

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Matthew Gear,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 5, 2023

Court of Appeals Case No.
22A-CR-2475

Appeal from the
St. Joseph Superior Court

The Honorable
John M. Marnocha, Judge

Trial Court Cause No.
71D02-2110-F1-23

Memorandum Decision by Judge Foley
Judges Vaidik and Tavitas concur.

Foley, Judge.

[1] Matthew Gear (“Gear”) was convicted of Level 5 felony criminal confinement¹ and Level 6 felony battery on a person less than fourteen years old.² He appeals, arguing that the evidence presented at trial was insufficient to support his convictions. Finding that there was sufficient evidence to support Gear’s convictions, we affirm.

Facts and Procedural History

[2] On February 9, 2021, South Bend police were dispatched in response to gunshots fired on North Scott Street in South Bend, Indiana. Officer Briar Johnston spoke with twelve-year-old K.M. and her mother, Jennifer Moore (“Moore”), who lived on North Scott Street across the street from Gear. K.M. and Moore informed officers that Gear had been firing the gunshots outside of his residence. K.M. and Moore then reported that Gear had raped K.M. in the preceding days and had held her in his apartment. After hearing K.M.’s statements, the police transported K.M. and Moore to St. Joseph Medical Center where K.M. was interviewed and examined by medical staff.

[3] With respect to the rape allegations, K.M. acknowledged that she had difficulty remembering the exact date it occurred, but that it was some point in the preceding three days. Gear asked K.M. if she wanted to come to his apartment to get some marijuana. K.M. agreed and entered Gear’s apartment. K.M.

¹ Ind. Code § 35-42-3-3.

² I.C. § 35-42-2-1.

stated that while she was waiting inside of Gear's apartment, he allegedly raped her. K.M. stated that, one or two days later, she told Moore about the alleged rape but asked her not to call the police.

[4] K.M. also stated that, earlier in the day on February 9, 2021, she and Moore went to their next-door neighbor's house to do their laundry and discuss Moore's concerns about K.M. following the alleged rape. At some point, Gear approached the neighbor's house and began knocking on the door, insisting that he speak to K.M. Moore refused. Later the same evening, while K.M. and Moore were outside, Gear asked Moore to look at something for him inside his apartment. Testimony from both K.M. and Moore indicated that when they approached Gear, he grabbed K.M. by the arm, pulled her into the apartment, slammed the door and locked it, leaving Moore outside. Moore began pounding on the door and screamed for Gear to let K.M. out or else she would call the police. K.M. stated that, while she was inside of Gear's apartment, he told her, "[You] can't tell nobody or something bad would happen." Tr. Vol. 2 p. 134. Gear then opened the door and shoved K.M. out of the door and into Moore.

[5] On October 22, 2021, the State charged Gear with rape³, criminal confinement, and battery. Following a jury trial on September 12–14, 2022, Gear was

³ Ind. Code § 35-42-4-1.

acquitted on the charge of rape, but was found guilty of criminal confinement and battery. Gear now appeals.

Discussion and Decision

- [6] Gear argues that the evidence at trial was insufficient to support his convictions for criminal confinement and battery. Specifically, Gear contends that the evidence “did not erase all reasonable doubt as to whether Gear confined or battered K.M.” Appellants Br. p. 6. When we review a challenge to the sufficiency of the evidence, “[w]e neither reweigh evidence nor judge witness credibility.” *Gibson v. State*, 51 N.E.3d 204, 210 (Ind. 2016). “[W]e consider only that evidence most favorable to the judgment together with all reasonable inferences drawn therefrom.” *Id.* “We will affirm the judgment if it is supported by substantial evidence of probative value even if there is some conflict in that evidence.” *Id.* Further, “[w]e will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.” *Love v. State*, 73 N.E.3d 693, 696 (Ind. 2017).
- [7] To convict Gear of criminal confinement, the State was required to prove that Gear knowingly or intentionally confined another person without the person’s consent. Ind. Code § 35-42-3-3(a). To confine is defined as “to substantially interfere with the liberty of another person.” I.C. § 35-42-3-1. The offense is a Level 5 felony if the person confined is less than fourteen years of age and is not the confining person’s child. I.C. § 35-42-3-3(b)(1)(A).

[8] To convict Gear of battery, the State had to prove that Gear knowingly or intentionally touched another person in a rude, insolent, or angry manner. I.C. § 35-42-2-1(c)(2). The offense is elevated to a Level 6 felony if it is committed against a person less than fourteen years of age and is committed by a person at least eighteen years of age. I.C. § 35-42-2-1(e)(3).

[9] Gear argues that there was insufficient evidence to convict him of criminal confinement because, although K.M. described being “pushed” and “pulled” by Gear into his apartment, she did not indicate that she was unwilling to go nor that she tried to leave and was denied. However, this argument reads a requirement into the statute that is not there. The statute does not require that the confined person attempt to leave—it requires the confined person’s lack of consent. In *Mickens v. State*, this Court held that the defendant had confined his victim when he grabbed the victim by her hair and dragged her outside onto the front yard. 115 N.E.3d 520, 522 (Ind. Ct. App. 2018). As in *Mickens*, Gear confined K.M. when he grabbed her arm, pulled her into his apartment, and locked the door, without her consent. Further, Gear did not unlock the door to release K.M. for an indeterminate amount of time despite Moore pounding on the door and demanding that Gear release K.M. Considering this evidence, the jury reasonably concluded that Gear substantially interfered with K.M.’s liberty and thus confined her.

[10] Gear next argues that there was insufficient evidence to support his battery conviction because there was no evidence that K.M. sustained injuries consistent with being touched in a rude, insolent, or angry manner. However,

evidence of an injury is not an essential element of battery. I.C. § 35-42-2-1(c)(1). A conviction for battery will be affirmed so long as “there is evidence of touching, however slight.” *Mishler v. State*, 660 N.E.2d 343, 348 (Ind. Ct. App. 1996). Considering the evidence most favorable to the judgment presented at trial, we conclude that there was sufficient evidence presented to support Gear’s battery conviction. Testimony from K.M. indicated that before Gear released K.M. from his apartment, he said, “[You] can’t tell nobody or something bad would happen.” Tr. Vol. 2. p. 134. Gear subsequently shoved K.M. out of the door and into Moore. Gear’s verbal threat, followed by him pushing K.M. out of the door, is evidence that Gear touched K.M. in a rude manner, thus satisfying the statutory requirements for battery conviction. Gear points to apparent contradictions between the testimony from K.M. and Moore, who were the only two witnesses that had any direct knowledge of this incident and argues that “[t]he contradictions . . . should be held insufficient to sustain this count.” Appellant’s Br. p. 8. Gear simply invites us to reweigh evidence and reassess the credibility of witness’s statements, which we cannot do. “[The jury], [as a] [] trier of fact, resolve[s] conflicts in the evidence and [] decide[s] which witnesses to believe or disbelieve.” *Moore v. State*, 27 N.E.3d 749, 755–56 (Ind. 2015). Thus, it is not our place on appeal to reweigh the evidence or the credibility determinations made by the jury.

[11] We, therefore, conclude that there was sufficient evidence presented to support Gear’s convictions of criminal confinement and battery.

[12] Affirmed.

Vaidik, J., and Tavitas, J., concur.