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IN THE
COURT OF APPEALS OF INDIANA

CEDRIC ELDRIDGE-WEST,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A03-0901-CR-19
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Robert Ross, Judge
Cause No. 02D04-0803-CM-1343

September 22, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Cedric Eldridge-West appeals his convictions for Class A misdemeanor resisting law enforcement and Class A misdemeanor carrying a handgun without a license. We affirm.

Issues

Eldridge-West raises two issues, which we consolidate and restate as:

I. whether the trial court properly refused his request to show the jury a public service announcement video during his closing argument; and

II. whether there is sufficient evidence to support his convictions.

Facts

During the afternoon of March 5, 2008, Officer John Drummer of the Fort Wayne Police Department observed Eldridge-West bent over in the middle of a street adjusting his pant leg. Eldridge-West was wearing a tan coat with fur trim. Eldridge-West looked at Officer Drummer and quickly walked away. Eldridge-West proceeded to knock on the doors of three houses. No one answered the doors at the first two houses, but an older man answered the door at the third house. An exchange took place between the older man and Eldridge-West. Eldridge-West left the house and walked toward Officer Drummer's marked police car. Officer Drummer asked Eldridge-West if he needed help, and Eldridge-West responded that he was looking for his aunt's house and ran away. Officer Drummer ordered Eldridge-West to stop and used his K-9 to chase Eldridge-West. As Eldridge-West was jumping over a fence, a handgun fell out of his pants.

Officer Drummer continued to chase Eldridge-West but did not catch him. After the chase, Officer Drummer described Eldridge-West over his police radio as being five feet eight inches tall.

Approximately two hours later, Officer Drummer returned to the area where he had first encountered Eldridge-West. Officer Drummer saw Eldridge-West wearing a tan coat with fur trim and walking down the street with another man. Eldridge-West walked between two houses, and Officer Drummer ordered him to stop. Eldridge-West continued to walk away but eventually came back from behind the house and was detained by Officer Drummer.

The State charged Eldridge-West with Class A misdemeanor resisting law enforcement and Class A misdemeanor carrying a hand gun without a license. A jury found Eldridge-West guilty as charged.

Analysis

I. Admission of Public Service Announcement Video

Eldridge-West argues that the trial court improperly denied his request to show the jury a video of a public service announcement during his closing argument. To reverse a trial court's decision to exclude evidence there must be (1) error by the court, (2) that affects a defendant's substantial rights, and (3) the defense must have made an offer of proof or the evidence must have been clear from the context. Stroud v. State, 809 N.E.2d 274, 283 (Ind. 2004). We review a trial court's decision to exclude evidence for an abuse of discretion. Id.

Eldridge-West sought to admit a video of a British public service announcement designed to remind people to be aware of cyclists. The video, described as "awareness test," showed two teams passing basketballs among players and asked viewers to count the number of passes by one of the teams. Exhibit A. Then the announcer states the number of passes and asks viewers if they saw a person in a bear costume dancing across the screen. The footage is then rewound for viewers to look for the dancing bear that was presumably overlooked while counting the passes. The minute-long video concludes with the words, "It's easy to miss something you're not looking for. Look out for cyclists." Id.

Eldridge-West argues that the video "was offered for purposes of illustrating the main crux of Mr. West's defense, that the Officer had mis-identified Mr. West as the person who committed the crimes because the Officer was not looking at the things that pointed to his innocence." Appellant's Br. p. 9. Eldridge-West does not explain what was overlooked by Officer Drummer, and we agree with the trial court that the video is not relevant to Officer Drummer's identification of Eldridge-West.

As Eldridge-West and the State point out, the video offered by Eldridge-West was demonstrative evidence, which is evidence offered for purposes of illustration and clarification. Wise v. State, 719 N.E.2d 1192, 1196 (Ind. 1999). "To be admissible, the evidence need only be sufficiently explanatory or illustrative of relevant testimony to be of potential help to the trier of fact." Id.

Unlike in the video, Eldridge-West and the man who answered the door were the only other people in the area during Officer Drummer's first encounter with him; Officer

Drummer was not distracted by eight people passing two basketballs in a relatively small area. Further, the video only briefly showed the players passing the ball whereas Officer Drummer spoke directly with Eldridge-West and then chased him on foot, giving Officer Drummer an opportunity to view him. Most importantly, the purpose of the video is to draw attention to things that go unnoticed—Eldridge-West did not go unnoticed. Because it is not similar to the facts of this case, the video did not explain or illustrate relevant evidence.[1] The trial court did not abuse its discretion in excluding it.

II. Sufficiency of the Evidence

Eldridge-West argues there is insufficient evidence to support his convictions. Upon a challenge to the sufficiency of evidence to support a conviction, we do not reweigh the evidence or judge the credibility of the witnesses, and we respect the jury's exclusive province to weigh conflicting evidence. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). We must consider only the probative evidence and reasonable inferences supporting the verdict. Id. If the probative evidence and reasonable inferences drawn therefrom could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt, we must affirm the conviction. Id.

Eldridge-West claims Officer Drummer's testimony was incredibly dubious because after the chase Officer Drummer radioed a description of Eldridge-West describing him as five feet eight inches tall. Eldridge-West testified at trial that he at six foot two or three inches tall.

[1] Because we conclude the video was not admissible because it did not explain relevant evidence, we need not determine whether it should have been excluded under Indiana Evidence Rule 403.

Within the narrow limits of the "incredible dubiosity" rule, we may impinge upon a fact-finder's function to judge the credibility of a witness. Love v. State, 761 N.E.2d 806, 810 (Ind. 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. This is appropriate only where the court has confronted inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiosity. 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.

Officer Drummer's identification of Eldridge-West at trial was unequivocal. The fact that Officer Drummer's radio statement regarding Eldridge-West's height was incorrect does not make Officer Drummer's trial testimony incredibly dubious. There is sufficient evidence that it was Eldridge-West who committed the offenses.

Conclusion

The trial court did not abuse its discretion in refusing to admit into evidence a video concerning awareness of cyclists. Officer Drummer's testimony was not incredibly dubious. We affirm.

Affirmed.

NAJAM, J., and KIRSCH, J., concur.