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ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

MICHAEL E. CAUDILL
Indianapolis, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

MARJORIE LAWYER-SMITH
Special Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

DAVID D. THOMPSON,
Appellant- Defendant,

vs.

STATE OF INDIANA,
Appellee- Plaintiff,

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No. 49A02-0910-CR-1015

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Kimberly J. Brown, Judge
The Honorable Israel Nunez Cruz, Master Commissioner
Cause No. 49G16-0904-FD-40022

May 17, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

David Thompson appeals his conviction of domestic battery as a Class D felony following a bench trial. Thompson argues that the evidence is insufficient to support his conviction because the testimony of the victim was incredibly dubious. Concluding the victim's testimony was not incredibly dubious, and the evidence is sufficient to sustain Thompson's conviction, we affirm.

Facts and Procedural History

The facts most favorable to the verdict reveal when Tisha Thompson walked in the back door of her home on April 7, 2009, Thompson, Tisha's husband of two months, pushed the door into her several times and would not let her into the house. When he eventually let go of the door and let her into the house, Thompson began yelling at Tisha about not answering her cell phone. Thompson followed Tisha through the house, screamed at her, and threw items out the front door. He grabbed Tisha by the shoulders and tried to shove her out the front door as well. He then backed her into a corner and bit her face. The bite did not draw blood, but left a bruise.

The following day, when Tisha did not answer her cell phone, her family members became worried and called the police. Indianapolis Metropolitan Police Department Officer Brian Harvey was dispatched to the Thompsons' home. Tisha was initially very quiet and hesitant with Officer Harvey. Thompson acted as if did not want to talk to or look at the officer. When Officer Harvey asked to speak to Tisha in private, she told him that her husband had bitten her. The officer noticed a faint red mark on Tisha's face. Thompson denied biting Tisha.

Thompson was charged with domestic battery as a Class A misdemeanor; battery as a Class A misdemeanor; domestic battery as a Class D felony; and battery as a Class D felony. In a bifurcated trial, the trial court found Thompson guilty of the two Class A misdemeanors. Thompson subsequently pled guilty to the Class D felony domestic battery, and the trial court entered judgment of conviction on that count alone. Thompson now appeals the conviction.

Discussion and Decision

Thompson argues that the evidence is insufficient to support his conviction because Tisha's testimony was incredibly dubious. When we review the sufficiency of the evidence to support a conviction, we consider only the probative evidence and reasonable inferences supporting the judgment. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). We neither reweigh the evidence nor assess the credibility of the witnesses. Id. We will affirm the conviction if there is probative evidence from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. Id.

Pursuant to the narrow limits of the incredible dubiousity rule, a reviewing court may impinge upon the finder of fact's function to judge the credibility of witnesses. Love v. State, 761 N.E.2d 806, 810 (Ind. 2002). We may reverse a conviction if a sole witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence. Id. This is appropriate only in the event of inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiousity. 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.

Here, Tisha's testimony was neither equivocal nor wholly uncorroborated. First, she never wavered from her account of the events. Second, Officer Harvey's testimony corroborates Tisha's version of events. Although he did not see a bite mark on her face, he noticed a faint red mark where she claimed to have been bitten. The fact that Officer Harvey did not notice a bite mark does not detract from Tisha's testimony that Thompson bit her. West v. State, 907 N.E.2d 176, 178 (Ind. Ct. App. 2009) (stating the fact that the officer did not notice any bruises did not detract from the victim's testimony about the injuries caused when the defendant pushed her). Officer Harvey did in fact verify that Tisha told him such an event occurred. See id. Tisha's testimony was not incredibly dubious.

Thompson further argues that even if Tisha's testimony was not incredibly dubious, there is still insufficient evidence to support his conviction. In order to convict Thompson of domestic battery as a Class D felony, the State had to prove that Thompson knowingly or intentionally touched Tisha, who was his spouse, in a rude, insolent, or angry manner, and that he had a prior conviction for domestic battery. See Ind. Code Sec. 35-42-2-1.3.

Thompson claims there is insufficient evidence that he knowingly touched Tisha in a rude and angry manner. Specifically, he claims that although they argued, he never touched her. Our review of the evidence reveals that this is nothing more than an

invitation for us to reassess the credibility of the witnesses and to reweigh the evidence.

In this regard, the trial court stated:

I absolutely believe everything that she said. Because, her testimony is very detailed about what happened. I don't find any part of her story . . . incredible. On the other hand, as I listen to the Defendant and observed his demeanor, his story is a bit incredible. . . . [H]e can't remember what happened the day of the incident, but he can remember everything that happened the day after. . . . He can remember what he was doing when the police knocked on the door. He can remember where he stood. He can remember the details of the kitchen, but he can't remember what happened the day before. He can remember when she walked in, and the door allegedly hit him in the small of the back. It wasn't the upper back. It was the small of his back. And, he can remember pushing the door back. He can remember an argument, but he can't remember what it was about. He can't remember biting her. He doesn't bite her. I don't believe a word he says.

Transcript at 34. The trial court is in a better position to weigh evidence, assess the credibility of witnesses, and draw inferences. Johnson v. State, 903 N.E.2d 472, 474 (Ind. Ct. App. 2009). We will not second guess its determination.

Conclusion

The incredible dubiousity rule does not apply in this case, and there is sufficient evidence to support Thompson's conviction.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.