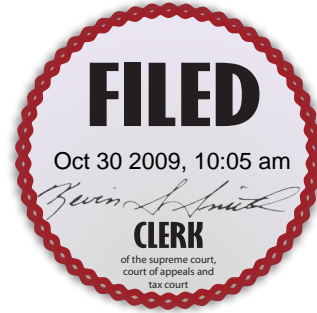


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

**KENT D. ZEPICK**  
Fishers, Indiana

ATTORNEYS FOR APPELLEE:

**GREGORY F. ZOELLER**  
Attorney General of Indiana

**ANN L. GOODWIN**  
Special Deputy Attorney General  
Indianapolis, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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FRANK GREENE, )  
 )  
Appellant-Defendant, )  
 )  
vs. )  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

No. 49A05-0905-CR-250

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Carol J. Orbison, Judge  
Cause No. 49G22-0811-FB-261114

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**October 30, 2009**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**BAKER, Chief Judge**

Appellant-defendant Frank Greene appeals following his convictions for Criminal Confinement,<sup>1</sup> a class B felony, Criminal Confinement,<sup>2</sup> a class D felony, Intimidation,<sup>3</sup> a class D felony, and Domestic Battery,<sup>4</sup> a class A misdemeanor, and the finding that he is a Habitual Offender<sup>5</sup>. Greene argues that he was denied the right to a speedy trial and that there is insufficient evidence supporting the class D felony criminal confinement conviction. Finding that Greene withdrew his speedy trial request and finding sufficient evidence supporting the conviction, we affirm.

### FACTS

In 2008, Brenda Johnson lived with Greene, her boyfriend, in Indianapolis. On Friday, November 15, 2008, Johnson and Greene began arguing at 8:00 a.m., when Johnson intended to go buy dog food. When she attempted to leave, Greene grabbed her arm and throat and forced her into a bedroom, where he threw her on the bed. Greene took Johnson's cell phone.

Several times, Johnson attempted to lift herself off of the bed, but Greene told her, “[b]itch, you are not leaving the house.” Tr. p. 14. He threw her back down onto the bed each time she attempted to leave, at one point climbing on top of her and holding her on the bed with his knees. Greene held Johnson in the bedroom for most of the day. He even escorted her to the bathroom and sat on her lap while she used the facilities. Greene

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<sup>1</sup> Ind. Code § 35-42-3-3(b)(2)(B).

<sup>2</sup> I.C. § 35-42-3-3(a)(1).

<sup>3</sup> Ind. Code § 35-45-2-1(b)(1)(A).

<sup>4</sup> I.C. § 35-42-2-1.3(a).

<sup>5</sup> Ind. Code § 35-50-2-8.

refused to allow Johnson to eat, though he forced her to prepare food for him that he ate in her presence.

Johnson eventually slept. When she awoke on Saturday morning, she again attempted to leave the home. Greene still refused to allow her to leave, grabbing her, slapping her in the face several times, and kicking her. Then, Greene placed his hands around her throat and strangled her until she lost consciousness. When she regained consciousness, she was on the couch in the living room. Shortly thereafter, at approximately 1:00 a.m. on Sunday morning, the authorities arrived. Johnson had bruises on her face, neck, arms, and chest, and broken blood vessels on her neck.

On November 19, 2008, the State charged Greene with class B felony criminal confinement, class C felony battery, class D felony strangulation, class D felony intimidation, two counts of class A misdemeanor domestic battery, two counts of class A misdemeanor battery, class D felony criminal confinement, class A misdemeanor intimidation, class A misdemeanor interference with the reporting of a crime, and class A misdemeanor cruelty to an animal.<sup>6</sup>

On December 2, 2008, Greene made an oral speedy trial request. On January 6, 2009, the State filed a notice indicating its intent to have Greene sentenced as a habitual offender. On January 7, 2009, Greene withdrew his speedy trial request. Appellant's App. p. 8.

During Greene's February 27, 2009, bench trial, the trial court granted his motion for judgment on the evidence as to one count of class A misdemeanor battery and class A

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<sup>6</sup> Greene allegedly kicked the dog at some point during the time he was holding Johnson captive.

misdemeanor interference with the reporting of a crime. At the close of the trial, the trial court found him not guilty of cruelty to an animal and guilty of all remaining counts.

At Greene's April 1, 2009, habitual offender and sentencing hearing, the trial court adjudged Greene to be a habitual offender. After merging a number of offenses, the trial court entered judgments of conviction on class B felony criminal confinement, class D felony intimidation, class A misdemeanor domestic battery, and class D felony criminal confinement.

The trial court found no mitigators and found Greene's criminal history and the nature and circumstances of the crime to be aggravators. The trial court imposed concurrent sentences of twenty years for class B felony criminal confinement, three years for class D felony intimidation, one year for class A misdemeanor domestic battery, and three years for class D felony criminal confinement. The trial court also enhanced the twenty-year sentence by thirty years because of the habitual offender finding, for an aggregate executed sentence of fifty years imprisonment. Greene now appeals.

## DISCUSSION AND DECISION

### I. Speedy Trial

Greene first argues that his right to a speedy trial, as guaranteed by the Sixth Amendment to the United States Constitution and Article I, section 12 of the Indiana Constitution, was violated. Indiana Rule of Criminal Procedure 4(B) permits an incarcerated defendant to request a speedy trial. If such a request is made, trial must be conducted within seventy days or the defendant is to be discharged. Ind. Crim. Rule 4(B)(1).

Greene requested a speedy trial on December 2, 2008, meaning that the State was required to bring him to trial by February 10, 2009. Greene's trial did not take place until February 27, 2009. A review of the record, however, reveals that on January 7, 2009, Greene withdrew his speedy trial request. Appellant's App. p. 8. Therefore, his rights were not violated when his trial took place outside of the seventy-day window and he is entitled to no relief on this basis.

## II. Sufficiency

Greene also argues that the evidence is insufficient to support his conviction for class D felony criminal confinement.<sup>7</sup> In reviewing a challenge to the sufficiency of the evidence, we neither reweigh the evidence nor assess witness credibility. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). We will consider only the evidence favorable to the verdict and all reasonable inferences that may be drawn therefrom. Id. We will affirm unless no rational factfinder could have found the defendant guilty beyond a reasonable doubt. Clark v. State, 728 N.E.2d 880, 887 (Ind. Ct. App. 2000).

To convict Greene of class D felony criminal confinement, the State was required to prove beyond a reasonable doubt that he knowingly or intentionally removed Johnson, by force or threat of force, from one place to another. I.C. § 35-42-3-3(a)(2). Specifically, the charging information alleged that Greene “knowingly, by force, or threat of force, remove Johnson from one place to another, that is: forcibly removed Johnson from the bedroom to the living room of her residence, which resulted in serious bodily injury, that is: loss of consciousness from being strangled.” Appellant's App. p. 22.

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<sup>7</sup> He does not challenge his remaining convictions on appeal.

The evidence presented at trial established that, while in the bedroom, Greene placed his hands on Johnson's throat and strangled her until she lost consciousness. She testified that "everything went black" and that she had not merely fallen asleep. Tr. p. 22. When she regained consciousness, she was in the living room and did not remember moving there. There was no evidence that anyone else was in the apartment when Greene strangled Johnson. Under these circumstances, it was reasonable for the factfinder to infer that Greene moved Johnson from the bedroom to the living room couch after he strangled her to the point of lost consciousness. See Jones v. State, 780 N.E.2d 373, 376 (Ind. 2002) (holding that convictions may be based solely upon circumstantial evidence). His arguments to the contrary amount to a request that we reweigh the evidence, which we may not do. We find the evidence sufficient to support his conviction for class D felony criminal confinement.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and RILEY, J., concur.