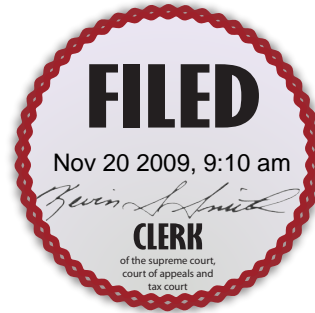


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

RYAN THURMAN,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 49A04-0905-CR-249

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Lisa F. Borges, Judge
The Honorable Stanley Kroh, Commissioner
Cause No. 49G04-0810-FB-225160

November 20, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Ryan Thurman (“Thurman”) appeals his conviction for Criminal Confinement, as a Class B felony,¹ presenting the sole issue of whether the conviction is supported by sufficient evidence. We affirm.

Facts and Procedural History

Thurman and Dequana Millbrooks (“Millbrooks”) were living together in Indianapolis in September of 2008. On the morning of September 30, 2008, Millbrooks asked Thurman when he was going to leave because “she was done” with the relationship. (Tr. 8.) Thurman asked Millbrooks if she was serious; when she confirmed that she was serious, Thurman responded, “Well, today’s the day you die.” (Tr. 8.)

Thurman began to beat Millbrooks with a broom handle and a board. Millbrooks ran downstairs and locked herself in her son’s bedroom. She told Thurman that she was going to the hospital and he would be going to jail. Thurman again threatened to kill Millbrooks, and added that he would kill himself and the children as well. Millbrooks heard Thurman rummaging in the kitchen and suspected that he was retrieving a knife.

Thurman screamed at Millbrooks to open the door, and she did so. Millbrooks attempted to dissuade Thurman from harming her, but he came after her and stabbed her in the arm while saying “die, bitch, die.” (Tr. 20.) However, when Millbrooks began to bleed, Thurman appeared to panic. He backed up, fell on the floor, and began shaking. Millbrooks

¹ Ind. Code § 35-42-3-3(a)(1)-(b)(2). He does not challenge his conviction for Battery, as a Class C felony, Ind. Code § 35-42-2-1(a)(3).

was able to step over Thurman to escape and summon help.

Thurman was charged with Criminal Confinement, Battery, and Intimidation. At the conclusion of a bench trial conducted on March 16, 2009, Thurman was acquitted of Intimidation but found guilty of the other charges. He was sentenced to ten years imprisonment for Criminal Confinement, with four years suspended, and four years imprisonment for Battery, with two years suspended, to be served concurrently.² This appeal ensued.

Discussion and Decision

Our supreme court has recently summarized our standard of review when assessing claims of insufficient evidence:

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. The 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) (quotations and citations omitted) (emphasis in original).

² Three years of the aggregate sentence are ordered to be served in a Work Release program.

The offense of Criminal Confinement is defined as occurring when one “knowingly or intentionally confines another person without the other person’s consent,” and it is a Class B felony “if it is committed while armed with a deadly weapon.” Ind. Code § 35-42-3-3. “Confine” means “to substantially interfere with the liberty of a person.” Ind. Code § 35-42-3-1.

Thurman asserts that the evidence offered by the State to convict him of confinement is insufficient. He asks that we disregard Millbrooks’ “equivocal” and “self-contradictory” testimony. Appellant’s Brief at 9-10. He further claims that the photographs of bloodstains are irrelevant, and directs our attention to Cunningham v. State, 870 N.E.2d 552, 554 (Ind. Ct. App. 2007) (concluding that “[a]n inference of confinement does not arise from evidence of injury to the victim.”).

Millbrooks testified that she was not able to get out of her son’s bedroom before the stabbing as she “was cornered” by Thurman. (Tr. 20.) This is sufficient to permit the factfinder to conclude that Thurman substantially interfered with Millbrooks’ liberty. In rare cases, the “incredible dubiosity rule” will permit an appellate tribunal to impinge upon the factfinder’s responsibility to judge the credibility of witnesses. Berry v. State, 703 N.E.2d 154, 160 (Ind. 1998). However, application of the rule is limited to cases where a sole witness provides inherently contradictory testimony that is equivocal or coerced, and no circumstantial evidence supports the defendant’s guilt.

Our review of the record leads us to disagree with Thurman's contention that Millbrooks offered contradictory testimony about her alleged confinement. Thurman focuses upon the following testimony by Millbrooks during her cross-examination:

Question: Ms. Millbrooks, you said you weren't free to leave but in fact you were free to leave on a number of occasions except the point in time where you locked yourself in the bedroom, isn't that correct?

Millbrooks: Yes.

(Tr. 51.) Thus, Millbrooks distinguished between the time she was inside the bedroom and the time she was outside the bedroom. She did not equivocate about her freedom to leave during the relevant time period: after Thurman, armed with a knife, demanded and gained entry to the bedroom. Furthermore, the photographs depicting blood droplets and splatter located in the bedroom corner corroborate Millbrooks' testimony that she had been backed into the corner before the knife attack. Contrary to Thurman's assertion, the State did not invite the factfinder to rely upon the blood stain photographs as proof that Millbrook was necessarily confined because she was injured.

As such, there is sufficient evidence to support Millbrooks' conviction of confinement.

Affirmed.

VAIDIK, J., and BRADFORD, J., concur.