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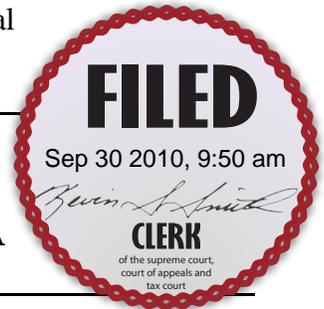
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**IN THE
COURT OF APPEALS OF INDIANA**



CARMELITA WOODS,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 49A02-1002-CR-387

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Kimberly J. Brown, Judge
Cause No. 49G16-0910-FD-88256¹

September 30, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

¹ Some documents in the record list the Cause Number as 49G16-0909-FD-88256.

Case Summary

Carmelita Woods (“Woods”) challenges her convictions for Battery² and Criminal Trespass,³ both as Class A Misdemeanors, raising the sole issue of whether there is sufficient evidence to sustain the judgment.

We affirm.

Facts and Procedural History

Around 5:00 a.m. on September 6, 2009, Bruce Oliver (“Oliver”) was hosting some friends at his home. Oliver left to go to a gas station and found Woods, a woman with whom he had previously had a sexual relationship, present upon his return. Oliver asked Woods to leave a number of times, but Woods did not do so and eventually became angry with Oliver. Oliver was not wearing a shirt because it was hot, and Woods scratched him on his bare chest and eventually knocked over a coffee table. Woods then left and called the police.

Officer John Burger (“Officer Burger”) responded to Woods’s call. Woods was waiting on the sidewalk in front of Oliver’s residence. Officer Burger noted that Woods seemed calm and collected, but Oliver, Oliver’s son, and Oliver’s friend all seemed shaken. Officer Burger collected statements and referred the incident to detectives for further investigation.

On October 22, 2009, Woods was charged with Battery of a Family or Household

² Ind. Code § 35-42-2-1(a)(1).

³ I.C. § 35-43-2-2(a).

Member,⁴ as a Class D Felony, Battery, and Criminal Trespass. On February 22, 2010, a bench trial was held. The trial court dismissed the charge of Battery of a Family or Household Member, and Woods was convicted of Battery and Trespass. Judgment was entered against Woods that day, and she was sentenced to one term of imprisonment for 365 days for each conviction, with 361 days suspended to probation and credit given for 4 days already executed, as well as counseling, community service, court costs, and a fine.

This appeal followed.

Discussion and Decision

Woods challenges the sufficiency of the evidence supporting both of her convictions, arguing that Oliver’s testimony was incredibly dubious. Our supreme court has stated the standard for incredible dubiousity:

Under the incredible dubiousity rule, a court will impinge on a jury’s responsibility to judge witness credibility only when confronted with inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiousity. Tillman v. State, 642 N.E.2d 221, 223 (Ind. 1994). The incredible dubiousity rule, however, is limited to cases where a sole witness presents inherently contradictory testimony which is equivocal or the result of coercion and there is a complete lack of circumstantial evidence of the defendant’s guilt. Id.

Majors v. State, 748 N.E.2d 365, 367 (Ind. 2001) (emphasis supplied). “The incredible dubiousity rule applies to conflicts in trial testimony rather than conflicts that exist between trial testimony and statements made to the police before trial.” Buckner v. State, 857 N.E.2d 1011, 1018 (Ind. Ct. App. 2006) (citing Reyburn v. State, 737 N.E.2d 1169, 1171 (Ind. Ct.

⁴ I.C. § 35-42-2-1(a)(2)(M).

App. 2000)).

To convict Woods of battery as charged, the State was required to prove beyond a reasonable doubt that Woods knowingly in a rude, insolent or angry manner touched Oliver, resulting in pain, scratches, or bleeding. See I.C. § 35-42-2-1(a)(1). To convict Woods of criminal trespass as charged, the State was required to prove beyond a reasonable doubt that Woods knowingly or intentionally refused to leave Oliver's property after having been asked to leave and without having a contractual interest in Oliver's property. See I.C. § 35-42-3-2(a).

Incredible dubiousity does not avail Woods here. Of those who testified at trial upon whom the court's judgment finds support, only Oliver was present during the incident. See Majors, 748 N.E.2d at 367 (limiting incredible dubiousity to situations in which there is only one witness). But Oliver's testimony is unequivocal, much less internally inconsistent. Upon direct examination and cross examination, he consistently denied his presence when Woods arrived at his home, denied permitting Woods into the apartment and maintained that he demanded numerous times she leave, denied attacking Woods and maintained that Woods harmed him and his property, and denied preventing her from calling 911. See id. (requiring equivocation for application of the incredible dubiousity rule). There is no evidence that Oliver's testimony was coerced. See id. Finally, there is circumstantial evidence of Woods's guilt in Officer Burger's testimony comparing Woods's calm demeanor and appearance with Oliver's frantic demeanor and disheveled appearance, and in Officer Burger's further testimony about seeing at least one scratch on Oliver's body.

To be sure, there are contradictions between Oliver’s testimony at trial and his statements to the police before trial. These include whether Oliver was out of the house when Woods arrived, whether Oliver let Woods into his home in response to her knocking, and whether Woods confronted one of Oliver’s friends. These, however, are not enough to support Woods’s claim of incredible dubiousity, which “applies to conflicts in trial testimony rather than conflicts that exist between trial testimony and statements made to the police before trial.” Buckner, 857 N.E.2d at 1018 (emphasis added).

Woods’s challenge to the sufficiency of evidence required for her conviction does not meet the requirements for the application of the incredible dubiousity standard.

Affirmed.

RILEY, J., and KIRSCH, J., concur.