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**IN THE  
COURT OF APPEALS OF INDIANA**

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WILLIAM C. STITTS,  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 34A02-0701-CR-112

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APPEAL FROM THE HOWARD SUPERIOR COURT  
The Honorable George A. Hopkins, Judge  
Cause No. 34D04-0601-MR-13

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**August 22, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

Appellant-Defendant William C. Stitts (“Stitts”) appeals his conviction of Murder, a felony.<sup>1</sup> We affirm.

### **Issue**

Stitts presents a single issue for review: whether the State failed to present sufficient evidence of probative value to support his conviction, because the testimony of the primary witness against him was incredibly dubious.

### **Facts and Procedural History**

On November 10, 2005, Jerry Kline (“Kline”) was found dead in his Kokomo apartment. Kline had suffered a skull fracture and brain injury from at least seven blunt force blows to his head. It appeared that he had been deceased for approximately forty-eight hours.

Later that evening, Kokomo police arrested Kline’s former neighbor, Amy Ellis (“Ellis”) on an unrelated warrant. Ellis was interviewed by Kokomo police. She admitted that she had purchased prescription drugs from Kline on previous occasions and that she and Stitts had been to Kline’s apartment building on November 8 and on November 9, 2005. Ellis stated that Kline’s lights were on, and his car was at the apartment building on both evenings. Ellis said she knocked at his door each evening, but left after receiving no response. During her incarceration, Ellis made a second statement, in which she maintained that neither she nor Stitts had been in Kline’s apartment on November 8 or 9, 2005.

On December 2, 2005, Ellis told police that she had been in Greg Johnson’s apartment, downstairs from Kline’s apartment, and saw Stitts descend the stairs appearing

“pissed off, sweaty and frantic.” (Tr. 215.) Ellis claimed that she had gained access to Johnson’s apartment by using a butter knife; however, Johnson claimed that he used a locked deadbolt that could not be slipped with a butter knife. Confronted with this inconsistency, Ellis requested to speak with her lawyer. Ellis indicated that she had nothing more to say at that time.

On January 27, 2006, after being allowed to meet with her husband, who was then serving a sentence for an unrelated conviction, Ellis directly implicated Stitts in Kline’s murder. Ellis made the following statements. She was a drug addict, and Stitts had been one of the men to whom she provided sex in exchange for drugs. According to Ellis, Stitts was aware of her sexual activities with other men and at times became angry about the situation.

On November 8, 2005, Stitts had driven Ellis to Kline’s apartment to purchase drugs. Lacking sufficient funds to pay for the drugs, Ellis asked Kline to extend her credit. Instead, Kline and Ellis agreed to engage in sexual activity. Stitts, who had been waiting in his car for several minutes, knocked at Kline’s door during the sexual encounter. After Ellis indicated that Kline should let Stitts in, Kline opened his door. Stitts saw Ellis zipping her pants and became angry. He began to “poke” Kline in the chest and “backhanded” Ellis when she sought to intervene. (Tr. 173.)

Stitts ordered Ellis to wait in the car, and she did so. After ten or fifteen minutes, Stitts came back to the car. Stitts drove to his apartment, gave Ellis a key, and told her to wait there. He returned after about an hour and a half, wearing different clothes. Ellis asked several times “what happened at Jerry’s” and Stitts replied “don’t fucking worry about it”

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<sup>1</sup> Ind. Code § 35-42-1-1.

and “shut up before [she] got the same thing.” (Tr. 177.)

On January 31, 2006, Stitts was charged with Kline’s murder. Stitts’s bench trial commenced on October 31, 2006. Stitts was convicted of murder and sentenced to sixty years imprisonment, with ten years suspended. He now appeals.

### **Discussion and Decision**

In order to convict Stitts of murder, as charged, the State was required to establish that he knowingly killed Kline. See Ind. Code § 35-42-1-1.

In a trial before the bench, the court is responsible for weighing the evidence and judging the credibility of witnesses as the trier of fact, and we do not interfere with this function on appeal. O’Neal v. State, 716 N.E.2d 82, 87 (Ind. Ct. App. 1999), trans. denied. In reviewing a claim of insufficient evidence, we look only to the evidence most favorable to the judgment and all reasonable inferences that support the judgment. Hubbard v. State, 719 N.E.2d 1219, 1220 (Ind. 1999.) We must affirm a conviction if the factfinder heard evidence of probative value from which it could have inferred the defendant’s guilt beyond a reasonable doubt. Graham v. State, 713 N.E.2d 309, 311 (Ind. Ct. App. 1999), trans. denied.

In rare cases, the “incredible dubiousity rule” will permit an appellate tribunal to impinge upon the factfinder’s responsibility to judge the credibility of witnesses. Berry v. State, 703 N.E.2d 154, 160 (Ind. 1998). Application of the rule is limited to cases where a sole witness provides inherently contradictory testimony that is equivocal or coerced, and no circumstantial evidence supports the defendant’s guilt. Id.

Ellis testified as follows. In 2005, she was addicted to opiates and was a user of crack

cocaine. In order to satisfy her addiction, Ellis customarily exchanged sex for drugs. She had developed such an arrangement with Stitts, and Stitts arranged for Ellis to engage in sexual encounters with Stitts's brother and nephew. However, he sometimes became angry about Ellis's sexual involvement with other men.

On November 8, 2005, the date of Kline's death, Stitts drove Ellis to Kline's apartment to purchase drugs. After waiting in the car for a while, Stitts knocked on Kline's door and was allowed into the apartment. When he saw Ellis zipping her pants, Stitts became angry, and called her a "whore leaving him in the car while up there having sex with another man." (Tr. 172.) Stitts also angrily confronted Kline and poked him in the chest. Stitts ordered Ellis to wait in the car, returned after several minutes, drove her to his apartment, and ordered her to wait there.

Stitts returned after about one and one half hours, wearing different clothes. Stitts refused to directly answer Ellis's questions about what happened at Kline's apartment, telling her only "don't fucking worry about it" and "shut up before [she] got the same thing." (Tr. 177.) Stitts also had Avinza<sup>2</sup> in his possession, a drug that Kline was known to keep. Ellis asked Stitts where he got them, and Stitts replied, "from your fucking boyfriend." (Tr. 232.) This is sufficient evidence from which the factfinder could conclude that Stitts murdered Kline.

Nevertheless, Stitts argues that Ellis's testimony must be disregarded in its entirety because Ellis was a drug addict who gave prior inconsistent statements to police. Stitts also claims that Kokomo police officers coerced Ellis's testimony with overly aggressive

interviewing tactics and a promise that her husband's prison sentence would be reduced. Finally, Stitts contends that Ellis's testimony is incredible because she testified that she saw Stitts walk out of Kline's apartment building while Officer Jason Burton testified that his fellow officer had to unlock two locks to gain access to Kline's apartment on the day that the body was discovered.

Stitts asks this Court to negatively assess Ellis's credibility because of drug use and to resolve in Stitts's favor perceived conflicts arising from the testimony of multiple witnesses. However, the trier of fact, rather than this Court, is in the best position to weigh the evidence presented and to resolve conflicts arising from the testimony of multiple witnesses. Graham, 713 N.E.2d at 311. Too, we are not persuaded that Ellis's testimony is in direct conflict with that of other witnesses.

Officer Burton testified that responding officers were required to open two locks to gain entry into Kline's apartment, which Ellis's testimony does not directly dispute. Ellis testified that, after waiting in the car ten or fifteen minutes, she "did start to go back in after waiting for so long and before I could get to the front door of the building, [Stitts] was walking out." (Tr. 175.) Her testimony that Stitts was walking out the front door of the apartment building does not purport to explain how Stitts exited Kline's upstairs apartment. Nor did Ellis purport to have direct knowledge of whether Stitts returned to Kline's apartment later that evening, or how he would have then exited. Indeed, the State did not establish a definitive means of the killer's egress. Kline's apartment door was double locked. The only other obvious means of egress was a window, yet the area around the apartment

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<sup>2</sup> Avinza is a morphine sulphate time-released capsule.

window did not appear disturbed. Nevertheless, Ellis was not obliged to provide testimony to explain all factual circumstances surrounding Kline's death, only those of which she had knowledge.

Furthermore, the incredible dubiousity rule is not implicated because Ellis gave prior statements claiming that Stitts did not enter Kline's apartment on the date in question. The incredible dubiousity rule has application only when the factfinder is presented with equivocal testimony. See Corbett v. State, 764 N.E.2d 622, 626 (Ind. 2002) (holding that inconsistencies between a witness's statement to police and his trial testimony did not render his testimony inherently contradictory as a result of coercion); Love v. State, 761 N.E.2d 806, 810 (Ind. 2002) (holding that the victim's testimony was not incredibly dubious or coerced although she initially denied, in out-of-court conversation with her mother, that the defendant had molested her); Holeton v. State, 853 N.E.2d 539, 541 (Ind. Ct. App. 2006) (holding that discrepancies between statements made to police and trial testimony goes only to the weight of that testimony and witness credibility and doesn't render the testimony inherently contradictory). Ellis's trial testimony was not equivocal; inconsistencies between her prior statements and her trial testimony go to the weight and credibility of the testimony but do not render it incredibly dubious.

Finally, Ellis denied that her testimony was prompted by promises or pressure from police officers. She testified that she was initially reluctant to implicate Stitts, for fear that his family would retaliate by "put[ting] a hit out on [her]." (Tr. 189.) Ellis decided to testify against Stitts after her husband urged her to "do the right thing for Jerry." (Tr. 191.) Ellis

testified to her belief that her husband's eight-year term of incarceration was reduced by one year in exchange for his talking to her and encouraging her to cooperate with police. However, she testified further that she "didn't know if they even promised him anything." (Tr. 244.) He was not released from prison as a result of Ellis' cooperation with the police. As such, the record does not support Stitts's contention that Ellis' testimony was coerced.

Accordingly, the exceptional circumstances that support the application of the incredible dubiosity rule are not present here. Sufficient evidence of probative value supports Stitts's murder conviction.

Affirmed.

BAKER, C.J., and VAIDIK, J., concur.