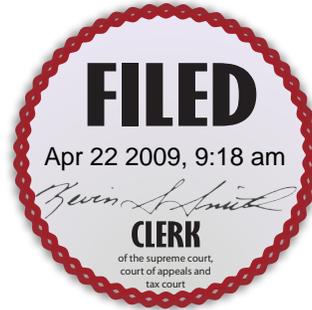


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JOSEPH MONEGAIN,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 71A03-0810-CR-521

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Jerome Frese, Judge
Cause No. 71D03-0802-FB-13

April 22, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Joseph Monegain appeals his convictions, after a bench trial, of two counts of criminal confinement, as class B felonies.¹

We affirm.

ISSUE

Whether sufficient evidence supports his convictions of criminal confinement.

FACTS

In February of 2008, Monegain was living with Carol McElfresh, who had been his girlfriend at one point. Also living in the home were Jessica Walpole and Larry Murray, who lived in the finished basement and paid McElfresh rent.

In the late afternoon of February 2, 2008, McElfresh asked Monegain to help her shovel snow, and “he just started going off,” calling her obscene names. (Tr. 80). McElfresh took the \$15 that he had given her for his rent, “put it down his tank top and said [she] want[ed] [him] to leave and leave now” (Tr. 82). McElfresh turned and walked toward the bathroom; Monegain came after her, grabbed her, and threw her to the bathroom floor. After McElfresh rose and started to walk away, “he threw [her] down again” in the hallway. (Tr. 83). McElfresh lay on the floor, curled in a fetal position, and Monegain stood over her “yelling and cursing.” (Tr. 85).

From the basement, Walpole had heard loud voices and sounds “like things were being thrown” around upstairs, and she went to investigate. (Tr. 172). Walpole saw Monegain standing over McElfresh and screaming at her. Walpole told Monegain to get

¹ Monegain does not challenge his conviction on one count of battery, as a class A misdemeanor.

away from McElfresh. Monegain “turned towards” Walpole, yelled at her, and as she started “walking backwards” toward the kitchen, he came after her. (Tr. 173). Monegain “pushed [Walpole] with both hands” against the stove, *id.*, and she thrust a chair at Monegain to keep him away from her.

McElfresh got between Walpole and Monegain. Monegain grabbed McElfresh and threw her down again. Walpole grabbed a knife from the knife block on the stovetop. McElfresh got up and when Monegain threw her against a support beam, Walpole ran to the basement stairs -- yelling to Murray to call the police.

As McElfresh arose from the floor, she saw Monegain “going to [her] bedroom, and . . . saying, ‘I know; I’ll show them; I’ll get the gun.’” (Tr. 91). She saw him “heading to . . . the side of the bed” whereunder she kept her shotgun, and “crouch” down. (Tr. 91). McElfresh ran to her neighbor’s house, and told “them to call 911 because somebody was getting a gun.” *Id.*

In the meantime, Walpole had run to the basement screaming that Monegain had hit her, and Murray called 911. Murray and Walpole remained in the basement, as the stairs were the only exit, while police responded to the call.

Peeping from the bottom of the stairs, Murray testified that he saw “the bottom of [Monegain’s] legs standing at the top of the stairs” and “heard him breech the gun”;² “yelling I’m going to kill you, m***** f*****, I’m going to blow your f***** heads off,” (tr. 155), and “persistently . . . saying . . . he’s going to blow our f***** heads off,

² Murray testified that he was familiar with shotguns, and that by “breech” he meant that he heard the sound of Monegain “opening” the shotgun. (Tr. 168).

. . . calling us . . . [obscene] names, telling us to come out,” and that “if we crossed his path he was going to blow our f***** heads off, and then after that he was going to use the remainder of the shells to take out the troopers outside the house” (Tr. 158). Walpole testified that Monegain yelled that if she came upstairs, he had “something for you . . . blow your head off,” (Tr. 177); and “ . . . call your boys; call your friends; do you want to see what I can do to ten state troopers” and that “he’d take care of all of them” and would “blow them all away.” (Tr. 189, 190).

After the police arrived, Monegain remained inside the house for an extended period of time, but he finally exited the house and surrendered. Thereafter, police found a shotgun loaded with two live shells and five rounds in an attached bandolier on top of the bed in McElfresh’s bedroom.

On February 6, 2008, the State charged Monegain with two counts of criminal confinement as class B felonies and one count of battery as a class A misdemeanor. On May 22, 2008, Monegain filed a motion for a bench trial, to which the State agreed.

On June 13, 2008, the trial court conducted the bench trial, at which evidence of the foregoing was presented. The trial court found Monegain guilty as charged and entered judgments of conviction.

DECISION

When considering an appellant’s claim that the conviction is not supported by sufficient evidence, we

consider only the probative evidence and reasonable inferences supporting the verdict. It is 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 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) (quotations and citations omitted, emphasis in original).

Monegain asserts that the evidence was insufficient to establish beyond a reasonable doubt “that Monegain confined anyone, or, in the alternative, . . . that any alleged confinement occurred while Monegain was armed with a deadly weapon.” Monegain's Br. at 5. Specifically, Monegain argues that “he did not knowingly confine [Walpole] or [Murray] and that he never touched, handled, or possessed a gun, and did not threaten anyone with the use of a gun.” *Id.* at 8. We cannot agree.

When a person “knowingly . . . confines another person without the other person's consent,” he commits criminal confinement. Ind. Code § 35-42-3-3(a). For this criminal offense, “‘confine’ means to substantially interfere with the liberty of a person.” I.C. § 35-42-3-1. In other words, criminal “confinement” is the “non-consensual restraint in place” of another person. *Kelly v. State*, 535 N.E.2d 140, 140 (Ind. 1989). An individual “engages in conduct ‘knowingly’ if, when he engages in the conduct, he is aware of a high probability that he is doing so.” I.C. § 35-41-2-2(b).

Murray testified that he saw Monegain's legs at the top of the stairway, the only exit from the basement where he and Walpole were. Further, both Murray and Walpole

testified that Monegain dared them to exit the basement and threatened to blow off their heads if they did so. This evidence is sufficient for the trier of fact to reasonably infer that Monegain knowingly restrained Murray and Walpole against their consent in the basement.

Monegain's argument that "he never touched, handled or possessed a gun," and that he "did not threaten anyone with the use of a gun" essentially asks that we assess witness credibility and weigh evidence. Monegain's Br. at 8. This we do not do. *See Drane*, 867 N.E.2d at 146.

The offense of criminal confinement is a class B felony offense when it is "committed while armed with a deadly weapon." I.C. § 35-42-3-3(b)(2)(A). McElfresh testified that after Monegain stated that he was going to "get the gun," (Tr. 91), she saw him go to and then crouch down by the side of the bed whereunder she kept her shotgun. Murray testified that he saw Monegain's legs at the top of the stairway, and heard him breech the shotgun. Both Murray and Walpole testified that Monegain repeatedly threatened to use the shotgun – to "blow [their] f***** heads off" if they came upstairs. (Tr. 158, 177). After Monegain exited the house and surrendered, McElfresh's shotgun was found atop her bed, not underneath -- where she kept it. This evidence is sufficient for the trier of fact to reasonably infer that Monegain possessed a shotgun and threatened to use it.

Affirmed.

BAILEY, J., and ROBB, J., concur.