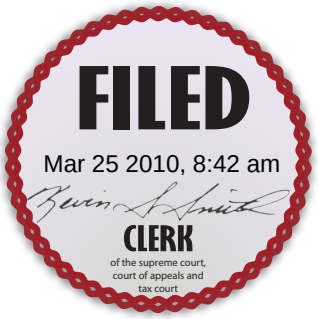

ATTORNEY FOR APPELLANT:

MARK S. LENYO
South Bend, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

GARY DAMON SECREST
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

LATOYA R. BROWN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A03-0910-CR-477
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable John M. Marnocha, Judge
Cause No. 71D02-0812-FC-385

March 25, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Latoya R. Brown appeals her conviction of Class C felony battery.[1] Finding the evidence sufficient, we affirm.

FACTS AND PROCEDURAL HISTORY

In the early morning hours of December 14, 2008, Ashley Newcomb and Lisa Jones went to a club called Stude's. While out on the dance floor, Newcomb bumped into Marina Hawkins, and the two began fighting. Newcomb ended up on top of Hawkins, and she was punching Hawkins in the head. Some of Hawkins' friends, including Brown, joined in the fight. Security personnel subdued Newcomb and escorted her out of the bar. Jones grabbed Newcomb's purse and went to her car. Jones and Newcomb got into Jones' car, and as Jones began to back out of her space, a car in which Hawkins and Brown were passengers pulled up.

Newcomb and Hawkins got out of the vehicles and began fighting again. Newcomb was on top of Hawkins and was punching and kicking her. Jones saw Hawkins swinging her arms, but could not see if she had anything in her hands. Newcomb felt something move across her chest and felt a "stinging sensation." (Tr. at 220.) Newcomb then felt someone hitting her on the head and felt a "stinging sensation." (*Id*. at 221.) She turned and saw Brown standing behind her with a "bright colored box cutter." (*Id*. at 223.) Newcomb also saw a "bright colored box cutter" in Hawkins' hand. (*Id*. at 224.) Jones had seen Brown "jump[] on top of" Newcomb, and she pulled Brown off of Newcomb. (*Id*. at 172.) Jones saw Brown trying to hide a silver object that looked like a blade behind her leg.

[1] Ind. Code § 35-42-2-1(a)(3).

Police officers were already in the vicinity and came to the scene of the fight. They asked Newcomb if she needed an ambulance, but Newcomb and Jones did not think Newcomb was badly hurt at the time. The police did not ask about the fight, and everyone left.

After Newcomb and Jones were back in the car, they realized Newcomb was bleeding badly from a cut across her chest and another near her left temple. Newcomb initially wanted to go to her mother's house, but when they could not stop the bleeding, Jones took Newcomb to the emergency room. At the hospital, an officer took Newcomb's statement and photographed her injuries.

Brown was charged with Class C felony battery. The information alleged Brown had used "a knife or cutting instrument." (Appellant's App. at 22.) At trial, Brown's sister testified she knew Hawkins to carry "a gold lighter" with a button on it that would cause a blade to "pop out." (Tr. at 311.) Brown acknowledged she was involved in the fights inside Stude's and in the parking lot, but she claimed she was unarmed and had only hit Newcomb in the head. The jury found Brown guilty as charged.

FACTS AND PROCEDURAL HISTORY

Brown argues there is insufficient evidence to support her conviction because Newcomb's testimony was incredibly dubious. In reviewing the sufficiency of evidence, we do not reweigh evidence or assess the credibility of the witnesses. *Love v. State*, 761 N.E.2d 806, 810 (Ind. 2002). We consider the evidence most favorable to the verdict and the reasonable inferences drawn therefrom. *Id*. We will affirm if there is probative evidence

from which a reasonable jury could have found the defendant guilty beyond a reasonable doubt. *Id*.

"Within the narrow limits of the 'incredible dubiosity' rule, a court may impinge upon a jury's function to judge the credibility of a witness." *Id*. The rule applies when "a sole witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence." *Id*. The rule is rarely applied and is appropriate only when the testimony is so inherently improbable or equivocal that no reasonable person could believe it. *Id*.

The incredible dubiosity rule does not apply here. Much of Brown's argument focuses on inconsistencies between Newcomb's testimony and the testimony of other witnesses.[2] "However, inconsistencies in the testimony of two or more witnesses go to the weight of the evidence and credibility of each individual witnesses' [sic] testimony, and such inconsistencies do not make the evidence 'incredible' as a matter of law." *Stephenson v. State*, 742 N.E.2d 463, 497 (Ind. 2001) (internal citations omitted). Brown notes Newcomb did not tell the officers at the scene of the fight that Brown or Hawkins had knives; however, Brown testified she did not realize at that time how badly she was hurt. Brown claims Newcomb minimized her role in the fights with Hawkins. Newcomb, however, freely acknowledged she was on top of Hawkins and was punching or kicking her both inside the

[2] For example, Brown notes Newcomb described the box cutter as being brightly colored, while Jones testified she saw a silver blade; however, those are not inconsistent if Newcomb was describing the handle. Newcomb said in a deposition she was glad she had been thrown out of the bar, while Jones said Newcomb was mad. Newcomb testified both Brown and Hawkins had attacked her with box cutters and that she told the police so at the hospital, while Officer Daniel Moryl testified she mentioned only Brown attacking her with a box cutter

bar and in the parking lot.

Finally, Brown characterizes as improbable Newcomb's account of how she sustained the injury to the left side of her head. Brown notes she is right-handed and Jones saw Brown holding a blade in her right hand. Therefore, Brown argues, if she attacked Newcomb from behind, the injury likely would have been on the right side of Newcome's head. However, Brown acknowledged it was possible she could have reached around. (Appellant's App. at 12.) It is also possible that Brown inflicted the injury by approaching Newcomb from the back and left rather than from directly behind her.

Newcomb testified Hawkins did not hit or slash her in the head. She felt a stinging sensation when someone hit her head from behind. When she turned around, she saw Brown with a box cutter in her hand. Jones saw Brown jump on Newcomb, and after she pulled Brown off of Newcomb, she saw a blade in Brown's hand. This evidence is sufficient to establish Brown battered Newcomb with a knife.

Affirmed.

DARDEN, J., and KIRSCH, J., concur.