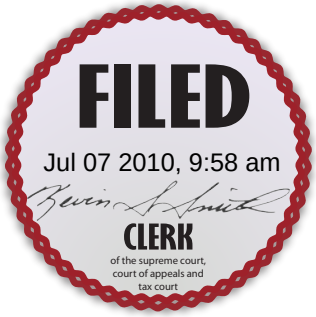

ATTORNEY FOR APPELLANT:

ERNEST P. GALOS
Public Defender
South Bend, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

KARL M. SCHARNBERG
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

CHRISTOPHER J. GEIDEMAN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A05-1002-CR-63
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable John M. Marnocha, Judge
Cause No. 71D02-0810-FD-1036

July 7, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Christopher J. Geideman appeals his convictions and sentencing, after a jury trial, for two counts of class A misdemeanor battery[1] and one count of class D felony residential entry.[2]

We affirm.

ISSUES

1. Whether the evidence was sufficient to support his convictions.

2. Whether the jury's verdicts of guilty of residential entry and two counts of battery are inconsistent with his acquittal on two other counts of battery.

3. Whether his sentences are inappropriate pursuant to Indiana Appellate Rule 7(B).

4. Whether the trial court abused its discretion in excluding a witness' testimony.

FACTS

The facts most favorable to the judgment are as follows: At the time of the underlying incident, Kathrin[3] Ryan ("Kathrin") was Geideman's girlfriend. Kathrin was a close family friend of Charles and Karol Straub. On September 28, 2008, Kathrin went to the Straubs' trailer and asked Charles to repay a loan that she had made to him approximately six months earlier. After a heated exchange, during which Charles

[1] Ind. Code § 35-42-2-1.

[2] I.C. § 35-43-2-1.5.

[3] We observe that the record contains multiple variations of Ryan's first name. For our purposes herein, we employ the version advanced by the appellant.

disputed the amount of the loan, Charles asked Kathrin to return to his trailer in the evening and stated that he would have some money for her at that time.

At approximately 10:30 p.m., Geideman knocked at the Straubs' door. Charles and the Straub children were asleep. Charles' wife, Karol, answered the door. Geideman asked to speak with Charles. Karol woke Charles, who spoke to Geideman from the doorway. Charles observed another man, later identified as James Harker, standing off in the distance. Geideman demanded to know whether Charles was going to repay Kathrin. Charles responded that the financial matter was between himself and Kathrin, and told Geideman to tell Kathrin to come over for her money.

When Charles attempted to shut the door, Geideman barged into the trailer with such force that the door struck Charles, stunning him. Geideman then punched Charles repeatedly in the face. Karol tried to assist Charles by striking Geideman with a remote control and then with a broom. Geideman punched Karol in the face, resulting in a swollen and bloodied lip. Karol and Charles later testified that two of their children were awakened by the chaos, and that Geideman also struck their fifteen-year old daughter as well as their thirteen-year old son. At some point, Harker joined the fight, which ultimately ended when Geideman and Harker were pushed from the trailer. Geideman and Harker then fled in a vehicle. Karol reported the incident to the police.

On October 1, 2008, the State filed a five-count information against Geideman, charging him with the following offenses: count I, residential entry,[4] a class D felony; count II, battery of a child,[5] a class D felony; and counts III, IV, and V, three counts of battery resulting in bodily injury, as class A misdemeanors.[6] Geideman was tried before a jury on October 29-30, 2009. Charles and Karol testified to the foregoing facts. Geideman testified that Charles had initiated the fight by pulling him inside the trailer and striking him first as they were "locked up together [in combat]." (Tr. 257). The jury found Geideman guilty as to counts I (residential entry), III (battery resulting in bodily injury), and IV (battery resulting in bodily injury), and not guilty as to counts II (battery of a child) and V (battery resulting in bodily injury).

The trial court set a sentencing date of December 2, 2009; however, Geideman failed to appear for the hearing and a bench warrant was issued for his arrest. Subsequently, on December 5, 2009, Geideman was sentenced to the Department of Correction as follows: on count I, residential entry, two years; and on counts III and IV, two counts of battery resulting in bodily injury, one year each. The trial court ordered the sentences on counts III and IV to be served concurrently, but consecutively to the sentence on count I. Thus, Geideman received an aggregate sentence of three years.

Additional facts will be provided as necessary.

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[4] I.C. § 35-43-2-1.5.

[5] I.C. §§ 35-42-2-1; 35-41-2-4.

[6] I.C. § 35-42-2-1; 35-41-2-4.

DECISION

Geideman argues that: (1) the evidence is insufficient to support his convictions; (2) the jury's verdicts of guilty of residential entry and two counts of battery are inconsistent with its verdict acquitting him of two other counts of battery; (3) his sentences are inappropriate pursuant to Indiana Appellate Rule 7(B); and (4) the trial court abused its discretion in excluding evidence. We address his arguments in turn.

1. Sufficiency of the Evidence.

Geideman argues that the evidence is insufficient to support his convictions.

> 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." "[T]he 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) (internal citations omitted).

Geideman argues that the State presented "no credible evidence that [he] had the intent to enter the Straub home." Geideman's Br. at 13. He directs our attention to conflicts between his testimony and that of Charles and Karol regarding how he came to enter the trailer; and he urges us to believe his account of the incident over the Straubs' testimony. This we cannot do.

In order to convict Geideman of class D felony residential entry, the State was required to prove that he knowingly or intentionally broke and entered the Straubs' trailer. *See* Ind. Code § 35-43-2-1.5. In order to convict Geideman of the two counts of battery resulting in bodily injury, the State was required to prove that he touched both Charles and Karol in a rule, insolent or angry manner resulting in bodily injury. I.C. § 35-42-2-1.

At trial, Charles and Karol each testified that as Charles attempted to close the door of their trailer, Geideman barged inside with extreme force and violence; punched Charles repeatedly in the face; and hit Karol in the mouth with a closed fist, resulting in a swollen and bloodied lip. State's Exhibits 3 and 5 are photographs of Charles and Karol taken by police shortly after the incident. Exhibit 3 depicts Karol's lacerated and swollen lower lip, and Exhibit 5 depicts red marks above Charles' eye and on his nose, as well as a cut on his cheek.

The State carried its evidentiary burden. It is well-settled that the testimony of a single witness is sufficient to sustain a conviction. *Stewart v. State*, 866 N.E.2d 858, 862 (Ind. Ct. App. 2007). A reasonable jury could have concluded from Charles and Karol's testimony that Geideman knowingly and intentionally broke and entered their trailer, and once inside, touched them in a rude, insolent or angry manner, resulting in bodily injury to them. Thus, we conclude that the State presented sufficient evidence to support Geideman's convictions. Inasmuch as Geideman invites us to believe his testimony over that of Charles and Karol, we note that it is the function of the trier of fact to resolve

conflicts of testimony and to determine the weight of the evidence and the credibility of the witnesses. *Jones v. State,* 701 N.E.2d 863, 867 (Ind. Ct. App. 1998). We must therefore decline his invitation that we reweigh the evidence and reassess the credibility of witnesses, which we cannot do. *See Drane,* 867 N.E.2d at 146.

2. Inconsistency of Jury Verdicts

Next, Geideman argues that the jury verdicts of guilty of residential entry and two counts of battery causing bodily injury are "irreconcilable and impermissibly inconsistent with [his] acquittal of [the two other charged counts of battery]." Geideman's Br. at 14. The State counters by citing the so-called *Dunn*[7] rule, recently adopted by our Supreme Court in *Beattie v. State,* 924 N.E.2d 643 (Ind. 2010), for the proposition that such challenges are unavailable for appeal. We agree with the State.

"Almost from the time of our state's founding, Indiana courts have overwhelmingly refused to interfere with jury verdicts alleged to be inconsistent or irreconcilable." *Id.* at 646. Apparently, "[o]nly one Indiana appellate decision has ever granted relief upon a claim that logically inconsistent verdicts were returned against a single defendant." *Id.* at 647; s*ee Owsley v. State,* 769 N.E.2d 181, 183-85 (Ind. Ct. App. 2002) (holding defendant's conviction for conspiracy to commit dealing in cocaine was impermissibly inconsistent with his acquittals for possession of cocaine and dealing in cocaine arising from the same alleged criminal transaction).

[7] *Dunn v. United States,* 284 U.S. 390, 52 S. Ct. 189, 76 L. Ed. 356 (1932).

In *Dunn v. United States*, 284 U.S. 390, 52 S. Ct. 18, 76 L. Ed. 356 (1932), the defendant was acquitted of unlawful possession of intoxicating liquor and unlawful sale of intoxicating liquor, but was convicted of maintaining a common nuisance by keeping intoxicating liquor for sale at a specified place. The United States Supreme Court held that "[c]onsistency in the verdict is not necessary," and acknowledged the possibility "[that] the verdict may have been the result of a compromise, or of a mistake on the part of the jury"; however, the Court ultimately held that "verdicts cannot be upset by speculation or inquiry into such matters." *Beattie,* 924 N.E.2d at 646 (quoting *Dunn*, 284 U.S. at 393-94)).

Dunn was interpreted by some courts to *"*create[ ] the 'permissible inconsistent verdict rule' to which certain limited exceptions could be made," while other courts concluded that *Dunn* prohibited review of verdicts for inconsistency. *Beattie*, 924 N.E.2d at 645. The latter "refusal to consider claims of logically inconsistent verdicts has been the predominant thrust in almost all of the approximately eighty-six Indiana appellate decisions addressing this issue." *Id.* at 646. *Cf. Marsh v. State*, 271 Ind. 454, 393 N.E.2d 757 (1979) (holding that extremely contradictory and irreconcilable verdicts warrant corrective action).[8]

Subsequently, in *United States v. Powell*, 469 U.S. 57, 105 S. Ct. 471, 83 L. Ed 461 (1984), the United States Supreme Court reaffirmed the *Dunn* rule and insulated

[8] Our Supreme Court observes in *Beattie* that "in the thirty years since *Marsh* suggested that verdict correction might be possible for 'extremely contradictory and irreconcilable verdicts,' this approach has for the most part been either ignored or not applied." 924 N.E.2d at 646-47.

inconsistent jury verdicts from review, holding that "a criminal defendant convicted by a jury on one count could not attack that conviction as inconsistent with the jury's verdict of acquittal on another count." 469 U.S. at 58.

Recently, in *Beattie*, our Supreme Court adopted the federal rule that derived from *Dunn* and *Powell* and held that "[j]ury verdicts in criminal cases are not subject to appellate review on grounds that they are inconsistent, contradictory, or irreconcilable." *Beattie*, 924 N.E.2d at 649. Specifically, our Supreme Court stated, in pertinent part:

> We agree with and adopt the federal rule expressed by the United States Supreme Court in *Dunn* and *Powell*, which has been for the most part the prevailing rule of Indiana jurisprudence. Concluding that the contrasting "extremely contradictory and irreconcilable" standard devised in *Marsh* has proven in practice to be unhelpful and inconsistent with Indiana's strong respect for the conscientiousness, wisdom, and common sense of juries, we overrule the standard advanced in *Marsh* and disapprove of *Owsley*.

Beattie, 924 N.E.2d at 649.

Accordingly, we conclude that Geideman's challenge to the jury's verdict on the ground that it is irreconcilable and impermissible inconsistent with his acquittal on other charges is unavailable for appeal.

3. Indiana Appellate Rule 7(B)

Geideman also argues[9] that his aggregate three-year sentence is inappropriate in light of the nature of his offenses and his character. We are not persuaded.

[9] He also argues that the trial court abused its discretion by failing to give proper mitigating weight to his "work ethic, reliability, trustworthiness, good manners, abilities as a negotiator and peace maker," as evidenced in letters of support from his friends/family. Geideman's Br. at 17. He argues that the same "should have outweighed, or at least balanced" the aggravating circumstances. *Id*. We disagree and observe that under the current advisory sentencing scheme, a trial court has no obligation to weigh

Article 7, Section 4 of the Indiana Constitution gives this Court power in all criminal appeals "to review and revise the sentence imposed." Indiana Appellate Rule 7(B) provides that this Court may revise a sentence "if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." "Although appellate review of sentences must give due consideration to the trial court's sentence because of the special expertise of the trial bench in making sentencing decisions, Appellate Rule 7(B) is an authorization to revise sentences when certain broad conditions are satisfied." *Purvis v. State*, 829 N.E.2d 572, 587 (Ind. Ct. App. 2005) (internal citations omitted). The defendant bears the burden of persuading us that the sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007).

"Regarding the nature of the offense, the advisory sentence is the starting point our legislature has selected as an appropriate sentence for the crime committed." *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh'g,* 875 N.E.2d 218. The advisory sentence for a class D felony is one and one-half years. The battery offenses, which are class A misdemeanors, do not have advisory sentences. *See* I.C. § 35-50-3-2 (One who "commits a Class A misdemeanor shall be imprisoned for a fixed term of not more than one (1) year."). Here, the trial court imposed a two-year sentence for the class

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aggravating or mitigating factors when imposing sentence; thus, the relative weight or value assigned to these factors is not subject to appellate review for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 493 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218.

D felony residential entry conviction and concurrent one-year sentences for Geideman's battery convictions.

Our review of the nature of the offenses reveals that on the night of the incident, Geideman, accompanied by Harker, went uninvited to the Straubs' trailer and initiated a verbal confrontation with Charles. When Charles attempted to conclude the conversation by closing his front door, Geideman forced his way into the trailer, thereby invading the sanctity of the Straubs' home. Inside, Geideman punched Charles repeatedly in the face, resulting in red marks and a cut to Charles' face; and when Karol tried to assist Charles, Geideman punched her in the mouth, lacerating and bloodying her lip.

As to the character of the offender, Geideman has prior convictions for class C misdemeanor operating a motor vehicle with a blood alcohol concentration over .10% (1994); class A misdemeanor possession of marijuana (2001); and a prior felony conviction for class D felony possession of a controlled substance (2001). The PSI also reveals that he has self-reported a history of gang-affiliation. Lastly, Geideman failed to appear for his initial sentencing hearing and a bench warrant was issued for his arrest.

Despite his prior and continuing contact with the criminal justice system, Geideman professes to have admirable qualities of character.[10] However, his conduct in committing the instant offenses indicates his poor judgment, lack of respect for others, and his continuing inability to conform his conduct to societal norms. In light of the foregoing, we cannot say that anything in the nature of the offenses or Geideman's

[10] Geideman cites his "work ethic, reliability, trustworthiness, good manners, abilities as a negotiator and peace maker." Geideman's Br. at 17.

character leads us to the conclusion that an aggregate three-year sentence is inappropriate in light of the nature of his offenses and his character.

4. Exclusion of Evidence

Lastly, Geideman argues that the trial court abused its discretion in refusing to allow Harker to testify regarding whether he had been charged with stealing money from the Straubs' home. He argues that Harker's testimony could have impeached Charles' testimony that $300.00 was missing from his trailer after the incident; and that Charles did not know whether anyone had been charged with the theft. Geideman argues further that "[t]he claim of money lost also could have been considered by the jury to call into question [Charles'] claims that he did not owe any money to Kath[]rin" and raises questions about "the financial motivations of the Straubs." Geideman's Br. at 19.

The decision to admit or exclude evidence rests within the sound discretion of the trial court, and we will not reverse such decision absent an abuse of discretion. *Wright v. State*, 916 N.E.2d 269, 277 (Ind. Ct. App. 2009). An abuse of discretion occurs if a trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. *Payne v. State*, 854 N.E.2d 7, 13 (Ind. Ct. App. 2006).

Indiana Rule of Evidence 611(a) provides that "[t]he court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment."

The trial court ruled as follows regarding Geideman's request to call Harker:

> [T]he purpose [of the proposed testimony] is to ask Mr. Harker whether or not he has been charged with a theft for stealing money from the Straub home.
>
> I[] find that, number one, to be a collateral issue; number two, I find it to be irrelevant as to this case. And further, because of that I'm going to exercise my discretion under Rule 611(a) to exclude that testimony.
>
> I believe that it would [be] a needless consumption of time. I believe that it would be confusing and misleading to the jury. And I believe that it is irrelevant.

(Tr. 278).

From our review of the record, we cannot say that Harker's proffered testimony was either relevant or dispositive of Geideman's guilt or innocence. Specifically, his testimony pertained to a collateral issue -- whether Harker was charged with stealing money from the Straubs' residence -- that was not relevant to a determination of whether Geideman committed residential entry or battery resulting in bodily injury against Charles and Karol. *See* Ind. Evid. R. 401 (defining "relevant evidence" as "evidence having any tendency to make the existence of any fact that [wa]s of consequence to the determination of the action more or less probable than it would be without the evidence"). *See also Rodgers v. State*, 422 N.E.2d 1211, 1214 (Ind. 1981) (holding exclusion of impeachment evidence harmless where that impeachment involved a subject which neither bore directly on an element of the offense or a matter at issue); *see also Wissman v. State*, 540 N.E.2d 1209, 1211 (Ind. 1989) (holding exclusion of evidence of victim's blood alcohol content, which defendant argued could have supported finding that

victim was lying down when shot, was at most harmless, inasmuch as that fact was not determinative of whether victim was shot in the manner claimed by defendant).

Thus, we conclude that Harker's proffered testimony -- which was offered to impeach Charles' claim that money was stolen from his trailer -- was objected to by the State and sustained by the trial court and was neither relevant or dispositive as to whether Geideman was guilty of residential entry or the charged battery offenses. We find no abuse of discretion.

Affirmed.

BAKER, C.J., and CRONE, J., concur.