violence issued under I.C. 34-26-5, which was issued to protect Shonna Rybolt, and furthermore, did so by engaging in the following conduct; telephoned and/or contacted Shonna Rybolt.

[2] The record does not reflect when Shonna filed her complaint with IMPD. The record is also devoid of any evidence or assertions that might have been included in the complaint.

Appellant's App. p. 14. Count II provided in part that

> Victor Rybolt, on or about June 28, 2010, did knowingly violate an order of protection, that is: a protective order . . . by engaging in the following conduct: telephoned and/or contacted Shonna Rybolt.

Id. at 14-15.

At a bench trial that commenced on September 1, 2010, Shonna initially testified that Rybolt spoke to her "several times" on June 28 about reconciling their marriage. Tr. p. 17. On cross-examination, Shonna testified that Rybolt contacted her "three times" after the hearing on June 28. Id. at 26. Shonna also testified that the contact was "in person" when Rybolt drove by her workplace on three different occasions. Id. at 26-27. However, later during cross-examination, Shonna acknowledged that she "got her dates confused" as to when the communication took place. Shonna testified that Rybolt "came to her job" prior to June 28. Id. at 27.

Shonna also testified on direct examination that she received several text messages and multiple telephone calls from Rybolt about family trips and possible reconciliation. Id. at 19, 30-31. However, Shonna acknowledged on cross-examination that "some of the conversation" was about J.A.R. Id. at 28-31.

Rybolt was found guilty as charged, and he stipulated to the previous convictions. Thus, the trial court entered each conviction as a class D felony. A sentencing hearing was held on November 4, 2010, in which the trial court imposed a 730-day sentence on each count, with 716 days suspended to probation to be served concurrently. Rybolt now appeals.

DISCUSSION AND DECISION

As noted above, Rybolt claims that the evidence was insufficient to support his convictions because Shonna was confused about when the offenses were committed, and that she contradicted herself about the sequence of events. Hence, Rybolt maintains that his convictions must be set aside because Shonna's testimony was inherently improbable and unbelievable in accordance with the "incredible dubiosity" rule.

When reviewing the sufficiency of the evidence to support a conviction, we consider the probative evidence and reasonable inferences that support the trial court's judgment. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). We will not reweigh the evidence or judge the credibility of the witnesses. Id. A conviction is upheld if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. Tobar v. State, 740 N.E.2d 109, 111-12 (Ind. 2000).

On the other hand, within the narrow limits of the "incredible dubiosity" rule, we may impinge upon a fact-finder's function to judge the credibility of the witness. Love v. State, 761 N.E.2d 806, 810 (Ind. Ct. App. 2002). If a sole witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence, a defendant's conviction may be reversed. 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.

To convict Rybolt of invasion of privacy, the State was required to prove beyond a reasonable doubt that Rybolt; (1) knowingly or intentionally; (2) violated a protective order to prevent domestic or family violence issued under Indiana Code Section 34-26-5. I.C. § 35-46-1-15.1.

Rybolt does not dispute that he made telephone calls or sent text messages to Shonna. And the record reflects that the telephone conversations and text messages involved Rybolt's attempts at reconciliation and to be included at family gatherings. Tr. p. 18-19, 29, 32-33. Those conversations were prohibited under the protective orders.

Rybolt also does not dispute that the calls and text messages occurred on at least two separate occasions after the protective order had been issued. Indeed, although Shonna's testimony may have been somewhat confusing, the record reflects that she corrected herself as to what had actually occurred on June 28, 2010. Indeed, Shonna was aware of her initial recollection of the sequence of events and subsequently clarified her testimony as to time and sequence. Tr. p. 27. Moreover, Shonna never denied that Rybolt had committed various acts outside her place of employment. Rather, she asserted that they had occurred on a different date. Id. Shonna admitted that she had become confused because she had attended so many court hearings. Id. at 35.

In light of the evidence that was presented, the trial court, as the finder of fact, could have drawn the reasonable inferences that Rybolt violated the protective order. We cannot say that the inconsistency or irregularity in Shonna's testimony regarding her confusion as to the exact dates of the offenses or the sequence in which they were

committed was subject to the incredible dubiosity rule. See Love, 761 N.E.2d at 810 (refusing to apply the rule of incredible dubiosity where the dates in the charging information was incorrect, but further evidence existed to prove the offense occurred). In short, Rybolt is asking us to reweigh Shonna's credibility, which we may not do. Thus, we conclude that the evidence was sufficient to support the convictions.

The trial court's judgment is affirmed.

MAY, J., and BRADFORD, J., concur.