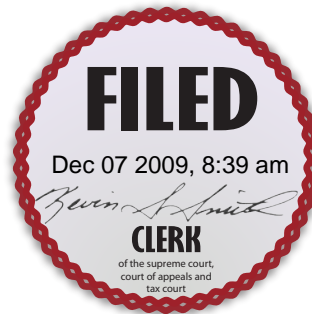


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

KURT A. YOUNG
Nashville, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ANN L. GOODWIN
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

FREDERICK V. SHORTS,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 49A04-0904-CR-203

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Clark H. Rogers, Judge
Cause No. 49G17-0806-FD-144943

December 7, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Frederick Shorts appeals his conviction for Class D felony strangulation.¹ Shorts contends the evidence is insufficient to support his conviction because the victim's testimony is incredibly dubious and because the State failed to rebut his self-defense claim. Concluding that the victim's testimony is not incredibly dubious and the State did rebut his self-defense claim, we affirm.

Facts and Procedural History

On June 12, 2008, Lisa Beck drove to Shorts's residence in Marion County. The two had been in an intimate relationship, but since an argument that occurred the previous weekend, they had not been in contact. Beck honked the horn after pulling into the parking area behind his residence. Shorts looked out the window, went to the back door, and invited her in. Beck said that she wanted to talk outside, but Shorts again asked her inside because he did not want his neighbors to hear their conversation. Beck went inside the house and followed Shorts upstairs to his bedroom. Shorts sat down in the middle of the bed with his knees pulled up, and Beck sat down beside him on the side of the bed. Beck asked Shorts how he was doing and apologized for the argument they had the previous weekend. They did not argue. Shorts took a drink of gin, and Beck kissed him on his knee. Shorts then jumped on top of Beck, put both his hands on her throat, and strangled her. While he was strangling her, he looked at her "like he was crazy." Tr. p. 8. Beck could not breathe, saw stars, and thought she was going to die. Shorts then

¹ The record contains multiple spellings of Shorts's first name. We use the spelling indicated by his signature. *See* Appellant's App. p. 23.

released her and ordered her to “[g]et the fuck out, bitch.” *Id.* Beck was afraid to descend the stairs ahead of him, so Shorts went first. Once outside the house, Beck immediately left in her car, drove to a nearby gas station, and called the police.

The State charged Shorts with Class D felony strangulation, Class A misdemeanor domestic battery, and Class A misdemeanor battery. Shorts waived his right to a trial by jury and was tried to the bench. Before the presentment of any testimony, the State dismissed the Class A misdemeanor battery charge. Beck and Officer Freddie Haddad, who saw Beck after the incident, testified for the State. The State offered and the trial court admitted three photographs into evidence showing red marks on Beck’s neck. State’s Exs. 1-3. Officer Haddad testified that he observed “[r]ed blotchiness around [Beck’s] neck.” Tr. p. 20. Shorts testified in his own defense that Beck lunged at him and forcefully kissed him, and he merely pushed her off of him. The trial court found Shorts guilty of Class D felony strangulation² and subsequently sentenced him to 730 days, with 365 days suspended and the remainder to be served on home detention. Shorts now appeals.

Discussion and Decision

Shorts contends the evidence is insufficient to support his conviction because Beck’s testimony is incredibly dubious and because the State failed to rebut his self-defense claim. When reviewing the sufficiency of the evidence to support a conviction, appellate courts 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-

² Ind. Code § 35-42-2-9(b)(1).

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.* To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider only the evidence most favorable to the trial court's ruling. *Id.* Appellate courts confirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Id.* It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. *Id.* at 147. The evidence is sufficient if an inference may reasonably be drawn from it to support the judgment. *Id.*

I. Incredible Dubiosity Rule

Shorts first contends that the evidence is insufficient to support his conviction because Beck's testimony is incredibly dubious. The incredible dubiosity rule provides that a court may "impinge on the jury's responsibility to judge the credibility of witnesses only when confronted with inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiosity." *Murray v. State*, 761 N.E.2d 406, 408 (Ind. 2002). The application of this rule is limited to where a sole witness presents inherently contradictory testimony that is equivocal or the result of coercion and there is a complete lack of circumstantial evidence of the defendant's guilt. *James v. State*, 755 N.E.2d 226, 231 (Ind. Ct. App. 2001), *trans. denied*. "[A]pplication 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." *Stephenson v. State*, 742 N.E.2d 463, 498 (Ind. 2001) (quotation omitted).

Beck testified that Shorts put both his hands around her neck and strangled her. Beck could not breathe, saw stars, and thought she was going to die. When Shorts finally released her and ordered her to leave, she was afraid to descend the stairs ahead of him. Although Shorts attempts to paint Beck's testimony as inherently improbable because she did not want to descend the stairs before him after being strangled, we find it entirely probable that Beck would refuse to descend first for fear of being pushed or thrown down the stairs. Circumstantial evidence provided by the photographs showing red marks on Beck's neck and Officer Haddad's testimony indicating the "red blotchiness" on her neck provide further corroboration of Beck's testimony. We thus conclude that Beck's testimony is not inherently improbable, nor is there a complete lack of circumstantial evidence of Shorts's guilt. The inherent dubiousity rule does not apply.

II. Self-Defense Claim

Shorts next contends that the evidence is insufficient to support his conviction because the State failed to rebut his self-defense claim. The standard of review for a challenge to the sufficiency of evidence to rebut a claim of self-defense is the same as the standard for any sufficiency of evidence claim. *Wilson v. State*, 770 N.E.2d 799, 801 (Ind. 2002). A valid claim of self-defense is a legal justification for an otherwise criminal act. *Henson v. State*, 786 N.E.2d 274, 277 (Ind. 2003). In order to prevail on such a claim, the defendant must show that he: (1) was in a place where he had a right to be; (2) did not provoke, instigate, or participate willingly in the violence; and (3) had been in reasonable fear or apprehension of bodily harm. *Henson*, 786 N.E.2d at 277; *Wilson*, 770 N.E.2d at 800. When a claim of self-defense is raised and finds support in

the evidence, the State has the burden of negating at least one of the necessary elements. *Wilson*, 770 N.E.2d at 800.

Beck testified that she and Shorts were in his bedroom when she apologized for the argument they had the previous weekend. They did not argue. Shorts took a drink of gin, and Beck kissed him on his knee. Shorts then jumped on top of Beck, put both his hands on her throat, and strangled her. Despite this evidence, Shorts argues that Beck lunged at him and forcefully kissed him, and he merely pushed her off of him. To the extent that witnesses offered conflicting accounts of the details, it was within the province of the trial court to decide whom to believe and which details were important. Shorts's argument asks us to reweigh the evidence and assess witness credibility, which we cannot do. Shorts fails to show that he had been in reasonable fear or apprehension of bodily harm at the time of the strangulation, and thus, his self-defense claim fails.

Affirmed.

C.J., BAKER, and BAILEY, J., concur.