MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Chad S. Taylor,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

November 13, 2023

Court of Appeals Case No. 23A-CR-530

Appeal from the Elkhart Superior Court

The Honorable Kristine A. Osterday, Judge

Trial Court Cause No. 20D01-2108-F5-185

Memorandum Decision by Judge Pyle

Judges Vaidik and Mathias concur.

Pyle, Judge.

Statement of the Case

[1] Chad Taylor ("Taylor") appeals his convictions, following a jury trial, for Level 5 felony criminal confinement,[1] Class A misdemeanor domestic battery,[2] and Class A misdemeanor interference with the reporting of a crime.[3] Taylor also appeals the aggregate six-year sentence imposed for his convictions. Taylor specifically argues that: (1) the trial court abused its discretion when it denied his motion for a mistrial; (2) the evidence is insufficient to support his Level 5 felony criminal confinement conviction; and (3) his aggregate sentence is inappropriate. Concluding that: (1) the trial court did not abuse its discretion when it denied Taylor's motion for a mistrial; (2) there is sufficient evidence to support his conviction; and (3) his aggregate sentence is not inappropriate, we affirm Taylor's convictions and sentence.

[2] We affirm.

Issues

1. Whether the trial court abused its discretion when it denied Taylor's motion for a mistrial.
2. Whether there is sufficient evidence to support Taylor's Level 5 felony criminal confinement conviction.

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[1] IND. CODE § 35-42-3-3.

[2] I.C. § 35-42-2-1.3.

[3] I.C. § 35-45-2-5.

3. Whether Taylor's sentence is inappropriate.

Facts

[3] The facts most favorable to the judgment reveal that Taylor began dating N.I. in December 2018. Two months later, in February 2019, Taylor and N.I. began living together at a friend's house. In March 2020, N.I. rented a house. Taylor did not immediately begin living with N.I. at this house; however, he later moved in with her. Over time, Taylor and N.I. began to frequently argue.

[4] On August 19, 2021, Taylor and N.I. had plans to go out for the evening. However, Taylor left the house before he and N.I. had been scheduled to go out, which upset N.I. While Taylor was out, he and N.I. argued in text messages. At some point, N.I. decided to take a shower and make other plans for the evening. Taylor telephoned N.I. while she was in the shower and became angry when N.I. did not answer his call.

[5] Taylor returned to the home and kicked in the front door as he entered the house. Taylor and N.I. began arguing again when N.I. walked into the living room and saw the damaged front door. N.I., who was particularly upset because this was the second time that Taylor had kicked in the front door, asked Taylor to leave the house. However, Taylor followed N.I. into the bedroom as they continued to argue.

[6] While in the bedroom, Taylor pushed N.I. on the bed on her back and "was laying on top of [her]" with his hands around her arms, which caused her physical pain. (Tr. Vol. 2 at 170). Taylor held N.I. down on the bed for several

minutes. N.I. asked Taylor to release her and struggled to free herself but was unable to do so. Taylor eventually released N.I. and then followed her into the living room.

[7] While Taylor and N.I. were in the living room, Taylor pushed N.I. into a table. N.I. fell on the floor and ripped the back of Taylor's shirt as she struggled with him to get up. Taylor picked up N.I.'s cell phone, which had also fallen on the floor, and refused to return it to N.I., who had said that she was going to call the police. N.I., who believed that "[t]hings were just out of control" and that she "needed help to get out of the situation[,]" grabbed her cell phone from Taylor, ran to the bathroom, and texted 911. (Tr. Vol. 2 at 179).

[8] Elkhart County Sheriff's Office Deputy Kwan Kuntu ("Deputy Kuntu"), who was wearing a body cam, arrived at the scene and knocked at the front door. When Taylor opened the door, Deputy Kuntu noticed that the back of Taylor's shirt was ripped. Deputy Kuntu also noticed that N.I. was on the floor "peeking [out of the bathroom] in the back of the residence." (Tr. Vol. 2 at 79). Deputy Kuntu approached N.I., who was "extremely scared" and "shaking." (Tr. Vol. 2 at 79). N.I., who "couldn't speak in . . . complete sentences[,]" was "pointing and giving gestures that something ha[d] happened and that [Taylor] was the cause." (Tr. Vol. 2 at 80). After she had calmed down, N.I. told Deputy Kuntu that Taylor had held her down on the bed and that her arm hurt "on the inside." (Tr. Vol. 2 at 85). Deputy Kuntu noticed that "[t]he sheets were ruffled [at the bottom of the bed] as if there [had been] an altercation on them." (Tr. Vol. 2 at 97).

[9] Four days later, the State charged Taylor with Level 5 felony criminal confinement, Class A misdemeanor domestic battery, and Class A misdemeanor interference with the reporting of a crime. While incarcerated before trial, Taylor contacted N.I. via a video call from the county jail. During the call, Taylor told N.I. that it was "on [her]" as to whether he would get out of jail and that they would see how much N.I. loved him. (State's Ex. 5).

[10] At Taylor's January 2023 two-day trial, the trial court instructed the jury as follows:

> [PRELIMINARY] INSTRUCTION NO. 17
>
> During the trial, the Court may rule that certain questions may not be answered and/or that certain exhibits may not be allowed into evidence. You must not concern yourselves with the reasons for the rulings. The Court's rulings are strictly controlled by law.
>
> Occasionally, the Court may strike evidence from the record after you have already seen or heard it. You must not consider such evidence in making your decision.
>
> Your verdict should be based only on the evidence admitted and the instructions on the law. Nothing that the Court says or does is intended to recommend what facts or what verdict you should find.

(App. Vol. 2 at 113).

[11] Also, at trial, the jury heard the facts as set forth above. In addition, the jury watched a redacted version of the video from Deputy Kuntu's body cam as well as a redacted version of the video call that Taylor had made to N.I. from the jail.

[12] Further, during N.I.'s testimony, the State asked N.I. when Taylor had moved into the home that N.I. had rented in March 2020. N.I. responded, "I honestly cannot remember. I know I do believe he was incarcerated at the time." (Tr. Vol. 2 at 155). Defense counsel immediately asked if the State and defense counsel could approach the bench, and the trial court responded affirmatively. The State told the trial court that it had told N.I. not to mention Taylor's previous incarcerations. The parties agreed that the trial court would advise the jury that it could not consider N.I.'s response to the State's question. After the parties had returned to their respective places, the trial court specifically admonished the jury that it "may not consider that last response that was provided by this witness." (Tr. Vol. 2 at 157).

[13] The trial court then took a brief recess. After the jurors had left the courtroom, Taylor stated that it was "clear" that N.I.'s statement about Taylor's prior incarceration was not intentional. (Tr. Vol. 2 at 158). Taylor further acknowledged that N.I. was "stressed." (Tr. Vol. 2 at 158). The trial court agreed that N.I. was "nervous and stressed" and found that N.I. was "certainly not a person who [was] trying to torpedo this trial." (Tr. Vol. 2 at 158). Taylor requested a few moments to review the issue and make a further record if necessary. When the parties returned to the courtroom ten minutes later, Taylor moved for a mistrial. However, the trial court told the parties that it had reviewed case law during the recess and had concluded that its admonishment to the jury "was a sufficient remedy here." (Tr. Vol. 2 at 160).

[14] After hearing the evidence, the jury convicted Taylor of Level 5 felony criminal confinement, Class A misdemeanor domestic battery, and Class A misdemeanor interference with the reporting of a crime. At Taylor's February 2023 sentencing hearing, the trial court reviewed Taylor's pre-sentence investigation report, which revealed that forty-seven-year-old Taylor has an extensive criminal history that spans nearly thirty years. Specifically, Taylor has felony convictions for possession of methamphetamine, operating a motor vehicle after forfeiture of his license for life, and operating a motor vehicle while his license had been suspended for being an habitual traffic violator. Taylor also has two felony convictions for theft and two felony convictions for resisting law enforcement. In addition, Taylor has multiple misdemeanor convictions, including convictions for illegal consumption of alcohol, reckless driving, receiving and concealing stolen property, operating a vehicle without a license, driving while suspended, possession of marijuana, and public intoxication. Taylor also has two misdemeanor convictions for driving while intoxicated, three misdemeanor convictions for resisting law enforcement, and four misdemeanor convictions for invasion of privacy. In addition, Taylor has been adjudicated to be an habitual offender, has violated the terms and conditions of his probation in multiple cases, and has been unsuccessfully discharged from community corrections and work release programs in several cases. Further, Taylor was out on bond for charges of Level 6 felony intimidation and Class A misdemeanor criminal trespass when he committed the offenses in this case. Taylor was also charged with Class A misdemeanor invasion of privacy for

violating a protective order after he had been charged with the offenses in this case.

[15] After hearing the parties' arguments, the trial court found the following aggravating circumstances: (1) Taylor's extensive criminal history, which was outlined "from page four through seventeen of the Pre-Sentence Investigation Report[]"; (2) Taylor's extensive history of probation and community corrections violations; (3) Taylor's failure to take advantage of programs or alternative sanctions offered to him in the past; and (4) other forms of sanctions had proved to be unsuccessful. The trial court found no mitigating factors and concluded that "an aggravated [sentence was] more than warranted." (Tr. Vol. 3 at 19).

[16] Thereafter, the trial court sentenced Taylor to six (6) years for the Level 5 felony conviction and 360 days for each Class A misdemeanor conviction. The trial court further ordered the sentences to run concurrently with each other, resulting in an aggregate sentence of six years ordered to be served in the Indiana Department of Correction.

[17] Taylor now appeals his convictions and sentence.

Decision

[18] Taylor argues that: (1) the trial court abused its discretion when it denied his motion for a mistrial; (2) there is insufficient evidence to support his conviction for Level 5 felony confinement; and (3) his aggregate six-year sentence is inappropriate. We address each of his contentions in turn.

1. Motion for a Mistrial

[19] Taylor first argues that the trial court abused its discretion when it denied his motion for a mistrial. The denial of a motion for a mistrial rests within the sound discretion of the trial court, and we review the trial court's decision only for an abuse of that discretion. *Brittain v. State*, 68 N.E.3d 611, 619 (Ind. Ct. App. 2017), *trans. denied*. Further, the trial court is entitled to great deference on appeal because the trial court is in the best position to evaluate the relevant circumstances of a given event and its probable impact on the jury. *Id*. at 620. To prevail on appeal from the denial of a motion for mistrial, a defendant must demonstrate that the statement in question was so prejudicial that he was placed in a position of grave peril. *Id*. The gravity of the peril is measured by the challenged conduct's probable persuasive effect on the jury's decision, not the impropriety of the conduct. *Mickens v. State*, 742 N.E.2d 927, 929 (Ind. 2001). Granting a mistrial "is an extreme remedy that is warranted only when no other action can be expected to remedy the situation." *Kemper v. State*, 35 N.E.3d 306, 309 (Ind. Ct. App. 2015), *trans. denied*. Further, a timely and accurate admonishment is presumed to cure any error in the admission of evidence. *Banks v. State*, 761 N.E.2d 403, 405 (Ind. 2002). In addition, "[w]e presume the jury followed the trial court's admonishment and that the excluded testimony played no part in the jury's deliberation." *Francis v. State*, 758 N.E.2d 528, 532 (Ind. 2001). We also presume that the jury followed the trial court's instructions. *Weisheit v. State*, 109 N.E.3d 978, 989 (Ind. 2018), *cert. denied*.

[20] Here, our review of the record reveals that before the jury heard any evidence, the trial court read Preliminary Instruction Number 17, which advised the jury that the trial court might strike evidence from the record after the jury had already heard it. The trial court further instructed the jury that it must not consider such evidence in making its decision. During the trial, the trial court admonished the jury to disregard N.I.'s response to the State's question immediately after she had given it. Both the trial court's instruction and admonition were clear, and we find nothing in the record to suggest that the jury did not follow the instruction and the admonition. As such, we presume that the jury followed the trial court's admonition and instruction and conclude that the trial court's timely admonishment sufficiently dispelled any grave peril and justified the denial of Taylor' motion for a mistrial. *See Banks*, 761 N.E.2d at 405 (concluding that the trial court's admonishment to the jury to disregard a witness' remark about the defendant's prior unrelated criminal act sufficiently dispelled any grave peril and justified denial of the defendant's motion for a mistrial). The trial court did not abuse its discretion in denying Taylor's motion for a mistrial.

2. Sufficiency of the Evidence

[21] Taylor also argues that there is insufficient evidence to support his Level 5 felony criminal confinement conviction. Our standard of review for sufficiency of the evidence claims is well settled. We consider only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We do not reweigh the evidence or judge witness

credibility. *Id.* We will affirm the conviction unless no reasonable fact finder could find the elements of the crime proven beyond a reasonable doubt. *Id.* The evidence is sufficient if an inference may be reasonably drawn from it to support the verdict. *Id.* at 147.

[22] In order to convict Taylor of Level 5 felony criminal confinement, the State was required to prove that Taylor knowingly or intentionally confined N.I. without her consent and that the confinement resulted in bodily injury to N.I. *See* I.C. § 35-42-3-3(b)(1)(C). INDIANA CODE § 35-42-3-1 defines confine as "to substantially interfere with the liberty of a person."

[23] Taylor specifically argues that "[t]he [S]tate failed to introduce sufficient probative evidence to prove beyond a reasonable doubt that Taylor substantially interfered with [N.I.]'s liberty[.]" (Taylor's Br. 10). However, our review of the evidence reveals that Taylor pushed N.I. on the bed on her back and lay on top of her with his hands holding her arms for several minutes. N.I. asked Taylor to release her and struggled to free herself but was unable to do so. Indeed, N.I. was not able to get up until Taylor released her. This evidence is sufficient to prove beyond a reasonable doubt that Taylor substantially interfered with N.I.'s liberty. *See Hardley v. State*, 893 N.E.2d 1140, 1144 (Ind. Ct. App. 2008) (finding sufficient evidence that defendant substantially interfered with the victim's liberty when he held her down on a bed with her arms up and she was unable to get up).

3. Inappropriate Sentence

[24] Taylor also argues that his aggregate six-year sentence is inappropriate. Indiana Appellate Rule 7(B) provides that we may revise a sentence authorized by statute if, after due consideration of the trial court's decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender. The defendant bears the burden of persuading this Court that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). Whether we regard a sentence as inappropriate "turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case." *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008).

[25] When determining whether a sentence is inappropriate, we acknowledge that the advisory sentence is the starting point the Legislature has selected as an appropriate sentence for the crime committed. *Childress*, 848 N.E.2d at 1081. Here, the jury convicted Taylor of a Level 5 felony and two Class A misdemeanors. The sentencing range for a Level 5 felony is between one (1) and six (6) years, and the advisory sentence is three (3) years. I.C. § 35-50-2-6(b). The maximum sentence for a Class A misdemeanor is one (1) year. I.C. § 35-50-3-2.

[26] The trial court sentenced Taylor to six years for the Level 5 felony conviction and 360 days for each of the Class A misdemeanor convictions. The trial court further ordered the sentences to run concurrently with each other, resulting in an aggregate sentence of six years. This six-year aggregate sentence is less than

the potential maximum sentence of nearly eight years if the trial court had ordered the counts to be served consecutively.

[27] With regard to the nature of the offenses, we note that Taylor entered the home by kicking in the front door. Taylor pushed N.I. on the bed on her back and held her down by her arms as she struggled to free herself and asked Taylor to release her. Taylor also pushed N.I. into a living room table, causing N.I. to fall on the floor and drop her cell phone. Taylor picked up N.I.'s cell phone and refused to return it to N.I., who had told Taylor that she was going to call the police. After N.I. was able to grab her cell phone, she ran to the bathroom and texted 911 because she believed that the situation had gotten out of control.

[28] With regard to Taylor's character, we note that Taylor has demonstrated a disdain for the law over the course of nearly thirty years by amassing a significant criminal history that includes multiple felony and misdemeanor convictions, an habitual offender adjudication, and multiple probation violations. In addition, Taylor was out on bond for charges of Level 6 felony intimidation and Class A misdemeanor criminal trespass when he committed the offenses in this case. Taylor was also charged with Class A misdemeanor invasion of privacy for violating a protective order after he had been charged with the offenses in this case. We further note that, while incarcerated before trial, Taylor attempted to manipulate N.I. during a video call from the jail. Taylor specifically told N.I. that it was up to her as to when he got out of jail and that they would see how much she loved him.

[29] Based on the nature of the offenses and his character, Taylor has failed to persuade this Court that his aggregate six-year sentence is inappropriate.

[30] Affirmed.

Vaidik, J., and Mathias, J., concur.