MEMORANDUM DECISION

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ATTORNEYS FOR APPELLANT

Valerie Kent Boots
Susan D. Rayl
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

J.T. Whitehead
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Williams Rodriguez,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 10, 2022

Court of Appeals Case No. 21A-CR-987

Appeal from the Marion Superior Court

The Honorable Grant W. Hawkins, Judge

Trial Court Cause No. 49D31-1811-F3-40585

Tavitas, Judge.

Case Summary

[1] Williams Rodriguez appeals his conviction for criminal confinement with bodily injury, a Level 5 felony. Rodriguez argues that the evidence is insufficient to show bodily injury caused by the criminal confinement and, thus, the conviction should be reduced to a Level 6 felony.

Issue

[2] Rodriguez raises one issue, which we restate as whether the evidence is sufficient to sustain his conviction for criminal confinement as a Level 5 felony.

Facts

[3] N.B. met Rodriguez on Tinder and agreed to meet with him on November 7, 2018. N.B. talked to Rodriguez in the parking lot, and Rodriguez invited her into his apartment. Rodriguez communicated with N.B. through Google Translate. N.B. sat on the couch, and Rodriguez offered N.B. a glass of wine. Rodriguez then "kinda waived [sic] [N.B.] up the stairs to follow him." Tr. Vol. II p. 62. Rodriguez and N.B. sat on Rodriguez's air mattress in his bedroom and talked. After a while, Rodriguez asked for a kiss, and N.B. declined. They talked more, and suddenly, the lights went out in the room. Rodriguez immediately put his body on top of N.B. N.B. struggled with Rodriguez, but he was licking her face, neck, and chest area. N.B. was fighting to keep her legs closed, but Rodriguez tried to pry her legs apart with his knees. According to N.B., Rodriguez placed his hand into N.B.'s pants and inserted his finger into her vagina. Eventually, Rodriguez got up, and the lights came

back on. N.B. stood up, Rodriguez motioned that N.B. could leave, and N.B. "bolted out the front door." *Id.* at 74. Rodriguez followed N.B. to her vehicle and got into the passenger's seat. N.B. asked him multiple times to get out of her vehicle, and he eventually did so.

[4] N.B. reported the incident to the police, and she was examined by Forensic Nurse Examiner Janét Jackson. Nurse Jackson discovered "some redness and tenderness" in N.B.'s vagina. *Id.* at 110. Nurse Jackson testified that the injuries were consistent with N.B.'s account of the events. Nurse Jackson also collected swabs, including from N.B.'s neck and breasts. DNA testing confirmed that Rodriguez was the "major contributor" of a sample taken from N.B.'s right neck. Exhibits p. 164.

[5] On November 20, 2018, the State charged Rodriguez with rape, a Level 3 felony; criminal confinement with bodily injury, a Level 5 felony; and sexual battery, a Level 6 felony. The charging information for criminal confinement alleged that Rodriguez "did knowingly confine [N.B.] without the consent of [N.B.], said act resulting in bodily injury to [N.B.], to-wit, pain and/or an abrasion." Appellant's App. Vol. II p. 29. After a bench trial, Rodriguez was found guilty of criminal confinement with bodily injury, a Level 5 felony, and sexual battery, a Level 6 felony. In May 2021, the trial court sentenced Rodriguez to concurrent terms of four years in the Department of Correction for the criminal confinement conviction and one year for the sexual battery conviction.

Analysis

[6] Rodriguez challenges the sufficiency of the evidence to sustain his conviction for criminal confinement with bodily injury, a Level 5 felony. Rodriguez claims that the evidence does not support the bodily injury element of the conviction and that his conviction should be reduced to a Level 6 felony.[1]

[7] Sufficiency of evidence claims "warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility." *Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020) (citing *Perry v. State*, 638 N.E.2d 1236, 1242 (Ind. 1994)). We consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. *Id.* (citing *Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018), *cert denied*, 139 S. Ct. 839 (2019)). "We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt." *Id.* We 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." *Sutton v. State*, 167 N.E.3d 800, 801 (Ind. Ct. App. 2021) (quoting *Drane v. State*, 867 N.E.2d 144, 146-47 (Ind. 2007)).

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[1] Rodriguez does not challenge his conviction for sexual battery.

[8] The offense of criminal confinement is governed by Indiana Code Section 35-42-3-3(a), which provides: "A person who knowingly or intentionally confines another person without the other person's consent commits criminal confinement."[2] The term "confine" means "to substantially interfere with the liberty of a person." Ind. Code § 35-42-3-1. The offense is generally a Level 6 felony, but the offense is elevated to a Level 5 felony if "it results in bodily injury to a person other than the confining person." I.C. § 35-42-3-3(b). "Bodily injury" means "any impairment of physical condition, including physical pain." I.C. § 35-31.5-2-29.

[9] Rodriguez does not challenge that he knowingly or intentionally confined N.B. without N.B.'s consent. Rather, Rodriguez argues that: (1) the State was required to prove that the injury was caused by the criminal confinement; and (2) the confinement did not result in bodily injury to N.B. Rodriguez contends that the only evidence of pain or injury to N.B. was the injury to her vaginal area and that he was acquitted of the rape charge. Rodriguez suggests that a finding of bodily injury in this case would be inconsistent with the acquittal on the rape charges.

[10] We first note that our Supreme Court held in *Beattie v. State*, 924 N.E.2d 643, 649 (Ind. 2010), that "[j]ury verdicts in criminal cases are not subject to appellate review on grounds that they are inconsistent, contradictory, or

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[2] The General Assembly amended Indiana Code Section 35-42-3-3, effective July 1, 2019, but the amendments are not at issue here.

irreconcilable." Rather, jury verdicts are subject to appellate review for sufficiency of the evidence. *Beattie*, 924 N.E.2d at 648 ("A verdict not supported by sufficient evidence cannot stand, regardless of whether it is inconsistent with another verdict."). Further, in *Dubinion v. State*, 493 N.E.2d 1245, 1246 (Ind. 1986), our Supreme Court held that jury verdicts "cannot be upset by speculation or inquiry" into "the wisdom, motive, or reasoning of the jury in reaching its verdict." The Court then held that "[t]he same standard applies where the court is the trier of fact . . . ." *Id.* Accordingly, any inconsistency in Rodriguez's acquittal on the rape charge versus the conviction for criminal confinement with bodily injury is not subject to appellate review. Rather, we review Rodriguez's criminal confinement with bodily injury under our sufficiency of the evidence standard.

[11] N.B. testified that, while Rodriguez was restraining N.B. on his air mattress, he inserted his finger into her vagina. Nurse Jackson testified that, during an examination of N.B., Nurse Jackson discovered "some redness and tenderness" in N.B.'s vagina. Tr. Vol. II p. 110. Rodriguez, however, argues that this evidence of bodily injury is insufficient because the injury was not *caused by* the confinement.

[12] In support of this argument, Rodriguez relies upon *Redman v. State*, 743 N.E.2d 263 (Ind. 2001), and *Long v. State*, 743 N.E.2d 253 (Ind. 2001).[3] We do not,

[3] Redman and Long were tried separately for related crimes.

however, find *Redman* or *Long* persuasive here. First, we note that, prior to July 1, 2014, the criminal confinement statute, Indiana Code Section 35-42-3-3(a), provided: "A person who knowingly or intentionally: (1) confines another person without the other person's consent; or (2) removes another person, by fraud, enticement, force, or threat of force, from one (1) place to another; commits criminal confinement." The criminal confinement statute, thus, was substantially different at the time of Long and Redman's offenses.

[13] Additionally, the previous confinement statute defined "two separate criminal offenses: confinement by non-consensual restraint in place and confinement by removal from one place to another." *Redman*, 743 N.E.2d at 265. In both *Redman* and *Long*, the defendants were charged with, among other things, "criminal confinement by knowingly or intentionally removing the victim by force from one place to another, which resulted in serious bodily injury, namely fractured bones." *Long*, 743 N.E.2d at 258; *Redman*, 743 N.E.2d at 265. Thus, the State charged Redman and Long with the victim's "removal, but not with her restraint in place." *Redman*, 743 N.E.2d at 265. Rodriguez, on the other hand, was charged with confining "[N.B.] without the consent of [N.B.], said act resulting in bodily injury to [N.B.], to-wit, pain and/or an abrasion." Appellant's App. Vol. II p. 29. Given the differing statutes, we are not convinced that *Long* and *Redman* are applicable in this case.

[14] Moreover, even if *Long* and *Redman* are applicable here, we conclude that the evidence is sufficient to sustain Rodriguez's conviction. On appeal, Long and Redman argued that, "while there was evidence that the victim suffered

fractured bones, there was no evidence that these injuries resulted from her being forcefully removed from one place to another and that, for this reason, there was insufficient evidence to prove the serious bodily injury element of criminal confinement as a class B felony." *Long*, 743 N.E.2d at 259; *see Redman*, 743 N.E.2d at 265. Our Supreme Court agreed and held that "the evidence was insufficient to establish that the conduct constituting the charged offense of criminal confinement resulted in serious bodily injury, as required to constitute a class B felony." *Long*, 743 N.E.2d at 259; *see Redman*, 743 N.E.2d at 265. Accordingly, the Court reduced both Redman's and Long's criminal confinement convictions to Class D felonies.

[15] Following *Long* and *Redman*, our Supreme Court decided *State v. Greene*, 16 N.E.3d 416 (Ind. 2014). In *Greene*, the defendant was convicted of Class B felony criminal confinement by forcible removal resulting in serious bodily injury. The defendant strangled his girlfriend in their bedroom until she lost consciousness and, when she regained consciousness, she was on the couch in the living room. The defendant was later granted post-conviction relief by the trial court, and on appeal, our Supreme Court considered whether the defendant received ineffective assistance of counsel for counsel's failure to present arguments regarding *Long*.

[16] The Court clarified that, in *Long*, the victim was confined and abused for possibly longer than a week, and the State was "likely unable to isolate precisely when [the victim] sustained her injuries." *Greene*, 16 N.E.3d at 420. Accordingly, "the jury was unable to find that serious bodily injury resulted

from her forcible removal." *Id.* In *Greene*, however, "the jury could have reasonably inferred that Greene's act of force, strangulation, both facilitated his removal of [his girlfriend] from their bedroom to their living room and resulted in serious bodily injury to her." *Id.* Thus, "[u]nlike in *Long*, the evidence here supported the State's contention that the defendant's knowing or intentional removal of the victim from one place to another by force resulted in serious bodily injury to the victim." *Id.* at 420-21. Our Supreme Court further clarified that:

> *Long* and *Redman* actually hold that serious bodily injury to the victim must be sustained during the charged offense of criminal confinement: a defendant's knowing or intentional forcible removal of the victim from one place to another. Thus, the victim must suffer serious bodily injury as the result of the act of forcible removal, whether or not the act of force occurs simultaneously with the act of removal.

Id. at 423.

[17] *Greene*, thus, clarified that the bodily injury must occur during the confinement. The bodily injury here—the vaginal abrasion—was sustained by N.B. *during* her confinement by Rodriguez on the air mattress. Thus, even if *Long* and *Redman* are applicable, the evidence is sufficient to sustain Rodriguez's conviction for criminal confinement as a Level 5 felony. *See, e.g., Mickens v. State*, 115 N.E.3d 520, 526 (Ind. Ct. App. 2018) (holding that the evidence was sufficient to sustain the defendant's conviction for Level 3 felony criminal confinement

where the victim's injury "did occur *during* the incident of confinement"), *trans. denied*.

Conclusion

[18] The evidence is sufficient to sustain Rodriguez's conviction for criminal confinement, a Level 5 felony. We affirm.

[19] Affirmed.

Bradford, C.J., and Crone, J., concur.