MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Pedro Albizu Diaz,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 20, 2022

Court of Appeals Case No. 22A-CR-558

Appeal from the Vanderburgh Circuit Court

The Honorable Celia M. Pauli, Magistrate

Trial Court Cause No. 82C01-2107-F6-3956

Bradford, Chief Judge.

Case Summary

[1] Following an incident involving his ex-girlfriend and her neighbors, Pedro Albizu Diaz was charged with Level 6 felony residential entry, Level 6 felony intimidation, and Level 6 felony criminal confinement and was alleged to be a habitual offender. Following trial, Diaz was found not guilty of residential entry and guilty of intimidation and criminal confinement and admitted to being a habitual offender. Diaz contends on appeal that the evidence is insufficient to sustain his conviction for Level 6 felony criminal confinement. Concluding otherwise, we affirm.

Facts and Procedural History

[2] On July 21, 2021, I.F. left her apartment door "a little cracked" while she went across the hall to visit with her neighbor. Tr. Vol. II 20. When she returned to her apartment, Diaz—with whom she had recently ended an "open relationship"—was inside. Tr. Vol. II p. 24. I.F. had not given Diaz permission to enter her apartment. I.F. asked Diaz to leave, and he responded that he was just putting some food in the refrigerator. Diaz remained in I.F.'s apartment for approximately ten to fifteen minutes before leaving. Later that day, Diaz returned to I.F.'s apartment twice more.

[3] At approximately 5:30 p.m., while Diaz was in I.F.'s apartment, Joseph Quick—the boyfriend of I.F.'s neighbor—came to check on I.F. because I.F. was not responding to her neighbor's attempts to reach her. I.F. asked Quick to

help get Diaz out of her apartment. Quick told Diaz that he "didn't think [Diaz] needed to be there," which led to a physical altercation between the two. Tr. Vol. II p. 37. The altercation ended in the hallway outside I.F.'s apartment when Quick "maced" Diaz. Tr. Vol. II p. 20. Diaz ran back into I.F.'s apartment to get the mace off his face. Once inside, he barricaded himself in the apartment with I.F., leading another neighbor to call the police.

[4] While I.F. sat on the couch, Diaz positioned himself between I.F. and the front door. Diaz told I.F. that "if [she] even moved in a certain way … he was going to kill [her]." Tr. Vol. II p. 38. I.F. wanted to leave the apartment but was scared to make any sudden movements "or [do] anything that would make [Diaz] react." Tr. Vol. II p. 22. I.F. was afraid to ask Diaz to leave her apartment because Diaz had threatened to kill her.

[5] Officers Nathan Pitt and Allison Farmer responded to the 911 call. After arriving on the scene, the officers knocked on the door to I.F.'s apartment several times and announced their presence. Given Diaz's threats, I.F. was terrified to respond to the officers, fearing that if she "even [said] anything at that point that, you know, it [would be] over with." Tr. Vol. II p. 22. She was also unable to answer the door because Diaz was still between her and the front door.

[6] Eventually, the officers forced entry into the apartment. Once inside, the officers observed I.F. sitting on the couch in the living room. Diaz was standing "right in front of" I.F. Tr. Vol. II p. 22. I.F. "appeared to be very

shocked" and "really shook up." Tr. Vol. II p. 48. Diaz was placed under arrest after the officers determined that I.F. "had not given [Diaz] permission to be in the apartment, that he had made [I.F.] aware that if she were to attempt to leave the apartment, he would commit a forcible felony and that he stopped her from exiting the apartment." Tr. Vol. II p. 48. During the booking process, Diaz told Officer Farmer that "if y'all wouldn't have come, I would have killed that mother f[***]er." Tr. Vol. II p. 50.

[7] On July 23, 2021, the State charged Diaz with Level 6 felony residential entry, Level 6 felony intimidation, and Level 6 felony criminal confinement. The State also alleged that Diaz was a habitual offender. Following trial, Diaz was found guilty of the intimidation and criminal confinement charges and not guilty of the residential entry charge. Diaz then admitted to being a habitual offender. The trial court subsequently sentenced Diaz to an aggregate five-year sentence.

Discussion and Decision

[8] Diaz contends that the evidence is insufficient to sustain his conviction for Level 6 felony criminal confinement.[1]

> When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is

[1] Diaz does not challenge the sufficiency of the evidence to sustain his conviction for intimidation or the determination that he qualifies as a habitual offender on appeal.

> the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts 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.

Drane v. State, 867 N.E.2d 144, 146–47 (Ind. 2007) (cleaned up). Stated differently, "'[w]e affirm the judgment unless no reasonable factfinder could find the defendant guilty.'" *Mardis v. State*, 72 N.E.3d 936, 938 (Ind. Ct. App. 2017) (quoting *Griffith v. State*, 59 N.E.3d 947, 958 (Ind. 2016)).

[9] "A person who knowingly or intentionally confines another person without the other person's consent" commits Level 6 felony criminal confinement. Ind. Code § 35-42-3-3(a). Thus, to convict Diaz of Level 6 felony criminal confinement, the State was required to prove that Diaz knowingly or intentionally confined I.F. without her consent. Diaz does not challenge the sufficiency of the evidence to prove that he acted knowingly or intentionally on the day in question. Instead, he argues that the evidence is insufficient to prove that he confined I.F. To "'confine' means to substantially interfere with the liberty of a person." Ind. Code § 35-42-3-1.

[10] The evidence demonstrates that Diaz substantially interfered with I.F.'s liberty. Diaz entered I.F.'s apartment and stayed there despite her expressed desire for

him to leave. He threatened to kill I.F., leaving her afraid "to make any sudden movements" or to do anything "that would make [him] react." Tr. Vol. II p. 22. Diaz also positioned himself between I.F. and the door to the apartment, preventing her both from leaving and from answering the door when the police arrived. The evidence is therefore sufficient to sustain Diaz's conviction for Level 6 felony criminal confinement. Diaz's claim to the contrary amounts to nothing more than an invitation to reweigh the evidence, which we will not do. *See Cunningham v. State*, 870 N.E.2d 552, 553 (Ind. Ct. App. 2007).

[11] The judgment of the trial court is affirmed.

Mathias, J., and Pyle, J., concur.