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**IN THE  
COURT OF APPEALS OF INDIANA**

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BRETT A. BAKER,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0701-CR-21

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APPEAL FROM THE MARION SUPERIOR COURT

The Honorable Carol Orbison, Judge

Cause No. 49G17-0607-CM-136573

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**August 3, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**VAIDIK, Judge**

## **Case Summary**

Brett A. Baker (“Baker”) appeals his conviction for domestic battery as a Class A misdemeanor following a bench trial. Baker argues that the evidence is insufficient to support his conviction because the testimony of the victim and her cousin was incredibly dubious. Concluding that the incredible dubiousity rule is not applicable in this case and that the evidence is sufficient to sustain Baker’s conviction for domestic battery, we affirm the judgment of the trial court.

## **Facts and Procedural History**

Baker and Julie Denham (“Denham”) have known each other for approximately twenty years, lived together for about one year in Denham’s house, and were involved in an exclusive romantic relationship. Denham’s cousin, Patricia Horn (“Horn”), also lived in Denham’s house.

On July 22, 2006, Baker, Denham, and Horn were at Denham’s house, and the three went outside to Baker’s car to retrieve Horn’s CDs that were in the trunk of Baker’s car. As Baker and Denham were walking back inside, Baker shoved Denham. Once inside the house, Baker and Denham began to argue because Denham refused Baker’s request to go to the liquor store to get some liquor for him. Baker then pushed Denham, grabbed her, and placed her in handcuffs. The handcuffs, which were on Denham’s wrists for about ten minutes, were “really tight” and caused pain to Denham. Tr. p. 11, 13. Horn, who saw Denham crying because of the handcuffs, asked Baker to remove the handcuffs, but he refused and just laughed. Horn then called the police.

The State charged Baker with domestic battery as a Class A misdemeanor<sup>1</sup> and battery as a Class A misdemeanor.<sup>2</sup> Following a bench trial, the trial court found Baker guilty as charged. When sentencing Baker, the trial court vacated his battery conviction and imposed a 365-day sentence, with 10 days executed and 355 days suspended, for his domestic battery conviction. Baker now appeals.

### **Discussion and Decision**

Baker's sole argument on appeal is that the evidence is insufficient to support his conviction because the testimony of the victim and her cousin was incredibly dubious. In reviewing a claim of insufficient evidence, we neither reweigh the evidence nor assess the credibility of the witnesses. *Love v. State*, 761 N.E.2d 806, 810 (Ind. 2002). Instead, we look to the evidence most favorable to the verdict and reasonable inferences drawn therefrom. *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 infringe upon a jury's function to determine the credibility of witnesses. *Id.* The incredible dubiousity rule provides that if a sole witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence, a defendant's conviction may be reversed. *Id.* This is appropriate only where the court has confronted 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

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<sup>1</sup> Ind. Code § 35-42-2-1.3.

<sup>2</sup> Ind. Code § 35-42-2-1.

is whether the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it. *Id.*

To convict Baker of domestic battery, the State was required to prove beyond a reasonable doubt that Baker “knowingly or intentionally touche[d]” Denham, who “is or was living as if a spouse of [Baker] as provided in [Indiana Code § 35-42-2-1.3(c)] . . . in a rude, insolent, or angry manner that results in bodily injury” to Denham. *See* Ind. Code § 35-42-2-1.3(a)(2). When considering whether a person “is or was living as if a spouse” as described in Indiana Code § 35-42-2-1.3(a)(2), the court is required to review the following: “(1) the duration of the relationship; (2) the frequency of contact; (3) the financial interdependence; (4) whether the two (2) individuals are raising children together; (5) whether the two (2) individuals have engaged in tasks directed toward maintaining a common household; and (6) other factors the court considers relevant.” I.C. § 35-42-2-1.3(c) (formatting altered).

Here, the State presented evidence that Baker and Denham knew each other for approximately twenty years, lived together for about one year, and were involved in an exclusive romantic relationship. The State also presented testimony from Denham and Horn that Baker argued with Denham, pushed her, grabbed her, and placed her in handcuffs around her wrists, causing her pain.

Baker does not claim that the State failed to provide sufficient evidence regarding the specific elements of the crime. Instead, he invokes the incredible dubiousity rule and argues that the evidence was insufficient to prove beyond a reasonable doubt that Baker was guilty of battery because Denham’s testimony regarding the reason why she and

Baker were arguing in the house was different than the reason given in her pre-trial statement to police and because the testimony from Denham and her cousin, Horn, was “full of contradictions” and “not corroborated by any evidence,” thus rendering their testimony incredibly dubious. Appellant’s Br. p. 4. We disagree.

The incredible dubiousity rule is not applicable in this case. First, the incredible dubiousity rule applies to conflicts in trial testimony rather than conflicts that exist between trial testimony and statements made to police before trial. *See Buckner v. State*, 857 N.E.2d 1011, 1018 (Ind. Ct. App. 2006). Furthermore, as noted above, the rule applies when a *sole* witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence. *See Love*, 761 N.E.2d at 810. Thus, the standard for dubious testimony is inherent contradiction, not contradiction between witnesses’ testimony. *Id.* Baker is apparently aware of such limitation to the incredible dubiousity rule, and in an attempt to circumvent such limitation, he asserts that the testimony of the victim and her cousin “should be treated as one witness for purposes of this appeal” because of their “relationship” and “the fact that they share[d] the same house[.]” Appellant’s Br. p. 5. While such an assertion presents a creative argument, it is not the law. Baker’s arguments present nothing more than an invitation to reweigh the evidence, but we decline this invitation.

In summary, we conclude that the incredible dubiousity rule is not applicable in this case and that probative evidence exists from which the trial judge, as finder of fact, could have found Baker guilty beyond a reasonable doubt of domestic battery as a Class A misdemeanor.

Affirmed.

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