MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Ebony S. Taylor,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

October 30, 2020

Court of Appeals Case No. 20A-CR-765

Appeal from the Marion Superior Court

The Honorable Peggy Hart, Magistrate

Trial Court Cause No. 49G10-1905-CM-20224

May, Judge.

[1] Ebony S. Taylor appeals following her conviction of Class A misdemeanor battery resulting in bodily injury.[1] Taylor raises two issues on appeal, which we revise and restate as: (1) whether the victim's testimony at trial was incredibly dubious; and (2) whether Taylor's sentence is inappropriate given the nature of her offense and her character. We affirm.

Facts and Procedural History

[2] Taylor and Lisa Greene were neighbors in the same apartment complex in Indianapolis. They knew each other for several years, and Greene considered herself "like a big sister figure in [Taylor's] life." (Tr. Vol. II at 10.) On April 30, 2019, Greene visited her neighbor, Dichelle Emerson. While Greene and Emerson were visiting, Taylor entered Emerson's apartment and began to argue with Greene. Taylor then pulled Greene's hair and hit her in the face, causing Greene pain. Emerson inserted herself between Taylor and Greene, and Taylor left the apartment. Greene then called Indianapolis Metropolitan Police Department (IMPD) Detective Kevin Kern because Greene had served as a complaining witness in a case Detective Kern investigated involving Greene's nephew. Detective Kern instructed Greene to notify the IMPD about the incident, and Greene did so. On May 3, 2019, Detective Kern met with Greene

[1] Ind. Code § 35-42-2-1 (2018).

and showed her a photo array. Greene identified Taylor in the photo array as her assailant.

[3] On May 23, 2019, the State charged Taylor with Class A misdemeanor battery resulting in bodily injury, and the court held a bench trial on March 2, 2020. The court found Taylor guilty and held a sentencing hearing on the same day as the bench trial. At the sentencing hearing, Greene testified Taylor "has violently been into it with several of our neighbors . . . she has expressed anger towards several of the neighbors as well as myself and her two (2) children." (*Id*. at 45.) The court imposed a 365-day sentence, but the court suspended all but two days of the sentence to probation. The court also ordered Taylor to perform eighty hours of community service.

Discussion and Decision

I. Incredible Dubiosity

[4] Taylor argues the State presented insufficient evidence to convict her because Greene's testimony was incredibly dubious. In evaluating the sufficiency of the evidence to support a conviction, we do not reweigh the evidence or judge the credibility of the witnesses. *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). We respect the trier of fact's authority to weigh conflicting evidence, and we interpret the probative evidence in the light most favorable to the verdict. *Id*. However, "[u]nder the 'incredible dubiosity rule,' this court may impinge upon the jury's responsibility to judge the credibility of witnesses when confronted with inherently improbable testimony or coerced, equivocal, wholly

uncorroborated testimony." *Livers v. State*, 994 N.E.2d 1251, 1256 (Ind. Ct. App. 2013) (quoting *Manuel v. State*, 971 N.E.2d 1262, 1271 (Ind. Ct. App. 2012)). We will reverse a conviction if it is supported by only a sole eyewitness's inherently improbable testimony and there is a complete lack of circumstantial evidence. *Id*. Nonetheless, application of the incredible dubiosity rule is rare. *Id*. We evaluate "whether the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it." *Id*. The rule "applies only when a witness contradicts himself or herself in a single statement or while testifying, and does not apply to conflicts between multiple statements." *Id*.

[5] Taylor argues Greene's testimony was incredibly dubious because Greene gave conflicting testimony regarding how IMPD responded to her report of the battery and whether Taylor was an eyewitness in the investigation involving Greene's nephew. Greene initially testified that an IMPD officer came to speak with her after she followed Detective Kern's direction to report the crime to IMPD. Nonetheless, upon questioning from the court, Green testified:

> THE COURT: Okay. So after you talked to Detective Kern, he said call IMPD, is that correct?
>
> GREENE: Yeah, I had to call and get a case number.
>
> THE COURT: Okay. And did they ever come out and talk to you?
>
> GREENE: They didn't have to.

> THE COURT: Okay, because you told them that you knew who it was.
>
> GREENE: Um-hum (affirmative response) Yes.

(Tr. Vol. 2 at 21.) Greene also initially testified Taylor was not a witness in the case involving Greene's nephew, but she later testified Taylor saw Greene's nephew carry stolen property out of Greene's apartment. However, none of these contradictions are material to whether Taylor battered Greene.

[6] We note Taylor elected to have a bench trial, and thus, we assume the judge knew and correctly applied the law. *Parks v. State*, 113 N.E.2d 269, 274 (Ind. Ct. App. 2018) ("Further, this case was tried to the bench, and we presume the judge knows and properly applies the relevant law to the facts of the case."). A person is guilty of Class A misdemeanor battery if she touches another in a "rude, insolent, or angry manner" and the touching "results in bodily injury to any other person." Ind. Code § 35-42-2-1 (2018). "Bodily injury" includes physical pain. *Comm'r Ind. Dep't of Ins. v. A.P.*, 121 N.E.3d 548, 555 (Ind. Ct. App. 2018), *reh'g denied*, *trans. denied*. Greene testified that Taylor entered Emerson's apartment while Greene was visiting with Emerson. Taylor then pulled Greene's hair and hit her in the face, causing Greene pain. This testimony was not inherently contradictory nor was it inconsistent with human experience. Therefore, we hold Greene's testimony was not incredibly dubious. *See Livers*, 994 N.E.2d at 1256 (holding victim's testimony that defendant hit her while holding a car door open was not incredibly dubious).

II. Appropriateness of Sentence

[7] Taylor also argues that her sentence is inappropriate given the nature of her offense and her character. We evaluate inappropriate sentence claims using a well-settled standard of review.

> We "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] the sentence is inappropriate in light of the nature of the offense and the character of the offender." Ind. App. R. 7(B). Our role in reviewing a sentence pursuant to Appellate Rule 7(B) "should be to attempt to leaven the outliers, and identify some guiding principles for the trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived 'correct' result in each case." *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). "The defendant bears the burden of persuading this court that his or her sentence is inappropriate." *Kunberger v. State*, 46 N.E.3d 966, 972 (Ind. Ct. App. 2015). "Whether a sentence is inappropriate ultimately turns on the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case." *Thompson v. State*, 5 N.E.3d 383, 391 (Ind. Ct. App. 2014).

Belcher v. State, 138 N.E.3d 318, 328 (Ind. Ct. App. 2019), *trans. denied*. We consider both the length of the sentence and the manner in which the sentence is to be served in evaluating whether the sentence is inappropriate. *Davidson v. State*, 926 N.E.2d 1023, 1025 (Ind. 2010).

[8] Generally, when considering the nature of the offense, we first look to the advisory sentence for the crime. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh'g* 875 N.E.2d 218 (Ind. 2007). We assess any deviation

from the advisory sentence by looking to see if "there is anything more or less egregious about the offense committed by the defendant that makes it different from the 'typical' offense accounted for by the legislature when it set the advisory sentence." *Holloway v. State*, 950 N.E.2d 803, 806-07 (Ind. Ct. App. 2011). However, the Indiana Code does not provide advisory sentences for misdemeanors. Indiana Code section 35-50-3-2 states, "A person who commits a Class A misdemeanor shall be imprisoned for a fixed term of not more than one (1) year; in addition, he may be fined not more than five thousand dollars ($5,000)." Taylor entered Emerson's residence, argued with Greene, and battered Greene. Nonetheless, Taylor did not use a weapon or inflict more harm than a typical battery resulting in bodily injury.

[9] "The nature of offense portion of the analysis compares the defendant's actions with the required showing to sustain a conviction under the charged offense, while the character of the offender portion of the analysis permits a broader consideration of a defendant's character." *Webb v. State*, 149 N.E.3d 1234, 1241 (Ind. Ct. App. 2020) (internal citation omitted). "When considering the character of the offender, one relevant fact is the defendant's criminal history." *Johnson v. State*, 986 N.E.2d 852, 857 (Ind. Ct. App. 2013). Two positive aspects of Taylor's character are that she did not have a criminal record prior to this offense and that she is raising her two young children as a single mom. However, Greene's testimony indicates Taylor has a history of conflict with her neighbors and of losing her temper.

[10] The trial court could have imposed a fully executed 365-day sentence, but it exercised its grace and suspended all but two days of Taylor's sentence to probation. *See Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007) ("Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled."). In light of all these considerations, we cannot say Taylor's sentence is inappropriate. *See Kunberger v. State*, 46 N.E.3d 966, 974 (Ind. Ct. App. 2015) (holding two-and-one-half-year sentence, with all but six months suspended to probation, was not inappropriate given the nature of the offense and character of the offender).

Conclusion

[11] The State presented sufficient evidence to support Taylor's conviction because Greene's testimony regarding the battery incident was consistent with human experience and not inherently contradictory. Further, Taylor's sentence was not inappropriate given the nature of her offense and her character. Therefore, we affirm the judgment of the trial court.

[12] Affirmed.

Riley, J., and Altice, J., concur.