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**IN THE
COURT OF APPEALS OF INDIANA**

MARCUS D. REED,)

Appellant-Defendant,)

vs.)

No. 02A03-0701-CR-45

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Frances C. Gull, Judge
Cause No. 02D04-0606-FB-111

November 20, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Marcus D. Reed appeals his conviction for Criminal Confinement,¹ a class D felony, challenging the sufficiency of the evidence. Specifically, Reed argues that his conviction must be set aside because the evidence showed that the sole act of confinement occurred while he was hitting the victim. In other words, Reed claims that the State failed to prove a separate act of confinement. Finding no error, we affirm the judgment of the trial court.

FACTS

In April 2006, Lakeysha King and Reed began living together in a Fort Wayne apartment. On the evening of June 7, 2006, after the two returned from a tavern, King telephoned a friend at approximately 1:00 a.m. When Reed demanded to know who King was talking to, she handed him the phone. Reed then tossed the phone into the bathroom, breaking it. Thereafter, Reed approached King and pushed and choked her. When King attempted to leave the apartment, Reed continued hitting her.

At some point, Reed stopped hitting King and he started to carry some of his belongings to his vehicle while King remained near the front door of the apartment. When Reed was no longer in sight, King ran from the apartment and went to a neighbor's home across the street to obtain help. However, Reed suddenly "came out of nowhere" and knocked King down. Tr. p. 47-48. Reed then beat, bit, and choked King and held a knife to her throat. King was finally able to run from Reed with the knife that he had dropped during the struggle.

¹ Ind. Code § 35-42-3-3.

Reed then chased King in his vehicle and attempted to persuade her to get inside. King refused and kept walking. King was eventually able to call the police from a cell phone. After the police interviewed King, she was transported to a local hospital where she was diagnosed with, and treated for, multiple hematomas, abrasions, human bites, and a closed head injury.

The State charged Reed with criminal confinement, a class B felony, battery, a class A misdemeanor, criminal recklessness, a class A misdemeanor, and interference with the reporting of a crime, a class A misdemeanor. Following a jury trial on November 30, 2006, Reed was found guilty of the lesser-included offenses of confinement as a class D felony and battery as a class B misdemeanor. Reed was acquitted of the remaining charges. Thereafter, Reed was sentenced, and he now appeals.²

DISCUSSION AND DECISION

In reviewing sufficiency of the evidence claims, this court considers only the probative evidence and reasonable inferences supporting the judgment without weighing the evidence or assessing witness credibility. Miller v. State, 770 N.E.2d 763, 774 (Ind. 2002). This court must affirm if the probative evidence and reasonable inferences drawn from the evidence could have allowed the trier of fact to find the defendant guilty beyond a reasonable doubt. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005).

To prove the offense of confinement as a class D felony, the State was required to show that Reed knowingly or intentionally confined King without her consent. I. C. § 35-42-

3-3. To “confine” means to substantially interfere with the liberty of a person. I.C. § 35-42-3-1.

In this case, the charging information read in pertinent part that

[o]n or about the 7th day of June, 2006, . . . Reed, did knowingly or intentionally, while armed with a deadly weapon, to wit: a knife, confine Lakeysha King, without the consent of Lakeysha King.

Appellant’s App. p. 13. Following the presentation of evidence, the jury was instructed that the charged crime of class B felony criminal confinement included the lesser offense of class D felony criminal confinement, which is distinguished by the absence of the element of a deadly weapon. Id. at 77-78.

At trial, the evidence demonstrated that Reed refused to permit King to leave their apartment. Tr. p. 45. Reed struck King repeatedly, and King testified that she was “terrified,” and “it was like [Reed] was trying to trap me inside.” Id. at 44-45. King acknowledged that she was frightened because Reed did not allow her to leave after she told him that she was going to call the police. Id. at 44-45. Although Reed contends that King could have escaped from the apartment and the only act of confinement occurred when he was actually striking her, our Supreme Court has determined that a victim’s escape does not negate a finding of confinement. See Crabtree v. State, 470 N.E.2d 725, 727 (Ind. 1984) (holding that even when a victim breaks away from the confinement, the fact-finder can still determine that a nonconsensual confinement occurred). Moreover, even though the evidence demonstrated that Reed made several trips to his vehicle while King remained in the

² Reed does not challenge the battery conviction.

apartment, it was certainly reasonable to infer that King was too frightened to leave. See Daniel v. State, 526 N.E.2d 1157, 1161 (Ind. 1988) (finding that the evidence was sufficient to support a confinement conviction separate and apart from a robbery when the victim testified that she did not attempt to leave after the robbery occurred because she was “afraid” and the defendant could have grabbed her if she tried to flee). In essence, Reed’s arguments amount to an invitation to reweigh the evidence—one that we decline. As a result, we conclude that the evidence was sufficient to support Reed’s conviction for confinement.

The judgment of the trial court is affirmed.

RILEY, J., and BRADFORD, J., concur.