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IN THE
COURT OF APPEALS OF INDIANA

ALLISON JOHNSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-1106-CR-266
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Kimberly Brown, Judge
Cause No. 49G16-1009-CM-71719

December 28, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Allison Johnson appeals her conviction following a bench trial for class A misdemeanor battery.[1]

We affirm.

ISSUE

Whether there is sufficient evidence to support the conviction.

FACTS

Johnson and Laquana Green were in a relationship from approximately March 30 until August of 2010. During this time, they lived together in an apartment, which was leased in both of their names. Green moved out of the apartment in late August or early September of 2010. At some point after Green moved out of the apartment, Johnson changed the locks.

On September 14, 2010, Green went to the apartment to retrieve her projector and dog. Several people, including Green's mother, aunt and girlfriend, went with Green. While Green's mother, Vickie Harland, and girlfriend stayed in the vehicle, Green's aunt, Veronica Montgomery, accompanied Green to the apartment.

Johnson refused to let Green into the apartment. When Green complained to the apartment manager, he informed her that she could have the locks drilled for a small fee because her name remained on the apartment's lease. As the maintenance man was

[1] Ind. Code § 35-42-2-1.

drilling the locks, Johnson's father arrived at the apartment. When Johnson opened the door for her father, Green and Montgomery walked into the apartment.

Johnson began to get "rowdy" and threatened that no one was going to leave "without [a] fight[.]" (Tr. 12). Johnson then picked up a couple of empty liquor bottles and "started swinging them." (Tr. 13). Johnson struck Green's arm with one of the bottles, leaving a bruise and causing pain. She also struck Montgomery. While Montgomery and Johnson argued, Green took her projector and left the apartment.

As Green began walking to the parking lot, she heard glass shattering. Once outside, she observed Johnson throw two bottles out of the apartment window. The flying glass from one of the bottles cut Johnson's arm. The other bottle struck Harland's vehicle, cracking the windshield and shattering the side mirror. One of the thrown bottles landed in the bed of a truck parked next to Harland's vehicle. Harland then telephoned police.

When he arrived at the scene, Indianapolis Metropolitan Police Officer Jeffrey Newlin observed "one or two bottles broken just below [Johnson's] apartment." (Tr. 41). He also observed a bottle "in the bed of a vehicle" parked next to Harland's vehicle. (Tr. 42).

On September 16, 2010, the State charged Johnson with Count 1, class A misdemeanor battery; and Count 2, class B misdemeanor criminal mischief. The trial court held a bench trial on April 19, 2011. At the conclusion of the State's case-in-chief, Johnson moved for a directed verdict on both counts. The trial court granted the motion

as to Count 2, finding that the State had not proved that Johnson recklessly or knowingly damaged Green's property, as charged. The trial court found Johnson guilty of class A misdemeanor battery. Following a sentencing hearing on May 10, 2011, the trial court sentenced Johnson to 365 days, with 351 days suspended to probation.

DECISION

Johnson asserts that there is insufficient evidence to support her conviction for battery.

> 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).

Johnson contends that the incredible dubiosity rule applies to Green's testimony regarding Johnson hitting her arm with a bottle while in the apartment where she also testified, during cross-examination, that she informed the responding officer that while in the apartment, Johnson had thrown a beer bottle, which hit her on the side of the neck. Johnson further maintains that the incredible dubiosity rule applies to Green's testimony that she was cut by flying glass. Specifically, Johnson argues that it is unclear whether

the injury depicted in the State's photograph of Green's arm is a scar or a fresh scratch and that "no reasonable person could believe the 'scar,' or scratch . . . came from a haphazard shard of broken glass." Johnson's Br. at 7.

"Under the incredible dubiosity rule, a court will impinge on the jury'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.*

Here, the State charged Johnson with class A misdemeanor battery. Thus, the State was required to prove that Johnson knowingly or intentionally touched Green in a rude, insolent, or angry manner, resulting in bodily injury. *See* I.C. § 35-42-2-1. During trial, Green testified that when she entered the apartment, Johnson started swinging a bottle and hit Green on the arm, causing a bruise and pain. During cross-examination, she also acknowledged that she told Officer Newlin that Johnson had "picked up a beer bottle, and threw it at [her], and hit [her] on the left side of [her] neck." (Tr. 27).

We cannot agree that Green's testimony was inherently dubious or improbable. Contrary to Johnson's assertion, Green did not provide contradictory testimony. To the extent that Green's trial testimony during direct examination may have been more extensive than testimony during cross-examination regarding the statement she made to Officer Newlin does not indicate contradictory or equivocal testimony. *See West v. State*, 907 N.E.2d 176, 178 (Ind. Ct. App. 2009) (finding no contradiction where the victim's testimony was more extensive as to the events which transpired than what she specifically told the officer). Moreover, Green did not testify that Johnson never struck her arm with a bottle.

In this case, Johnson's counsel cross-examined Green, and the trial court was able to independently evaluate her testimony. Johnson'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 Johnson's conviction for class A misdemeanor battery.[2]

Affirmed.

BAKER, J., and BAILEY, J., concur.

[2] Because we find the evidence to be sufficient that Johnson committed battery by striking Green's arm with a bottle, we need not address Johnson's assertion that Green's testimony regarding getting cut or scratched by a bottle was incredibly dubious.