



## STATEMENT OF THE CASE

Michael A. Thompson appeals his conviction for aggravated battery, a class B felony.<sup>1</sup>

We affirm.

### ISSUE

Whether there is sufficient evidence to support the conviction.

### FACTS

In the early morning of July 30, 2009, Thompson and Evan Miller drove to the home of Andrea Massey to retrieve some of Thompson's belongings from Massey. Massey was in her bedroom with George Nance when Thompson arrived. After Massey let Thompson into the house, Nance went outside to talk to Miller, an acquaintance, who was waiting in the car for Thompson.

Several minutes later, Thompson left Massey's house and approached Nance. When Nance realized that Thompson had a revolver in his hand, he asked him what he was doing. Thompson told Nance to "shut the f [sic] up," before striking Nance's head with the gun. (Tr. 56). The blow "dazed" Nance. (Tr. 57). Nance, who could not see anything at this point, "stumbled back[.]" (Tr. 57). Afraid that Thompson would shoot him if he went back inside Massey's house, Nance walked to a nearby convenience store; a clerk telephoned 911.

---

<sup>1</sup> Ind. Code § 35-42-2-1.5.

An ambulance transported Nance to the hospital. Doctors found that the blow to Nance's head had ruptured Nance's left eyeball, necessitating its removal.

Officers found Thompson at his father's house the morning of July 30<sup>th</sup> and placed him under arrest. As he was being handcuffed, Thompson pushed against one of the officers.

On August 3, 2009, the State charged Thompson with Count I, aggravated battery, a class B felony; Count II, battery as a class C felony; Count III, carrying a handgun without a license as a class C felony; and Count IV, resisting law enforcement as a class A misdemeanor. The trial court commenced a two-day jury trial on December 10, 2009, after which the jury found Thompson guilty of aggravated battery. Following a sentencing hearing on January 8, 2010, the trial court sentenced Thompson to twelve years, with four years suspended.

Additional facts will be provided as necessary.

### DECISION

Thompson asserts that there is insufficient evidence to support his conviction. We disagree.

When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-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. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It

is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

*Drane v. State*, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations and citations omitted).

No one witnessed Thompson strike Nance in the eye, and Nance was the only witness to testify that Thompson hit him. Thompson argues that the evidence does not support his conviction because “the testimony of the other witnesses to the events brings doubt to the key elements of George’s Nance’s testimony.” Thompson’s Br. at 4. In support of this argument, Thompson cites to Nance’s testimony that he did not interact or speak with Thompson prior to seeing the gun in Thompson’s hand. This testimony conflicts with Massey’s testimony that Thompson and Nance “talk[ed] for a moment” inside the house. (Tr. 127). Specifically, Massey testified that Thompson “apologized to [Nance] for interrupting and [Nance] said, whatever, I’m done man, you can have her . . . .” (Tr. 141).

Thompson also cites to Miller’s testimony that after Thompson exited the house, he “put his arm around [Nance] and him [sic] and [Nance] laugh[ed] . . . .” as Thompson led Nance behind the car, out of Miller’s sight. (Tr. 100). According to Miller, this occurred seconds before he heard a “smack,” which “sounded like he punched him or he just open[] fist smacked him . . . .” (Tr. 101).

“Under the incredible dubiousity rule, a court will impinge on the jury’s responsibility to judge the credibility of the witness only when it is confronted with inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony

of incredible dubiousity.” *Altes v. State*, 822 N.E.2d 1116, 1122 (Ind. Ct. App. 2005). We will reverse a conviction where a “sole witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence . . . .” *Id.* (quoting *White v. State*, 706 N.E.2d 1078, 1079 (Ind. 1999)). The application of the rule is rare, however, “and is limited to cases where the sole witness’ testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it.” *Id.*

The record shows that Nance testified that he did not “remember [Thompson] saying anything” when Thompson came into the house. (Tr. 50). “[I]f,” however, he and Thompson did indeed converse, Nance testified that “it had been a what’s up . . . or greetings or something like that . . . .” (Tr. 50). We cannot say that Nance’s uncertain testimony regarding whether he and Thompson talked during the brief period they were in the house together supports a reversal of Thompson’s conviction.

Furthermore, although Nance’s testimony regarding the moments before Thompson struck Nance conflicted with Miller’s testimony, Nance unequivocally testified that Thompson struck him in the head with a gun. Miller’s testimony that he heard a “smack,” “like he punched him,” corroborates Nance’s testimony that Thompson hit him. (Tr. 101). Given the evidence presented, we cannot say that Nance’s testimony was so incredibly dubious or inherently improbable that no reasonable person could believe it.

As to Thompson’s argument that Nance could have injured his eye by running into something on his way to the convenience store, Nance testified that he “didn’t hit

anything” as he walked to get help. (Tr. 60). Moreover, the doctor who treated Nance in the emergency room testified that Nance’s injuries were consistent with those caused by blunt force trauma.

Thompson’s counsel cross-examined Nance, and the jury was able to independently evaluate his testimony. Thompson’s argument is nothing more than an invitation to judge the credibility of the witness, which we decline to do. The evidence presented at trial is sufficient to support Thompson’s conviction.

Affirmed.

NAJAM, J., and BAILEY, J., concur.