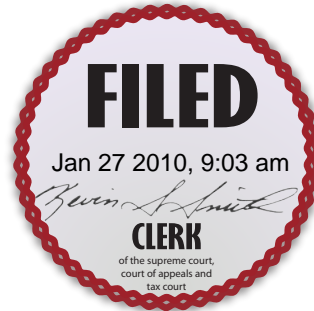


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

CHARLES DAVIS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0906-CR-579

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Clark Rogers, Judge
Cause No. 49G17-0812-FD-276881

January 27, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Charles Davis appeals his convictions for Class D felony residential entry¹ and Class A misdemeanor battery. We affirm.

Issue

The sole issue is whether there is sufficient evidence to support Davis's convictions.

Facts

The evidence most favorable to the convictions is that Davis had a romantic relationship with V.C., but it ended no later than November 2008. At approximately eleven o'clock in the evening of December 2, 2008, V.C. was in bed in her efficiency apartment in Indianapolis when Davis began tapping on her door and attempting to talk to her. The tapping gradually became louder and continued until almost 2:00 a.m. V.C. then heard Davis attempting to pick the locks on her door until he was able to force the door open. V.C. tried to shut the door, but Davis pushed his way in.

Davis dragged V.C. throughout the apartment by her pajama shirt, saying, "I know you have [a] M F'er up in here" Tr. p. 10. V.C.'s downstairs neighbor then slammed her door, which prompted Davis to run out of the apartment while calling V.C. derogatory names. V.C. did not have a phone, and she waited until 7:00 a.m. to wake her elderly landlady to use her phone to call the police.

¹ The trial court sentenced Davis for this offense as a Class A misdemeanor under alternative misdemeanor sentencing.

The State charged Davis with Class D felony residential entry and Class A misdemeanor battery. After a bench trial held on April 14, 2009, the trial court found Davis guilty as charged. He now appeals.

Analysis

When we review the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the judgment. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). “It is the fact-finder’s role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction.” Id. When confronted with conflicting evidence, we must consider it in a light most favorable to the conviction. Id. We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. Id.

Davis specifically contends that the testimony of V.C., the only first-hand witness to testify against him, was incredibly dubious. “Within the narrow limits of the ‘incredible dubiousity’ rule, a court may impinge upon a jury’s function to judge the credibility of a witness.” 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.

We conclude the incredible dubiousity rule does not apply here. First, V.C.’s testimony was not wholly uncorroborated. Officer Thomas Reuss of the Indianapolis Metropolitan Police Department responded to V.C.’s complaint, and he observed that the door to her apartment appeared to have “fresh” splinters and that screws in it were loose, indicating that the door had recently been forced open. Tr. p. 18. Although Officer Reuss could not specify how recently the door had been forced open, his testimony corroborates V.C.’s version of events.

Davis also contends it is inherently improbable that he could have knocked on V.C.’s door for three hours in the middle of the night without drawing the ire of V.C.’s upstairs and downstairs neighbors. We note, however, that V.C. testified that Davis’s knocking at first was only a tapping, and only became louder over time. There also is little evidence as to how well sound travels in the apartment building, nor any evidence as to whether V.C.’s neighbors were home, with the exception of her downstairs neighbor slamming her door when Davis was dragging V.C. around her apartment. We further note that although V.C.’s failure to seek immediate police assistance after Davis’s entry and attack may not have been a “typical” response to such a crime, V.C. was not severely injured, she lacked a phone, and she was concerned about disturbing her elderly landlady.

In sum, the trial court was not required to disbelieve V.C.’s testimony. Nor was it required to accept Davis’s self-serving alibi testimony, particularly since it was not

corroborated by any other testimony or documentation. For us to conclude otherwise would constitute an improper reweighing of evidence and judging of witness credibility.

Conclusion

There is sufficient evidence to support Davis's convictions. We affirm.

Affirmed.

MATHIAS, J., and BROWN, J., concur.