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**IN THE
COURT OF APPEALS OF INDIANA**

DARREN KING,)

Appellant-Defendant,)

vs.)

No. 49A05-0804-CR-198

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Clark H. Rogers, Judge
Cause No. 49G16-0712-FD-271502

October 24, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Darren King appeals his conviction for Domestic Battery, as a Class D felony, following a bench trial. He presents a single issue for our review, namely, whether the State presented sufficient evidence to support his conviction.

We affirm.

FACTS AND PROCEDURAL HISTORY

On December 15, 2007, while King was living with his girlfriend, M.W., and their two minor children, an argument ensued between King and M.W. At some point, King “got mad and pushed [M.W.] down and hit [her] in the back of [her] head.” Transcript at 7. King’s grandmother, Rita Perdue, was visiting at the time, and she tried to break up the argument. When M.W. tried to call the police, she found that her cell phone had been broken. Accordingly, M.W. used a neighbor’s telephone to call the police. King and Perdue left before police arrived.

M.W. told Officer Jeffrey Rakestraw that King had hit her in the face “approximately five times with a closed fist.” Id. at 24. M.W. also told Officer Rakestraw that King had “head[-]butted” her “several times.” Id. at 25. Officer Rakestraw did not see any blood or bruising on M.W.’s face or body, but he observed that M.W. was “upset” and “kind of excited.” Id.

The State charged King with domestic battery, as a Class D felony, domestic battery, as a Class A misdemeanor, battery, as a Class A misdemeanor, and interference with reporting a crime, as a Class A misdemeanor. Following a bench trial, the trial court

found King guilty of domestic battery, as a Class D felony and entered judgment and sentence accordingly. This appeal ensued.

DISCUSSION AND DECISION

King contends that the State presented insufficient evidence to support his conviction. His sole contention on appeal is that M.W.'s testimony was incredibly dubious and cannot support his conviction. In particular, King maintains that M.W. contradicted herself regarding how many times King had hit her and gave equivocal testimony regarding whether King broke her phone.

When reviewing the claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the judgment and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

The “incredible dubiousity rule” is limited to cases where a sole witness presents inherently contradictory testimony which is equivocal or the result of coercion and there is a complete lack of circumstantial evidence of the defendant’s guilt. Tillman v. State, 642 N.E.2d 221, 223 (Ind. 1994). Here, while King points out inconsistencies in M.W.’s testimony regarding how many times King hit her and whether King broke her phone, her testimony was not inherently contradictory. And there is no evidence that she was coerced into testifying against him. Moreover, there is circumstantial evidence of King’s guilt given Perdue’s testimony that she intervened when King “touched” M.W.’s

shoulders during the argument, and Officer Rakestraw testified that M.W. appeared “upset” and “excited.” Transcript at 25, 29. We conclude that the incredible dubiousity rule does not apply here. See Timberlake v. State, 690 N.E.2d 243, 252 (Ind. 1997), cert. denied, 525 U.S. 1073 (1999). As such, King’s contention on this issue must fail.

The evidence is sufficient to support King’s conviction. To prove domestic battery, as a Class D felony, the State was required to show that King knowingly, in a rude, insolent or angry manner, touched M.W., who was living as if a spouse with King, in the presence of their two minor children and that touching resulted in bodily injury to M.W. See Ind. Code § 35-42-2-1.3. M.W. testified that King “pushed [her] down and hit [her] in the back of [her] head.” Transcript at 7. Perdue testified that she observed King and M.W. arguing, that King was “mad,” and that King “touched” M.W.’s shoulders. Id. at 29, 30. M.W. also testified that her two minor children were present during the incident. King asks that we reweigh the evidence, which we will not do.

Affirmed.

ROBB, J., and MAY, J., concur.