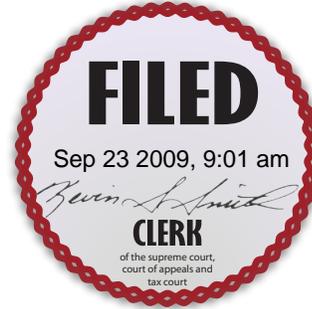


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

DENNIS MADRID-VARGAS,)

Appellant-Defendant,)

vs.)

No. 49A05-0903-CR-129)

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Sheila A. Carlisle, Judge
Cause No. 49G03-0803-FB-69742

September 23, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Dennis Madrid-Vargas (“Madrid-Vargas”) appeals his convictions of Rape, as a Class B felony,¹ and Criminal Confinement, as a Class D felony.² We affirm.

Issue

Madrid-Vargas raises the sole issue whether there was sufficient evidence that he committed Rape and Criminal Confinement.

Facts and Procedural History

The following are the facts most favorable to the convictions. H.S. and her cousin met a man named Enrique³ and agreed to get together with him later that evening. H.S. and her cousin went to a bar, where H.S. became intoxicated. After her cousin left, Enrique arrived at the bar. H.S. and Enrique went later to an apartment and engaged in consensual intercourse in a bedroom.

H.S. put her clothes on and asked Enrique to get her something to eat; he agreed. After Enrique left, Orlin Ortiz-Flores (“Ortiz-Flores”) came out of the closet; Madrid-Vargas entered from the living room. Ortiz-Flores held H.S. down, while Madrid-Vargas held her legs. H.S. was struggling, crying, and screaming for the men to stop. Madrid-Vargas took H.S.’s pants off, put on a condom, and moved his penis inside her vagina for ten minutes, causing her pain. After Madrid-Vargas stopped, he held H.S.’s arms. Ortiz-Flores took his

¹ Ind. Code § 35-42-4-1.

² Ind. Code § 35-42-3-3.

³ In an “Agreed Stipulation as to Fact” admitted at trial, the parties agreed that the State made a DNA profile of a sample taken from Enrique Barahona. Exhibit at 76-77.

pants off, put on a condom, and put his penis inside her vagina for another ten minutes. During these incidents, the lights were on, and H.S. was confined on her back.

When the men left the bedroom, H.S. put her pants on and walked to the living room. For approximately a half hour, Ortiz-Flores prevented H.S. from leaving. After repeatedly asking him to call Enrique, he did so. Enrique returned to the apartment. As H.S. was leaving with him, she grabbed a pen from the kitchen counter and wrote the apartment number on her hand. Enrique drove H.S. to a friend's house.

The next day, H.S. went to the hospital. She also met with Indianapolis Metropolitan Police Department ("IMPD") Detective Tiffany Woods ("Det. Woods") and identified Madrid-Vargas and Ortiz-Flores as the men who had assaulted her the night before.

The State charged Madrid-Vargas with two counts of Rape, as Class B felonies, and Criminal Confinement, as a Class D felony.⁴ The trial court found him guilty of committing one Rape and Criminal Confinement.⁵

Madrid-Vargas now appeals his convictions.

Discussion and Decision

I. Standard of Review

In reviewing a challenge to the sufficiency of the evidence, we consider only the probative evidence and reasonable inferences supporting the conviction, even when

⁴ The State also filed charges against Ortiz-Flores. The men were tried together.

⁵ The trial court stated that, "[f]or purposes of the record, I will be merging or vacating the second count of Rape." Transcript at 146.

confronted with conflicting evidence. Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007). We do not assess witness credibility or reweigh the evidence, affirming a conviction unless no reasonable factfinder could find the elements proven beyond a reasonable doubt. Id. “It is therefore not necessary that the evidence ‘overcome every reasonable hypothesis of innocence.’” Id. at 147 (quoting Moore v. State, 652 N.E.2d 53, 55 (Ind. 1995)).

II. Sufficiency of the Evidence

For a conviction of Rape, as a Class B felony, the State had to prove that Madrid-Vargas knowingly had sexual intercourse with H.S. when she was compelled by force or imminent threat of force. Ind. Code § 35-42-4-1(a)(1). For a conviction of Criminal Confinement, the State had to prove that Madrid-Vargas knowingly and substantially interfered with H.S.’s liberty without her consent. Ind. Code §§ 35-42-3-1 and -3(a)(1).

H.S. testified that Madrid-Vargas and Ortiz-Flores converged on her and pinned her on her back. According to H.S., Madrid-Vargas took off H.S.’s pants, put on a condom, and raped her, as she resisted, cried, and screamed for the men to stop. Madrid-Vargas then held her arms so that Ortiz-Flores could also rape her. During this time, the bedroom lights were on.

Laura Maloy (“Maloy”), a hospital nurse, testified that she examined H.S. the next day and noticed a laceration on H.S.’s vagina, a bruise and a scratch on her left, inner arm, a scratch below her left knee, “a series of scratches above the tailbone,” a reddened, scraped area on her left buttock, and a reddened area on H.S.’s right buttock. Transcript at 55. According to Maloy, the laceration on H.S.’s vagina was not typical of consensual

intercourse. Maloy also noted numbers written in ink on H.S.'s hand that H.S. described as an apartment number.

Det. Woods testified that she and other IMPD officers retrieved from the apartment bedroom two condom wrappers and two used condoms – one found in a trash can and the other found on the floor. After H.S. identified Madrid-Vargas the night after the incident, Det. Woods submitted for DNA testing a sample taken from the defendant. A report issued by Forensic Scientist Tonya Fishburn concluded that a sample taken from one of the used condoms found in the bedroom matched the DNA profile of Madrid-Vargas.

In arguing that there was insufficient evidence that he committed Rape or Criminal Confinement, Madrid-Vargas asserts that there was “contradictory evidence” and “conflicting evidence” regarding his guilt. Appellant’s Brief at 3, 4, and 5. Thus, his argument amounts to a request that we reweigh the evidence, which we cannot do. See Drane, 867 N.E.2d at 146-47.

There was sufficient evidence for the trial court to find beyond a reasonable doubt that Madrid-Vargas forcefully engaged in intercourse with H.S. and that he substantially interfered with the liberty of H.S. without her consent.

Affirmed.

VAIDIK, J., and BRADFORD, J., concur.