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ATTORNEY FOR APPELLANT:

JAMES A. EDGAR
J. Edgar Law Offices, Prof. Corp.
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

MICHELLE BUMGARNER
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

| | | |
|----------------------|---|-----------------------|
| A.T., |) | |
| |) | |
| Appellant-Defendant, |) | |
| |) | |
| vs. |) | No. 49A02-1104-CR-343 |
| |) | |
| STATE OF INDIANA, |) | |
| |) | |
| Appellee-Plaintiff. |) | |

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marc T. Rothenberg , Judge
Cause No. 49F09-0909-FD-78274

November 28, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

A.T. appeals her convictions of intimidation, a class A misdemeanor,¹ and battery, a class A misdemeanor.²

We affirm.

ISSUES

- I. Whether the State presented sufficient evidence to support A.T.'s conviction of intimidation.
- II. Whether the State presented sufficient evidence to support A.T.'s conviction of battery.

FACTS

On September 4, 2009, A.T. called an Indianapolis Blockbuster store and complained about a late fee that had been assessed to her account. A.T. believed that she had timely returned the DVD and that she did not owe the late fee. A.T. used foul and abusive language on the phone with Blockbuster employee, Amy Dickinson, and threatened to come to the store “to show [Dickinson] who she was.” (Tr. 7). Dickinson felt fear over the threatening language and ended the call. After ending the call, Dickinson removed the late fee from A.T.'s account.

Following the phone call, A.T. and her companion, George Kent, drove to the Blockbuster store. Upon arrival, A.T. became hostile with Dickinson, shoving her, going behind the counter where Dickinson was standing, and grabbing her by the arm. A.T. was “yelling and screaming” and stated that she was going to “fuck [Dickinson]

¹Ind. Code § 35-45-2-1.

²I.C. § 35-42-2-1.

up,” causing Dickinson to become fearful and to call 911. At some point during the confrontation, Melody Kelly, a postal worker delivering mail to the store, stepped between A.T. and Dickinson. Dickinson was not hostile toward A.T., and A.T. eventually left the store with Kent. Kelly followed A.T. to her vehicle in an attempt to record the license plate number, but A.T. covered the license plate with paper and threatened Kelly, causing Kelly to retreat.

Indianapolis Police Officer Stacy Lettinga³ was dispatched to the store and found Dickinson “crying and kinda shaking, look[ing] miserably upset.” (Tr. 41). Officer Lettinga observed redness on Dickinson’s arm. Dickinson gave A.T.’s address to Officer Lettinga, who went to A.T.’s home. After listening to A.T.’s explanation of the events, Officer Lettinga arrested her.

The State charged A.T. with criminal confinement, a class D felony; intimidation, a class A misdemeanor; and battery, a class A misdemeanor. After a bench trial, the court found A.T. guilty of intimidation and battery. Before sentencing, A.T. voluntarily completed an anger management course. The trial court sentenced her to 180 days, with 176 days suspended and 20 hours community service.

1. Intimidation

In order to prove intimidation as charged, the State was required to show that A.T. communicated a threat to Dickinson with the intent that Dickinson be placed in fear of retaliation for a prior lawful act. *See* I.C. § 35-45-2-1. Here, the prior lawful act was defined in the charging information as “assessment of a fine for a late video return.”

³ By the time of the trial, Officer Lettinga’s surname was “Riojas.” (Tr. 40).

(App. 26). A.T. contends that the State failed to submit sufficient evidence to establish that assessment of the late fee was a lawful act. In support of her contention, she cites cases where fees have been assessed that were later found to be unlawful.

Our standard of review for sufficiency claims is well settled. In reviewing sufficiency of the evidence claims, this court does not reweigh the evidence or assess the credibility of witnesses. *Davis v. State*, 791 N.E.2d 266, 269 (Ind. Ct. App. 2003), *trans. denied*. We consider only the evidence most favorable to the judgment, together with all reasonable and logical inferences drawn therefrom. *Id.* at 269-70. The conviction will be affirmed if there is substantial evidence of probative value to support the conclusion of the trier of fact. *Id.* at 270.

Here, A.T. did not dispute either the legality of the late fee or of Dickinson's right as a Blockbuster manager to assess the fee pursuant to Blockbuster's policy regarding failure to return a rented DVD. Her argument was that she had timely turned in the DVD and that the late fee was mistakenly assessed. Our supreme court has previously held that "[i]t is certainly true that when determining whether an element exists, the jury may rely on its collective common sense and knowledge acquired through everyday experiences." *Halsema v. State*, 823 N.E.2d 668, 673 (Ind. 2005) (citing 12 Robert Lowell Miller, Jr., *Indiana Evidence* § 201.101 (1995)). Here, the trial court, like a jury, was free to use its common sense and knowledge. It could have reasonably concluded that the late fee was assessed in accordance with Blockbuster's standard practice. Furthermore, the court could have reasonably assumed that something as commonplace as a late fee on a DVD rental, like other types of rental and library late

fees, fell within the “commonplace and everyday experience” of the trial court and that no direct evidence was required. We conclude that there was sufficient evidence to support the elements of intimidation.

2. Battery

In order to prove battery as charged, the State was required to show that A.T. knowingly or intentionally touched Dickinson in a rude, insolent, or angry manner and that the touch caused injury to Dickinson’s arm. *See* I.C. § 35-42-2-1(a)(1). A.T. contends that Dickinson’s testimony was “incredibly dubious or inherently improbable” because she “would have us believe that she was calm throughout the process and never gave any cause for provocation and that A.T. became violent without justification.” A.T.’s Br. at 12. A.T. further contends that if her “purpose for traveling to the Blockbuster was satisfied by Dickinson removing the fee, and if Dickinson communicated to A.T. that the fee had been removed, then A.T.’s aggression becomes nonsensical.” *Id.* at 13.

A.T.’s argument lacks merit. The “incredible dubiousity” rule applies where a sole witness presents testimony that is inherently improbable or coerced, equivocal, or wholly uncorroborated. *Carter v. State*, 754 N.E.2d 877, 880 (Ind. 2001), *cert. denied*, 537 U.S. 831 (2002). Incredibly dubious or inherently improbable testimony is that which runs counter to human experience and which no reasonable person could believe. *Campbell v. State*, 732 N.E.2d 197, 207 (Ind. Ct. App. 2000).

Here, A.T.’s conviction is not based on incredibly dubious testimony. Both Dickinson and Kelly testified to A.T.’s demeanor, including her threats and

aggressive behavior. Officer Lettinga observed the red marks on Dickinson's arm and her "miserably upset" state. Testimony from multiple witnesses and circumstantial evidence of A.T.'s guilt render the incredible dubiousity exception inapplicable in this case. The evidence was sufficient to support A.T.'s conviction of battery.

Affirmed.

FRIEDLANDER, J., and VAIDIK, J., concur.