

STATEMENT OF THE CASE

Appellant-Defendant, Marcus I. Snell (Snell), appeals his convictions for Count I, murder, a felony, Ind. Code § 35-42-1-1, and Count II, carrying a handgun without a license, a Class A misdemeanor, I.C. § 35-47-2-1.

We affirm.

ISSUE

Snell raises one issue on appeal, which we restate as follows: Whether the State presented sufficient evidence to sustain his convictions.

FACTS AND PROCEDURAL HISTORY

The evidence most favorable to the verdict reflects that on November 4, 2004, in the late evening hours, Candy Covington (Covington) was at the residence of her boyfriend, Terry Jones (Jones), located at 2156 North Kitley in Indianapolis, Indiana. Jones and Covington were alone in the front room of the residence where Covington was braiding his hair.

After hearing a knock on the front door, Jones got up and looked out the front window; Jones then proceeded to let Snell into the residence. Snell wore a dark colored hooded sweatshirt with the hood up. After a few seconds, Covington, who was seated on a love seat in the front room of the residence, looked up while Snell pulled the hood from his head. Covington had known Snell because she attended sixth grade with him, braided his hair on occasion, and had sexual relations with him twice.

While both Snell and Jones stood near the front door, Snell asked to buy \$10.00 worth of marijuana from Jones, who was a marijuana dealer. Jones refused to sell

marijuana to Snell, and told him to come back in about 40 minutes. Snell turned toward the front door, but then turned around towards Jones again and said, “Nah, you’re going to do something.” (Transcript p. 68-69). Snell pulled out two handguns from his sweatshirt, and Jones grabbed his wrists as the two men struggled. Seeing the altercation, Covington ran to the back room where she heard the first of several gunshots. She attempted to escape from the residence by breaking a window in the back bedroom; but Snell came into the room and held a gun to her neck. He demanded to know where the drugs were in the house; however, Covington did not know where the cooler where Jones usually kept the marijuana was located.

Covington and Snell returned to the living room where she saw Jones lying on his side in a pool of blood. While Covington pleaded for her life, Snell continued to demand to know where the drugs were. Jones looked up and Snell shot him several more times; Jones never moved again. Covington escaped the residence while the final shots were fired. Nearby neighbors who were outside heard gunshots and saw Covington run out of the residence. They went inside and called the police. When the police arrived, Covington was in the yard repeatedly yelling, “Marcus did it” into a cell phone. (Tr. p. 51). She was crying and another woman had to hold her up.

Indianapolis Police Department Detective Thomas Lehn (Detective Lehn) arrived at the scene and walked through the residence. Inside the partially open front door, Detective Lehn observed Jones’ feet and a blood spatter. He noticed a large amount of blood beneath Jones’ body and some cracks in the linoleum. In the back bedroom, Detective Lehn noticed a broken window, a cooler containing marijuana, scales, and

marijuana on top of a dresser. The side and front door of the residence was unlocked, and there was no sign of a forced entry.

Covington was taken to the police homicide office via police car. Covington provided a statement to Detective Lehn telling him that Snell shot Jones. She also identified Snell during a photo array; she described him as having braids in his hair.

On November 5, 2004, police were dispatched on a report that Snell was in an apartment. When officers arrived at the apartment where Snell was located, he fled. The police officers pursued Snell on foot, and ordered him to stop; Snell continued running. He ran to the back of the apartment complex where he was caught and apprehended. The police officers continued searching the back of the apartment complex because it appeared that Snell had thrown a gun during the pursuit. While police searched for the gun, Snell told an attending police officer that, “You ain’t never going to find those guns. They’re in a lake.” (Tr. p. 291). At the time of Snell’s arrest, he did not wear braids in his hair; however, his clothing did match the description of what he had been wearing on the night of the shooting.

On November 8, 2004, the State filed an Information charging Snell with Count I, murder, a felony, and Count II, carrying a handgun without a license, as a Class A misdemeanor. On August 29 through 31, 2005, a jury trial was conducted. At the close of the trial, the jury found Snell guilty of Counts I and II. On September 21, 2005, a sentencing hearing was conducted. The trial court sentenced Snell to fifty-five years for Count I, and one year for Count II, with the sentences to run concurrently.

Snell now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Snell challenges the sufficiency of the evidence supporting his convictions for murder and carrying a handgun without a license claiming that Covington's testimony was incredibly dubious. Our standard of review for a sufficiency of the evidence claim is well settled. In reviewing sufficiency of evidence claims, this court does not reweigh the evidence or assess the credibility of witnesses. *Cox v. State*, 774 N.E.2d 1025, 1028-29 (Ind. Ct. App. 2002). We consider only the evidence most favorable to the judgment, together with all reasonable inferences that can be drawn therefrom. *Alspach v. State*, 755 N.E.2d 209, 210 (Ind. Ct. App. 2001), *trans. denied*. The conviction will be affirmed if there is substantial evidence of probative value to support the conviction of the trier of fact. *Cox*, 774 N.E.2d 1028-29. This court has held that a conviction for the crime charged may be based on circumstantial evidence. *Marrow v. State*, 699 N.E.2d 675, 677 (Ind. Ct. App. 1998). Reversal is only appropriate when reasonable persons would be unable to form inferences as to each material element of the offense. *J.J.M. v. State*, 779 N.E.2d 602, 605 (Ind. Ct. App. 2002).

In the present case, Snell claims that evidence provided solely by Covington is incredibly dubious and insufficient to sustain the verdicts. Under the incredible dubiosity rule, for testimony to be so inherently incredible that it is disregarded, the witness must present evidence that is inherently contradictory, wholly equivocal, or the result of coercion. *Clay v. State*, 755 N.E.2d 187, 189 (Ind. 2001). "When a sole witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence, a defendant's conviction may be reversed." *White v. State*, 706 N.E.2d 1078, 1079 (Ind.

1999). However, we have recognized that the application of this rule is rare and is limited to cases where the sole witness' testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it. *Stephenson v. State*, 742 N.E.2d 463, 497 (Ind. 2001), *cert. denied*.

Here, even if an incredible dubiousity inquiry were appropriate, Snell fails to proffer any inherent contradictions within Covington's testimony. Rather, he directs our attention to Covington's intoxicated state, her limited opportunity to view Snell, and her description of his hair to support his assertion that Covington's identification was equivocal, inherently improbable, and unsupported by any circumstantial evidence. Snell admits that Covington's ability to see and remember was not impaired by her smoking marijuana and drinking a beer on the day of the incident. Additionally, she testified that she was able to identify Snell, even with limited lighting, because she had known him for several years, braided his hair on several occasions, and had sexual relations with him twice. Further, his change of hairstyle from the evening of the murder to the day of his apprehension could be easily accomplished. Thus, Covington's accounts of the events were never equivocal, illogical, or contradictory.

Further, in the present case, we find the incredible dubiousity rule to be inapplicable. The incredible dubiousity doctrine is only applicable in cases where there is a complete lack of circumstantial evidence. *See White*, 706 N.E.2d at 1079. However, in this case, the State presented circumstantial evidence supporting Covington's identification. First, when the police located Snell at the apartment complex, he fled and led them on a foot pursuit. One police officer testified that Snell ran past him, and police

officers had to chase him about an eighth of a mile through the apartment complex before he surrendered. Additionally, when Snell learned that police were searching the area where he was apprehended for guns, because it appeared that he had thrown something just prior to his apprehension, he stated, “You ain’t never going to find those guns. They are in the lake.” (Tr. 291). Snell argues that the statement could be termed a “flippant remark,” and not necessarily some sort of admission. (Appellant’s Br. p. 16). However, we decline Snell’s invitation to reweigh the evidence. *See Cox*, 774 N.E.2d at 1028-29. As a result, we conclude that Covington’s testimony is neither the sole evidence nor is her testimony uncorroborated.

Accordingly, based on the evidence before us, we do not conclude that Covington presented inherently improbable testimony. *See White*, 706 N.E.2d at 1079. Additionally, the jury found Covington to be a credible witness, and we may not disturb that determination. Therefore, we conclude that the State presented sufficient evidence from which a jury could find Snell guilty beyond a reasonable doubt.

CONCLUSION

Based on the forgoing, we conclude that the State presented sufficient evidence to sustain Snell’s conviction.

Affirmed.

BAILEY, J., and MAY, J., concur.