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**IN THE
COURT OF APPEALS OF INDIANA**

DAMIAN AMBROSE,)
)
Appellant-Defendant,)
)
vs.) No. 49A02-0608-CR-690
)
STATE OF INDIANA,)
)
Appellee.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Carol Orbison, Judge
Cause No. 49G17-0604-FD-69732

July 11, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SULLIVAN, Judge

Following a bench trial, Appellant-Defendant, Damian Ambrose, appeals his convictions for Auto Theft as a Class D felony¹ and Domestic Battery as a Class A misdemeanor.² Upon appeal, Ambrose challenges the sufficiency of the evidence to support his convictions.

We affirm.

Sergeant John Dierdorf of the Clermont Police Department testified that he responded to a call from Kelly Davis on April 10, 2006. Upon arriving at Davis's mother's house, Sergeant Dierdorf observed Davis had a lump and a bit of redness on the right side of her face and that she appeared to have been crying prior to his arrival.

According to Davis, who testified she "share[s] a child" with Ambrose,³ on April 8, 2006,⁴ she and Ambrose were living together as boyfriend and girlfriend. Tr. at 5. Davis testified that at approximately 11:00 p.m. that night her mother dropped her off at her home. Approximately ten to fifteen minutes later, Ambrose came home angry and began accusing her of cheating on him. At the time, Davis was sitting on the couch, feeding their then four-month-old baby. According to Davis, Ambrose slapped her on the right side of her face with such force that it knocked her and her child over. Davis left the room to put her child in a crib in their bedroom, and Ambrose followed her. Davis

¹ Ind. Code § 35-43-4-2.5 (Burns Code Ed. Repl. 2004).

² Ind. Code § 35-42-2-1.3 (Burns Code Ed. Repl. 2004).

³ Davis conceded that Ambrose's paternity has not been established and that Ambrose's name is not on the child's birth certificate. Ambrose does not contest the domestic nature of their relationship upon appeal.

⁴ There is a discrepancy in the record as to whether Davis's mother dropped her off on April 8 or April 7 and whether Ambrose drove off in Davis's car on April 9 or April 8.

testified that he asked her where she had been, and when she answered that she had been at her grandmother's house, he hit her with a closed fist in her right side, knocking the wind out of her and causing her to fall to her knees. Davis again tried to tell Ambrose she had not been cheating on him, when Ambrose began choking her. Davis testified that she tried to run, but Ambrose placed his arm around her neck and choked her again. Ambrose choked Davis a third time as well, long enough that she could hardly breathe. Davis testified that she then made up a story that she had been cheating. Davis further testified that the confrontation lasted approximately an hour and a half, though she also testified that it did not end until 12:30 or 1:00 in the morning.

According to Davis, the next afternoon when her mother, Maryinette Wineglass, came over to take her to a birthday party, Ambrose took the keys to her 2004 Chrysler without her permission and left in it. Davis testified that it was not her habit to give Ambrose permission to drive her car and that they did not have a relationship where he was free to take her car as he pleased.⁵ Davis did not see Ambrose drive off in her car, but she did see him take her keys. Wineglass, however, testified that she saw Ambrose "jump" into Davis's car and drive off. Tr. at 27. Wineglass further testified that she observed Davis had bruises on her face and the right side of her ribs. Ambrose did not return to the house that day. According to Davis, the Marion County Sheriff's Office

⁵ Davis conceded on cross-examination that in the past Ambrose had driven the Saturn she previously owned and that she had driven his car approximately two to three times.

recovered the car on May 4, 2006.⁶ Wineglass testified that she paid \$250 to the impound lot, at which point Davis was able to recover her car.

Davis testified that she delayed reporting the above incidents until April 10 because she still loved Ambrose, but upon determining that he would not assure her that these events would not happen again, she filed the police report.

Contrary to Davis's testimony, Ambrose's mother, Darnetha Silva, testified that she observed Ambrose drive the gold Chrysler multiple times, sometimes with Davis as a passenger, and sometimes alone. Silva conceded that she did not know whether Ambrose was given permission to drive the Chrysler either on the date in question or before that date.

Ambrose testified that he ended his relationship with Davis on April 5, 2006 when her brother moved in, and that she had threatened him that she would have him sent to jail. Ambrose further testified that he often drove Davis's Chrysler, and that the two treated it as their mutual car. Ambrose conceded, however, that the Chrysler was in Davis's name only and that he had never taken the car for a significant period of time. Ambrose further testified that he never took the Chrysler on the date in question and that he did not even drive after April 5 because his license was revoked on that date.

On April 26, 2006, Ambrose was charged with auto theft as a Class D felony, and domestic battery and battery as Class A misdemeanors. Following a July 6, 2006 bench trial, the court found him guilty as charged on all three counts. During the July 20, 2006

⁶ The police report indicates the car was stolen on April 8, 2006, which Davis testified was in error, as she claimed the car was stolen April 9, 2006. Davis's mother, however, testified Ambrose took the car on April 8, 2006.

sentencing hearing, the court entered judgment of conviction only upon the auto theft and domestic battery charges.⁷ The trial court sentenced Ambrose to 910 days for the auto theft conviction, with 730 days suspended and to 365 days with 273 days suspended for the domestic battery conviction, with the sentences to run concurrently. Ambrose filed his notice of appeal on August 21, 2006.

Upon appeal, Ambrose challenges the sufficiency of the evidence to support his convictions. In reviewing his claims, we note that our standard of review for sufficiency-of-the-evidence claims is well settled. We do not reweigh the evidence or judge the credibility of the witnesses. Kien v. State, 782 N.E.2d 398, 407 (Ind. Ct. App. 2003), trans. denied. We consider only the evidence which supports the conviction and any reasonable inferences which the trier of fact may have drawn from the evidence. Id. We will affirm the conviction if there is substantial evidence of probative value from which a reasonable trier of fact could have drawn the conclusion that the defendant was guilty of the crime charged beyond a reasonable doubt. Id. It is the function of the trier of fact to resolve conflicts of testimony and to determine the weight of the evidence and the credibility of the witnesses. Jones v. State, 701 N.E.2d 863, 867 (Ind. Ct. App. 1998). The uncorroborated testimony of the victim is sufficient to sustain a criminal conviction. Johnson v. State, 837 N.E.2d 209, 214 (Ind. Ct. App. 2005), trans. denied.

A reviewing court will impinge upon the fact-finder's credibility judgments only when confronted with testimony of inherent improbability, or coerced, equivocal, wholly

⁷ In entering judgment only upon the convictions of auto theft and domestic battery, the trial court concluded that the battery charge contained identical underlying facts as, presumably, the domestic battery conviction. The court vacated the determination of guilt as to the battery charge.

uncorroborated testimony of incredible dubiousity. Kien, 782 N.E.2d at 407. A conviction will be overturned on this basis only where a victim’s testimony is so incredibly dubious or inherently improbable that it runs counter to human experience, and no reasonable person could believe it. Id. This exception applies only where a single witness testifies. Id. (citing Bowles v. State, 737 N.E.2d 1150, 1152 (Ind. 2000)).

Indiana Code § 35-43-4-2.5 defines auto theft in pertinent part as “knowingly or intentionally exert[ing] unauthorized control over the motor vehicle of another person, with intent to deprive the owner of . . . the vehicle’s value or use.” Indiana Code § 35-42-2-1.3 defines domestic battery as “knowingly or intentionally touch[ing] a [domestic partner]⁸ in a rude, insolent, or angry manner that results in bodily injury to the [domestic partner].”

We first observe that, contrary to Ambrose’s arguments alleging Davis’s accusations to be incredibly dubious, Davis was not the sole witness on her behalf. With respect to the auto theft, Wineglass testified to observing Ambrose remove the key to the car from the bedroom and driving off in Davis’s car without asking her permission. With respect to domestic battery, we observe that Wineglass, who saw Davis the day following the incident at issue, as well as Sergeant Dierdorf, who saw her two days following the incident, testified consistent with Davis’s testimony that she had visible bodily injury to the right side of her face. As Davis’s testimony that Ambrose took her car without permission and that he hit her and caused her injury is not without corroboration from at

⁸ Ambrose does not dispute the domestic nature of his and Davis’s relationship.

least one additional witness, we decline to entertain Ambrose's challenge based upon what he alleges was the incredible dubiousity of Davis's testimony.

In evaluating the overall sufficiency of the evidence to support Ambrose's convictions for auto theft and domestic battery, we first consider Ambrose's challenge to his auto theft conviction on the basis of alleged inconsistencies in Davis's and Wineglass's testimony. According to Ambrose, Davis's and Wineglass's testimony was contradictory because Davis testified that she did not see Davis drive off in her car while Wineglass testified that she left the house with Davis and the two of them watched Ambrose drive off in Davis's car together. It is the trial court's duty, not ours, to assess the credibility of the witnesses, and Ambrose's request that we re-evaluate Davis's and Wineglass's credibility in light of their allegedly contradictory statements is merely an invitation to reweigh the evidence, which we will not do. Evidence introduced at trial indicated that Ambrose took Davis's car keys and left in her Chrysler without her permission, that Davis reported the vehicle stolen approximately two days later, and that the vehicle was recovered by authorities at "Pro-Tow" approximately a month later. Ambrose's response was simply to deny that any of the above occurred and claim he was on probation and unable to drive. Leaving credibility determinations to the trial court, we conclude there was substantial evidence of probative value from which the court could have made a determination beyond a reasonable doubt that Ambrose was guilty of auto theft.

With respect to the sufficiency of the evidence to support his conviction for domestic battery, Ambrose lists each alleged incident of battery and, referring to claimed

rules of common sense, physics, and medicine, challenges the alleged facts by arguing that each battery could not have taken place as alleged, nor could it have resulted in the alleged injury. Again, it is not our duty to re-evaluate the facts in order to assess the witnesses' credibility.⁹ The evidence at trial permitted a determination that Ambrose, who was angry, slapped, hit, and choked Davis, and that she suffered pain and physical injury as a result, including a lump and redness on the right side of her face as testified to by Sergeant Dierdorf and bruising to her ribs, as testified to by Wineglass. We similarly determine that there was substantial evidence of probative value from which the trial court could have made a determination beyond a reasonable doubt that Ambrose was guilty of domestic battery.

Having rejected Ambrose's incredible dubiousness claims as inapplicable and upon finding sufficient evidence to sustain his convictions for auto theft and domestic battery, we affirm the judgment of the trial court.

The judgment of the trial court is affirmed.

ROBB, J., and VAIDIK, J., concur.

⁹ Ambrose's argument consists of decidedly unscientific claims seeking to cast doubt upon Davis's testimony by claiming she could not have been knocked over by a "slap," as she had testified, but only by a "push" or a "punch"; that Davis's injuries as described by Sergeant Dierdorf and Wineglass were either too red or too "bruise-like" to be plausible given the time they were allegedly inflicted and the time they were subsequently observed; that Davis would have been unable to respond to Ambrose if she had truly had the wind knocked out of her; that Davis was not being "choked" if Ambrose's grip was somewhat loose; and that based upon spatial and temporal considerations, Davis's version of the events at issue was not plausible.