

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jody Eugene Elkins,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 26, 2023

Court of Appeals Case No.
23A-CR-290

Appeal from the St. Joseph
Superior Court

The Honorable Elizabeth C.
Hurley, Judge

Trial Court Cause No.
71D08-2109-F5-218

Memorandum Decision by Judge Brown
Judge Crone and Senior Judge Robb concur.

Brown, Judge.

- [1] Jody Eugene Elkins claims the evidence is insufficient to sustain his conviction for criminal confinement as a level 3 felony. We affirm.

Facts and Procedural History

- [2] Elkins and K.E. were married in 2014, and Elkins filed for divorce in August 2021. They have one child, V.E. In September 2021, K.E. and Elkins were living separately, and V.E. lived with K.E. On September 7, 2021, K.E. drove a white Ford Explorer to Elkins's house to pick up V.E. Elkins and V.E. walked toward the Explorer, he knelt down and whispered to V.E., V.E. started to walk away, and Elkins entered the backseat of the Explorer behind K.E. Elkins leaned forward, placed a gun to K.E.'s side, and said "you lying ass whore." Transcript Volume II at 71. K.E. opened her door to exit the vehicle, and Elkins exited the vehicle, moved toward K.E. before she could exit the driver's seat, and struck her in her face with his fist. K.E. attempted to drive away, K.E. and Elkins started to fight over the gear shifter, at some point he put the gun in a cupholder, and K.E. threw the gun out of the vehicle. K.E. was able to place the vehicle in drive, attempted to turn around, and the vehicle became stuck. Elkins returned, punched K.E. in the face "so hard [she] could see stars," and "was trying to rip [her] out." *Id.* at 76. While both were outside the vehicle, Elkins choked K.E., and she could not breathe. He moved on top of her, and tried to zip tie her hands. K.E. heard V.E. screaming. Elkins choked K.E. again, she "started to see black," and she bent one of his fingers back. *Id.* at 79. K.E. moved underneath the Explorer. Elkins entered the Explorer, K.E. heard

the tires spinning, and she moved from beneath the Explorer and ran next door to the house where her brother was living and beat on the door. She then ran to the next house, broke a windowpane using a mop or broom, unlocked the door, and went inside. K.E. started yelling that Elkins was trying to kill her, and a neighbor called the police.

- [3] K.E.'s brother, D.T., woke up when he heard a loud bang on his window. D.T. saw Elkins outside and opened the door. Elkins held a gun in his hand, asked D.T. "where the F is she," and D.T. said that he did not know. *Id.* at 170. Elkins had D.T. turn around and walked him through the kitchen and to the hallway. Elkins pushed open the bathroom door, looked in, and then walked D.T. to the bedroom where the four-year-old daughter of D.T.'s former girlfriend was in bed. Elkins asked D.T. for his gun and phone, D.T. pointed to where his gun was located, Elkins grabbed D.T.'s gun, and D.T. handed his phone to Elkins. D.T. carried the four-year-old to his car, placed her in the backseat, and started to drive to the police department. As D.T. was traveling around eighty miles per hour, the white Explorer "goes flying around [D.T.] and gets up a little ahead and blocks off the road for both lanes." *Id.* at 173. D.T. stopped his vehicle, and a school bus and two other vehicles which were traveling in the opposite direction stopped. Elkins exited the Explorer with the gun in his hand, had D.T. exit his vehicle, and told him to pop the trunk and open the back door. D.T. opened the trunk and back door, and Elkins saw that K.E. was not there, returned to the Explorer, and drove away. The police arrived at Elkins's house and placed him in custody.

[4] On September 8, 2021, the State charged Elkins with: Count I, strangulation as a level 6 felony; Count II, domestic battery resulting in moderate bodily injury as a level 6 felony; Count III, domestic battery by means of a deadly weapon as a level 5 felony; and Count IV, domestic battery as a level 6 felony. On September 9, 2021, the State charged Elkins with: Count V, attempted murder as a level 1 felony; Count VI, criminal confinement as a level 3 felony; and Count VII, pointing a firearm as a level 6 felony.¹ At Elkins’s jury trial, D.T. testified that he saw Elkins outside his house. He testified: “So I turned around, opened the door, and he had gun a [sic] to my head like pointed right in my face.” *Id.* at 169-170. He testified “he had me turn around, and he put the gun to my back right here, walked me through the kitchen, got to the hallway.” *Id.* at 170. When asked “[w]hen you say he walked you around the house, did he push you or did he tell you what to do or something else,” D.T. testified “[h]e told me like to walk to the room, but he had the gun right here the whole time pushing to keep walking forward.” *Id.* a 171. He testified that, after Elkins left the house, he entered his vehicle and drove toward the police department. D.T. testified:

I was driving . . . and I was doing like right around 80 miles an hour. And I see my sister’s white SVU [sic] flying up behind me. So I thought, oh, she got away, we're good. But then it comes flying up past me. Like I said, I was doing 80. So it goes flying

¹ Count VI alleged Elkins “did knowingly confine [D.T.] without the consent of [D.T.], said Jody Eugene Elkins being armed with a deadly weapon, to wit: a firearm.” Appellant’s Appendix Volume II at 12. Count VII alleged Elkins “did knowingly point a firearm at [D.T.]” *Id.* at 13.

around me and gets up a little ahead and blocks off the road for both lanes. So I'm stuck right here. There's a school bus coming this way in this lane and two cars behind that. And he got out with a gun pointed at me already, had me get out. He told me to pop the trunk and open the back doors. Popped the trunk and opened the back door. . . . He seen that [K.E.] wasn't in the car. So he turned around and went back to the Explorer and took off.

Id. at 173. The jury found Elkins guilty of strangulation as a level 6 felony under Count I, domestic battery as a level 6 felony under Count II, domestic battery as a level 6 felony under Count IV, and criminal confinement as a level 3 felony under Count VI. The jury found him not guilty on the remaining counts, including pointing a firearm as a level 6 felony under Count VII. The court entered judgment of conviction on Counts I, IV, and VI.

Discussion

[5] Elkins claims the evidence is insufficient to sustain his conviction for criminal confinement. He argues that he walked through D.T.'s house looking for K.E., did not threaten anyone while in the residence, and then simply left. He argues there is no evidence D.T. did not want to be in his own home or wanted to leave. With respect to stopping D.T. on the road, Elkins argues, “[a]part from . . . telling him to open the doors and pop the trunk, he had no other conversations with [D.T.]” Appellant’s Brief at 11. He asserts that, “[a]rguably the only evidence that Elkins ‘interfered’ with [D.T.’s] liberty is when he drove around him and stopped, and then [D.T.] stopped,” “[t]he fact though that [D.T.’s] liberty may have been interfered with is not enough, it has to be a

‘substantial’ interference,” and the evidence “is insufficient to prove this essential element of the crime of confinement.” *Id.* at 13-14.

- [6] When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. *Jordan v. State*, 656 N.E.2d 816, 817 (Ind. 1995), *reh’g denied*. Rather, we look to the evidence and the reasonable inferences therefrom that support the verdict. *Id.* We will affirm the conviction if there exists evidence of probative value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. *Id.*
- [7] Ind. Code § 35-42-3-3 provides that a person who knowingly or intentionally confines another person without the other person’s consent commits criminal confinement and that the offense is a level 3 felony if it is committed while armed with a deadly weapon. Ind. Code § 35-42-3-1 provides that “confine” means “to substantially interfere with the liberty of a person.”
- [8] The record reveals that D.T. saw Elkins outside his house and opened the door. Elkins, holding a gun, asked D.T. “where the F is she.” Transcript Volume at 170. While holding the gun, Elkins had D.T. turn around and walk through the kitchen, to the hallway, and then to the bedroom. Elkins asked D.T. for his gun and phone, and D.T. complied. Later, as D.T. was traveling around eighty miles per hour toward the police department, Elkins drove past him in the Explorer, stopped the Explorer in a manner to block both lanes of traffic, exited the Explorer with a gun in his hand, had D.T. exit his vehicle, and told him to pop the trunk and open the back door. D.T. complied, and Elkins drove away.

Based on the record, we conclude that evidence of probative value exists from which the jury could have found beyond a reasonable doubt that Elkins substantially interfered with D.T.'s liberty and committed criminal confinement as a level 3 felony.²

[9] For the foregoing reasons, we affirm Elkins's conviction for criminal confinement.

[10] Affirmed.

Crone, J., and Robb, Sr.J., concur.

² In a footnote, Elkins states: “[D.T.] described being forced to go through the house by Elkins’ pointing a gun at him, obviously the jury through its verdict that Elkins was not guilty of pointing a firearm did not find that evidence credible and as such it should not be used to support whether Elkins ‘substantially interfered’ with [D.T.’s] liberty.” Appellant’s Brief at 11 n.4. Although it did not find Elkins guilty of pointing a firearm under Count VII, the jury found him guilty of criminal confinement as a level 3 felony under Count VI which alleged he committed the confinement while armed with a deadly weapon, and the State presented evidence that Elkins was armed with a deadly weapon when he entered D.T.’s house and later when he stopped him on the road. Moreover, the Indiana Supreme Court has held that “[t]he evaluation of whether a conviction is supported by sufficient evidence is independent from and irrelevant to the assessment of whether two verdicts are contradictory and irreconcilable.” *Beattie v. State*, 924 N.E.2d 643, 648 (Ind. 2010). Elkins’s acquittal on the charge for pointing a firearm is not relevant to the evidence most favorable to his conviction for criminal confinement. The evidence supports the jury’s determination that Elkins, while armed with a deadly weapon, substantially interfered with D.T.’s liberty.