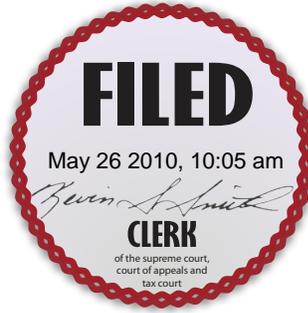


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

RANDY M. FISHER
Deputy Public Defender
Fort Wayne, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

ANN L. GOODWIN
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

ANTHONY E. GRIFFIN, SR.,)

Appellant-Defendant,)

vs.)

No. 02A03-0912-CR-575

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Robert J. Schmoll, Magistrate
Cause No. 02D04-0904-FB-85

May 26, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Anthony E. Griffin, Sr., appeals his conviction for Rape,¹ a class B felony, challenging the sufficiency of the evidence. Specifically, Griffin argues that his conviction must be set aside because the victim's testimony lacked credibility and the State failed to prove beyond a reasonable doubt that he forced the victim to have sexual intercourse with him. Finding the evidence sufficient, we affirm the judgment of the trial court.

FACTS

Griffin and S.W. were living together at a residence in Fort Wayne. On April 10, 2009, Griffin was arrested on a body attachment warrant for refusing to submit to a court-ordered paternity test in a matter that involved another woman.

Although S.W. was aware of the situation, she was angry because Griffin refused to take responsibility for his child. At some point during Griffin's incarceration, S.W. went to a bar, brought another man back to the house, and had sex with him. After Griffin was released from jail, he found out about the incident and confronted S.W. When S.W. admitted the encounter, Griffin punched her in the face. Griffin then grabbed S.W., threw her into a wall, and started to strangle her. When S.W. tried to escape, Griffin pulled her back from the door by the hair. Griffin struck S.W. again after ordering her to sit on a couch.

In an effort to stop the attacks, S.W. apologized to Griffin and told him that they "could work on their relationship." Tr. p. 140-41. When Griffin told S.W. that he

¹ Ind. Code § 35-42-4-1.

wanted to have sex with her, S.W. refused and stated that she “didn’t want to.” Id. at 142. As S.W. attempted to run from the residence, Griffin pulled her by the hair and threw her towards the stairs. Griffin then told S.W. that he would kill her unless she went upstairs with him. As S.W. ascended the stairs, Griffin told her to remove her pants. Although S.W. said “no, stop, don’t do this,” Griffin forced S.W.’s legs apart and had sexual intercourse with her. Id. at 143-44, 148, 165-66.

Approximately five minutes later, a friend of S.W.’s knocked on the front door. Griffin immediately ordered S.W. to get dressed and leave the house. When S.W. met her friend outside, they fled and S.W. notified the police. S.W. was examined at the Fort Wayne Sexual Assault Treatment Center and reported that Griffin had sexually assaulted her. As a result, the State charged Griffin with rape, strangulation, a class D felony, and domestic battery, a class A misdemeanor.

Following a jury trial on October 15, 2009, Griffin was found guilty on all counts. On November 10, 2009, Griffin was sentenced to: a) ten years for rape with four years suspended; b) one and one-half years for strangulation; and c) one year for domestic battery. The trial court ordered the sentences to run concurrently, and Griffin now appeals his conviction for rape.²

DISCUSSION AND DECISION

² Griffin does not challenge his convictions for strangulation and domestic battery.

In addressing Griffin's challenge to the sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Williams v. State, 873 N.E.2d 144, 147 (Ind. Ct. App. 2007). We will consider only the evidence most favorable to the judgment together with the reasonable inferences to be drawn therefrom. Id. We will affirm the conviction if sufficient probative evidence exists from which the fact finder could find the defendant guilty beyond a reasonable doubt. Id. Reversal is warranted only when reasonable persons would not be able to form inferences as to each material element of the offense. Alvies v. State, 905 N.E.2d 57, 61 (Ind. Ct. App. 2009).

We also note that the fact finder must determine whom to believe and what portions of conflicting testimony to believe. In re J.L.T., 712 N.E.2d 7, 11 (Ind. Ct. App. 1999). A conviction may rest upon the uncorroborated testimony of the alleged victim. Holeton v. State, 853 N.E.2d 539, 541 (Ind. Ct. App. 2006). Although we will impinge upon the fact finder's credibility judgments when confronted with testimony of inherent improbability, or coerced, equivocal, wholly uncorroborated testimony of incredible dubiousity, this exception applies only where a single witness testifies and there is no circumstantial evidence of guilt. Bowles v. State, 737 N.E.2d 1150, 1152 (Ind. 2000). However, a witness's trial testimony that contradicts his or her prior statements does not render such testimony incredibly dubious. Stephenson v. State, 742 N.E.2d 463, 498 (Ind. 2001).

To convict Griffin of rape, the State was required to prove that he knowingly or intentionally had sexual intercourse with S.W. while compelling S.W. “by force or imminent threat of force.” I.C. § 35-42-4-1(a). It is the victim’s perspective—and not the assailant’s—from which the presence or absence of forceful compulsion is to be determined. Tobias v. State, 666 N.E.2d 68, 72 (Ind. 1996). This is a subjective test that looks to the victim’s perception of the circumstances surrounding the incident in question. Id. The forcible compulsion element of rape may be inferred from the circumstances. Maslin v. State, 718 N.E.2d 1230, 1235 (Ind. Ct. App. 1999).

In this case, the evidence established that Griffin repeatedly struck S.W., threw her against the wall, and strangled her. Tr. p. 137-38. When Griffin told S.W. that he was going to have sex with her, Griffin verbally protested and tried to refuse. Id. at 141-42. Griffin then prevented S.W. from leaving the residence by grabbing her hair and throwing her up the stairs toward the bedroom. Id. at 142, 165. After ordering S.W. to remove her pants, Griffin forced S.W.’s legs apart and had sexual intercourse with her. S.W. again verbally protested, cried hysterically, and begged for Griffin to stop. Id. at 143-44, 148, 165-66.

Although Griffin claims that his testimony established that he and S.W. engaged in consensual sex, the jury obviously rejected his version of the incident. Moreover, we reject Griffin’s claim that S.W.’s testimony was incredibly dubious and unbelievable because the evidence did not establish that there was an obvious injury to S.W.’s groin area. Injury is not an element of the offense, and the nurse who examined S.W. testified

that it was very rare to find evidence of injury after a vaginal rape. Id. at 240-41. And S.W. never wavered in her testimony that Griffin forced her to have sexual intercourse against her will. Id. at 143-44, 148, 165-66.

In sum, the jury reasonably inferred from the evidence at trial that S.W. did not consent to sexual intercourse with Griffin and that she felt compelled by actual force and the threat of imminent force to submit to that act. Moreover, Griffin has failed to establish that S.W.'s testimony was improbable or incredible. Thus, we conclude that the evidence was sufficient to support Griffin's conviction for rape.

The judgment of the trial court is affirmed.

DARDEN, J., and CRONE, J., concur.