

## MEMORANDUM DECISION

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IN THE  
**Court of Appeals of Indiana**

Reko Deprea Levels, Jr.,  
*Appellant-Defendant*

v.

State of Indiana,  
*Appellee-Plaintiff*



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March 12, 2024

Court of Appeals Case No.  
23A-CR-1911

Appeal from the Vanderburgh Superior Court  
The Honorable Wayne S. Trockman, Judge

Trial Court Cause No.  
82D02-2109-F3-5036

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**Memorandum Decision by Judge Weissmann**  
Judges Mathias and Taviton concur.

## **Weissmann, Judge.**

- [1] Braeden Fitzsimmons locked himself inside his apartment bathroom after a party guest, Reko Levels, Jr., pointed a gun at the back of Fitzsimmons's head. While two other guests then stole items from Fitzsimmons's home, Levels stood outside the bathroom door threatening to kill Fitzsimmons if he exited the bathroom. Levels now challenges the sufficiency of the evidence to support his conviction for criminal confinement. We affirm but sua sponte remand to correct a sentencing error.

## **Facts**

- [2] Levels attended a social gathering at Fitzsimmons's apartment in September 2021. The event lasted into the early morning hours, and at some point, Fitzsimmons went to sleep while Levels and two other guests continued to socialize. Fitzsimmons later woke up to use the bathroom and found that Levels and the others were preparing to leave.
- [3] While using the bathroom, Fitzsimmons looked in the mirror and saw Levels in the doorway pointing a handgun at the back of Fitzsimmons's head. Levels shouted, "[D]on't move!" Tr. Vol. III, p. 31. But Fitzsimmons quickly forced shut the bathroom door and locked it. He then laid on the floor, braced his back against the bathroom sink, and pressed his feet against the door to further secure it.
- [4] Levels stayed outside the bathroom door for around ten minutes. During this time, he yelled at Fitzsimmons: "I killed your dog, don't do anything stupid or I

will kill you too”; and “[D]on’t try to leave, if you do you’ll get shot and killed.” *Id.* at 55. Meanwhile, the two other guests began ransacking Fitzsimmons’s apartment looking for things to steal.

- [5] Eventually, Levels and the other two guests left Fitzsimmons’s apartment having stolen his cellphone, car keys, rifle, and ammunition. One or more of them also stabbed Fitzsimmons’s dog four times. When Fitzsimmon heard the three guests leave, he emerged from the bathroom and locked his apartment door. He then tended to his dog before going outside, finding someone with a cellphone, and calling 911. Fitzsimmons’s dog recovered from its wounds.
- [6] Police arrested Levels a few days later, and among other crimes, the State charged him with three Level 3 felonies: (1) armed robbery by force or threat of force; (2) armed robbery by putting a person in fear; and (3) criminal confinement while armed with a deadly weapon. A jury found Levels guilty of all three, and the trial court entered judgments of conviction thereon. At sentencing, on the State’s recommendation, the trial court “merged” Levels’s two robbery convictions. *Tr.* Vol. IV, p. 74; *App.* Vol. III, pp. 37, 40. The court then sentenced him to a total of 10 years in prison.

## **Discussion and Decision**

- [7] On appeal, Levels only challenges the sufficiency of the evidence supporting his conviction for criminal confinement. But we also address *sua sponte* the trial court’s attempt to resolve its double jeopardy concerns by merging, without vacating, Levels’s second robbery conviction.

## I. Sufficiency

- [8] When reviewing a claim of insufficient evidence, we neither reweigh the evidence nor judge the credibility of the witnesses. *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). We consider only the probative evidence supporting the verdict and any reasonable inferences which may be drawn from this evidence. *Id.* We will affirm if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. *Id.*
- [9] To convict Levels of Level 3 felony criminal confinement, the State was required to prove that he: (1) knowingly or intentionally, (2) while armed with a deadly weapon, (3) substantially interfered with Fitzsimmons's liberty, (4) without Fitzsimmons's consent. Ind. Cod §§ 35-42-3-1, -3(a), -3(b)(3)(A). Levels claims the Stated failed to prove that he substantially interfered with Fitzsimmons's liberty because Levels did not force Fitzsimmons into the bathroom or shut and lock the bathroom door. According to Levels, he also did nothing to keep Fitzsimmons inside the bathroom during the robbery.
- [10] The evidence tells a different story. While Fitzsimmons was voluntarily in the bathroom, Levels pointed a handgun at Fitzsimmons's head and shouted, "[D]on't move!" Tr. Vol. III, p. 31. Levels then stood outside the bathroom door for ten minutes, threatening to shoot and kill Fitzsimmons if he exited the bathroom. This evidence is sufficient to prove beyond a reasonable doubt that Levels substantially interfered with Fitzsimmons's liberty. *See Williams v. State*,

681 N.E.2d 195, 204 (Ind. 1997) (finding sufficient evidence to support criminal confinement conviction despite victim voluntarily entering defendant’s car).

## **II. Merger**

[11] We sua sponte address the trial court’s merger of Levels’s two Level 3 felony armed robbery convictions. The abstract of judgment and sentencing order list “Finding of Guilty” as the disposition for the charge of armed robbery by force or threat and “Conviction Merged” as the disposition for the charge of armed robbery by putting a person in fear. App. Vol. III, pp. 37, 40. The documents also note that the latter charge “shall merge” with the former. *Id.* at 38, 41. But simply merging the offenses was not enough to resolve the presumed double jeopardy issue. *See, e.g., Owens v. State*, 206 N.E.3d 1187, 1190-91 (Ind. Ct. App. 2023), *trans. denied*. We therefore remand this case to the trial court to vacate the “merged” conviction for armed robbery in both the abstract of judgment and sentencing order.

## **Conclusion**

[12] We affirm Levels’s conviction for Level 3 felony criminal confinement but remand with instructions to vacate Levels’s “merged” conviction for Level 3 felony armed robbery by putting a person in fear.

Mathias, J., and Tavitas, J., concur.

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