ATTORNEY FOR APPELLANT:

RICHARD WALKER
Anderson, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

JANINE STECK HUFFMAN
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

MICHAEL ACHENBACH,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A05-0910-CR-575
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
DIVISION I
The Honorable Dennis D. Carroll, Judge
Cause No. 48D01-0803-FB-84

May 19, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Michael Achenbach (Achenbach), appeals his conviction for criminal confinement, a Class D felony, Ind. Code § 35-42-3-3(a).

We affirm.

ISSUE

Achenbach raises one issue on appeal, which we restate as follows: Whether the State presented sufficient evidence to prove beyond a reasonable doubt that Achenbach had committed criminal confinement.

FACTS AND PROCEDURAL HISTORY

On February 8, 2008, Sharon Alfrey (Alfrey) was at the Mounds Mall in Anderson, Indiana, for an eye appointment. Because she was early for her appointment, she waited in her vehicle, which was parked in the mall's parking lot. While waiting, Alfrey saw Achenbach and his wife, Cynthia Achenbach (Cynthia), in the parking lot. Alfrey noticed that Achenbach was angry and that he "was trying to hang on to [Cynthia] as to not to let her go," attempting to "keep her from going to wherever [Cynthia] wanted to go." (Transcript p. 41). Achenbach pulled out a knife. They argued and Cynthia loudly exclaimed "if you are going to do it, just go ahead and do it." (Tr. p. 42). Alfrey then went inside the mall and called security because a man was "manhandling" a woman in the parking lot, "trying to keep her from going." (Tr. p. 49).

Shannon Gulley (Gulley) was working as a security officer at the mall that day and responded to Alfrey's call. When he arrived in the parking lot, he recognized Cynthia as an

employee at the mall. She asked Gulley to "please help [her]." (Tr. p. 52). Gulley stepped between Achenbach and Cynthia to separate them and asked Achenbach if he had a weapon. Achenbach pulled an open pocketknife out of his coat pocket. Gulley detained Achenbach until officers with the Anderson Police Department arrived. Cynthia was shaking and crying; her eyes were red, puffy and bloodshot. She had suffered a scratch to her left wrist and had a handprint on her arm from "where somebody had really held onto her arm real tight." (Tr. p. 56).

On March 27, 2008, the State filed an Information, charging Achenbach with Count I, criminal confinement, a Class B felony, I.C. § 35-42-3-3; Count II, battery by means of a deadly weapon, a Class C felony, I.C. § 35-42-2-1; and Count III, domestic battery, a Class A misdemeanor, I.C. § 35-42-2-1.3. On July 22-23, 2009, a jury trial was held. At the close of the evidence, the jury returned a guilty verdict on Count I, as a Class D felony, on Count II, as a Class A misdemeanor, and on Count III, as a Class A misdemeanor. On September 25, 2009, the trial court sentenced Achenbach to three years for the Class D felony criminal confinement. The trial court merged the Class A misdemeanor battery into the Class A domestic battery and imposed a one year sentence. The trial court ordered the sentences to run concurrently.[1]

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

[1] Although not dispositive to our decision today, it should be noted that Achenbach murdered Cynthia on April 23, 2008. He pled guilty but mentally ill to the murder of his wife and was sentenced to sixty years in the Department of Correction.

DISCUSSION AND DECISION

Achenbach asserts that the State failed to present sufficient evidence to sustain his conviction for criminal confinement.[2] In reviewing a sufficiency of the evidence claim, this court does not reweigh the evidence or judge the credibility of the witnesses. *Perez v. State*, 872 N.E.2d 208, 212-13 (Ind. Ct. App. 2007), *trans. denied*. We will consider only the evidence most favorable to the verdict and the reasonable inferences to be drawn therefrom and will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. *Id*. at 213. Reversal is appropriate only when reasonable persons would not be able to form inferences as to each material element of the offense. *Perez,* 872 N.E.2d at 213.

In order to convict Achenbach of criminal confinement as a Class D felony, the State was required to prove beyond a reasonable doubt that Achenbach knowingly or intentionally confined Cynthia without her consent or removed Cynthia by fraud, enticement, force, or threat of force, from one place to another. I.C. § 35-42-3-3(a). Confinement exists when there is a substantial interference with the liberty of a person. I.C. § 35-42-3-1.

At trial, Alfrey testified that she observed Achenbach grabbing Cynthia's arm and preventing her from going to wherever she wanted to go. She stated that Achenbach pulled out a knife, and she overheard Cynthia yelling that "if you are going to do it, just go ahead and do it." (Tr. p. 42). During the course of the trial proceedings, the trial court admitted a

[2] Achenbach does not appeal the sufficiency of the evidence for his convictions for battery by means of a deadly weapon and domestic battery.

DVD of Achenbach's interrogation by a detective of the Anderson Police Department. In this interview, Achenbach admitted that he tried to "corral" Cynthia and stated that "[a]ll [he] was doing was actually holding on her arm like this, trying to keep her from actually just walking away from [him]." (Tr. p. 88). Furthermore, Gulley testified that Cynthia had a handprint on her arm from "where somebody had really held onto her arm real tight." (Tr. p. 56). Based on the evidence before us, we conclude that there was sufficient evidence to establish that Achenbach substantially interfered with Cynthia's liberty and thus, committed criminal confinement.[3]

CONCLUSION

Based on the foregoing, we conclude that the State presented sufficient evidence to convict Achenbach of criminal confinement.

Affirmed.

MATHIAS, J., and BRADFORD, J., concur.

[3] We agree with the State that Achenbach's argument that there was insufficient evidence of confinement because "[Cynthia] did not testify that she felt confined" to be astonishing to say the least, especially in light of the fact that Achenbach murdered her about two and one-half months after this incident. (Appellant's Br. p. 9).