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**IN THE
COURT OF APPEALS OF INDIANA**

WILLIAM BARRY,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 49A02-0701-CR-25

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Carol Orbison, Judge
Cause No. 49G17-0604-FD-74112

October 19, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

William Barry appeals his convictions for class D felony residential entry, class A misdemeanor criminal mischief, and class A misdemeanor battery. We affirm.

Issue

The issue on appeal is whether the State presented evidence sufficient to sustain Barry's convictions.

Facts and Procedural History

The facts most favorable to the verdict indicate that at 5:45 a.m. on April 19, 2006, Tashia Maul returned to her Indianapolis apartment after work. Barry, her boyfriend, was waiting for her in the parking lot, and the two entered her second-floor apartment. An argument ensued, and Barry refused Maul's request to leave. The argument became physical, and Barry began to choke Maul. He then threw her on the floor, cursed at her, and began to choke her again. When she begged him to stop, he stopped and slapped her face. Maul got up, ran outside onto the balcony, and yelled for help. A first-floor neighbor asked Barry to come down, and Barry left the apartment. Maul locked the front door and telephoned the police. While making the call, Maul saw Barry on the sidewalk below her balcony. He made verbal threats and then backed up and jumped, grabbed the balcony bars, and hoisted himself onto the balcony. Maul closed and locked the sliding glass door and saw Barry standing on the balcony, holding a steel patio chair. As she ran toward the bathroom, she heard the glass shatter. She then barricaded herself in the bathroom, and Barry kicked the bathroom door repeatedly, causing the bathroom mirror to shatter. After a brief silence, Maul heard the sound of items being knocked over and torn up. Eventually, neighbors helped her

get out of the apartment, and Deputy Greg Bowles arrived on the scene. When he searched outside, Deputy Bowles found that the windows to Maul's PT Cruiser had been broken. Inside the apartment, he found broken glass and a patio chair in the living room, and the sliding door to the balcony had been smashed.

The State charged Barry with class D felony residential entry, two counts of class A misdemeanor criminal mischief, and class A battery. On December 5, 2006, a jury found him guilty of residential entry, one count of criminal mischief, and battery. He appeals all three convictions.

Discussion and Decision

Barry contends that the State failed to present evidence sufficient to sustain his convictions. Our standard of review is well settled:

When considering a challenge to the sufficiency of evidence to support a conviction, we respect the fact-finder's exclusive province to weigh conflicting evidence and therefore neither reweigh the evidence nor judge witness credibility. We consider only the probative evidence and reasonable inferences supporting the verdict, and must affirm if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.

Gleaves v. State, 859 N.E.2d 766, 769 (Ind. Ct. App. 2007) (citations omitted).

Barry specifically challenges the verdict based on the testimony of Maul, the State's chief witness, alleging that her testimony is incredibly dubious. The "incredible dubiousity" rule provides that

[i]f a sole witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence, a defendant's conviction may be reversed. This is appropriate only where the court has confronted inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiousity. 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.

Nolan v. State, 863 N.E.2d 398, 404 (Ind. Ct. App. 2007) (citations omitted) *trans. denied*.

Barry's incredible dubiousity argument is misplaced. First, we note that Maul was not the State's sole witness. Although Deputy Bowles was not an eyewitness to the dispute, his testimony corroborated Maul's account. He specifically observed broken glass and a metal lawn chair in Maul's living room as well as a broken patio door. His testimony that the glass was on the inside rather than the outside of the doorframe supports a reasonable inference that the sliding door was broken from the outside, as Maul said.

Deputy Bowles also testified regarding the broken windows on the PT Cruiser. This supports a reasonable inference that the vehicle's windows were broken sometime between the time Maul met Barry in the parking lot and the time of Deputy Bowles's arrival. Thus, circumstantial evidence exists to support the jury's conclusion that Barry broke those windows.

Finally, we are unpersuaded by Barry's argument that Maul made an incredibly dubious claim regarding his ability to hoist himself up to a second-floor balcony. That Maul and Deputy Bowles disagreed in their estimates of the balcony's height off the ground is inconsequential. The jury observed Barry and was in a better position than we to judge whether he could accomplish such a jump.

Because Maul's testimony is corroborated by Deputy Bowles's testimony and supported by circumstantial evidence, we hold that the "incredible dubiousity" rule does not apply in this case. Therefore, we are left with a mere invitation to reweigh evidence, which

we will not do.

Affirmed.

DARDEN, J., and MAY, J., concur.