

Appellant-defendant Jermail D. Warren appeals his conviction for Criminal Confinement,¹ a class D felony. Warren argues that the evidence is insufficient to support the conviction and that the three-year sentence imposed by the trial court is inappropriate in light of the nature of the offense and his character. Finding sufficient evidence and concluding that the sentence is not inappropriate, we affirm.

FACTS

In September 2006, Warren and his girlfriend, Marie Lucy (Lucy), Lucy's sisters, Sarah and Stacy Smith, and Stacy's then eight-year-old daughter, Janessa, lived together in Elkhart. At that time, Warren and Lucy had been dating for approximately one year.

On September 5, 2006, Lucy suffered a miscarriage and went to the hospital to have a procedure related to the miscarriage. The next morning, on September 6, 2006, Lucy was resting when Warren came into the house around 6:30 a.m. Warren was upset about the miscarriage, blaming Lucy for the loss of the pregnancy, and began slamming doors. Lucy told him to calm down, and the two began arguing.

Lucy informed Warren that she was going to leave. Warren told her that she was not going anywhere, but Lucy grabbed her purse and started to leave the room. Warren grabbed her arm and repeated that she was not going to leave. Stacy was awakened by the argument and came downstairs, where she saw Warren on top of Lucy, observing that the two were "wrestling around." Tr. p. 362, 426-27. Warren became irate and started pacing, telling Lucy and Stacy that if anyone left the house, they would be leaving in body bags.

¹ Ind. Code § 35-42-3-3(a).

Lucy went to the door but stopped when Warren threatened, “I dare you to walk out that door. Just go ahead and try.” Id. at 362. Because of the couple’s violent relationship and because Warren had many guns in the house, Lucy did not feel safe to leave. Warren “liked guns” and kept guns under a couch, in the bedroom, and on top of the refrigerator. Id. at 364. Warren “carried [a gun] so regularly it was just like wardrobe.” Id. at 389. On the day of the incident, he had a gun on his person and, at some point, stuck it under a couch cushion.

Janessa came downstairs, crying. Stacy asked Warren if she could take her daughter and leave, but he refused. Warren then reached for a hammer that was next to him on the couch. Lucy reached for the hammer at the same time, and Warren grabbed it and struck her on the cheek with his elbow, causing her pain. Warren threw the hammer against the wall. Stacy intervened and took the hammer. After Stacy pleaded with Warren, he permitted Stacy and Janessa to leave the house about thirty minutes after he elbowed Lucy, around 3:30 p.m. Stacy then called 911 and asked that an officer check on her sister, as Lucy was being held against her will by a man known to carry firearms.

Police officers arrived at the residence, and Warren informed them that Lucy was his girlfriend and he was upset because she had just had a miscarriage. The officer asked Lucy to come to the door, and she complied even though Warren ordered her not to leave the room. Lucy was shaking and looked sad and scared. The officer observed redness around her eyes and cheekbone, and some swelling. The officers wanted to question Lucy away from Warren so they instructed her to meet them at the police department.

Upon learning that she was leaving, Warren's demeanor changed; he became defensive and told the officers that Lucy did not go anywhere without him.

On September 11, 2006, the State charged Warren with class B felony criminal confinement while armed with a deadly weapon and class D felony domestic battery. On July 13, 2009, the domestic battery charge was dismissed. Lucy and Stacy both testified at Warren's July 13-14, 2009, jury trial. The jury found Warren guilty of criminal confinement as a class D felony. On August 27, 2009, the trial court sentenced Warren to three years imprisonment. Warren now appeals.

DISCUSSION AND DECISION

I. Evidence

Warren first argues that the evidence is insufficient to support his conviction. In evaluating the sufficiency of the evidence, we will neither reweigh the evidence nor assess witness credibility, looking instead to the evidence and reasonable inferences therefrom that support the verdict. O'Connell v. State, 742 N.E.2d 943, 949 (Ind. 2001).

To convict Warren, the State was required to prove beyond a reasonable doubt that he knowingly or intentionally confined Lucy without her consent. I.C. § 35-42-3-3(a). "Confined" means "substantially interfering with the liberty of a person." I.C. § 35-42-3-1. Thus, the essence of the offense is the restriction of a person's freedom of movement and liberty against his will. Pyle v. State, 476 N.E.2d 124, 127 (Ind. 1985). Any amount of force can cause confinement because force, however brief, equals confinement. Wethington v. State, 560 N.E.2d 496, 508 (Ind. 1990).

Here, the record reveals that after Lucy and Warren began arguing, she told him that she was going to leave. Warren told her that she was not going anywhere, grabbed her arm, and repeated that she was not going to leave. When Stacy came downstairs, she saw Warren on top of Lucy. Warren was irate and began pacing, telling Lucy and Stacy that “nobody is going to go anywhere. Nobody is leaving,” adding that if anyone was leaving they would be doing so in body bags. Tr. p. 362, 426-27, 429, 442. Lucy went to the door but stopped when Warren said, “I dare you to walk out that door. Go ahead and try.” *Id.* at 362, 364. Lucy was scared and felt threatened because she knew that Warren had multiple guns stashed in their home, and Stacy testified that at the time of the altercation, he had a gun tucked under his armpit. Later, Warren and Lucy reached for a hammer at the same time, and he elbowed her cheek in the process, eventually securing the hammer and throwing it against the wall.

We find that this evidence suffices to support Warren’s conviction. Warren argues that Lucy was at the door and could have simply walked out, but we find that it was reasonable for the jury to conclude that Lucy did not feel free to leave because of Warren’s threats and the presence of multiple guns in the house. See Ransom v. State, 850 N.E.2d 491, 498 (Ind. Ct. App. 2006) (affirming defendant’s confinement conviction where the victim was at the door but did not feel free to leave). Furthermore, Warren physically grabbed Lucy by the arm and prevented her from leaving, which is a use of force that demonstrates confinement. Bolstering that act of force were the subsequent acts of wrestling her down to the floor and elbowing her in the cheek. In sum, we find

that this evidence suffices to establish that Warren substantially interfered with Lucy's liberty; thus, his conviction stands.

II. Sentence

Warren next argues that the three-year sentence imposed by the trial court is inappropriate in light of the nature of the offense and his character pursuant to Indiana Appellate Rule 7(B). In reviewing a Rule 7(B) appropriateness challenge, we defer to the trial court. Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). The three-year sentence is the maximum term Warren could have received for a class D felony conviction. Ind. Code § 35-50-2-7 (providing that a person who is convicted of a class D felony faces a term of six months to three years imprisonment, with an advisory term of one and one-half years).

As for the nature of the offense, Warren threatened and confined his girlfriend for over nine hours. He injured her at one point during the confinement, causing her pain. She had just suffered a miscarriage and undergone a surgical procedure the night before. He committed these acts in the presence of an eight-year-old child, frightening her to the point of tears, and refused to let the child and her mother leave for nearly the entire duration of the confinement.

As for Warren's character, he has an extensive criminal record. He has amassed three felony convictions, four misdemeanor convictions, three probation violations, several failures to appear at court, and was on probation at the time of the offense. While Warren was out on bond in this case, he committed and was convicted of felony

assaulting/resisting/obstructing a police officer in Michigan. We find that the egregious nature of the offense and Warren's significant, serious criminal history supports the three-year sentence imposed by the trial court.

The judgment of the trial court is affirmed.

DARDEN, J., and CRONE, J., concur.