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ATTORNEY FOR APPELLANT:

**WILLIAM BYER, JR.**

Byer & Byer  
Anderson, Indiana

ATTORNEYS FOR APPELLEE:

**STEVE CARTER**

Attorney General of Indiana

**MARA MCCABE**

Deputy Attorney General  
Indianapolis, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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JEFFREY HOUSE, )

Appellant-Defendant, )

vs. )

STATE OF INDIANA, )

Appellee-Plaintiff. )

No. 48A04-0607-CR-379

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APPEAL FROM THE MADISON SUPERIOR COURT

The Honorable Thomas Newman, Jr., Judge

Cause No. 48D03-0509-FB-436

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**June 29, 2007**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**RILEY, Judge**

## STATEMENT OF THE CASE

Appellant-Defendant, Jeffrey House (House), appeals his conviction for Count I, aggravated battery, a Class B felony, Ind. Code § 35-42-2-1.5; Count II, criminal confinement, a Class B felony, I.C. § 35-42-3-3; Count III, battery resulting in bodily injury, a Class A misdemeanor, I.C. § 35-42-2-1(a)(1)(A); and Count IV, attempted murder, a Class A felony, I.C. §§ 35-42-1-1; 35-41-5-1.

We affirm.

## ISSUES

House raises two issues on appeal, which we restate as follows:

- (1) Whether the trial court abused its discretion by admitting evidence of House's purported prior bad act; and
- (2) Whether the State presented sufficient evidence to prove beyond a reasonable doubt House's conviction for criminal confinement and battery.

## FACTS AND PROCEDURAL HISTORY

On September 15, 2005, House and his girlfriend, Christina Beard-Smith (Smith), frequented the Lamplighter Lounge in Anderson, Indiana. Upon leaving the Lounge, House insisted that Smith show him the location of her son's, Michael Beard (Beard), residence. Beard lived in half of a duplex in Anderson. House informed her that he wanted to go to Beard's house so he could kill her son. Smith refused to provide the information, but House drove to Beard's house anyway.

Because Smith declined to tell him which specific house was Beard's, House stood in the middle of the road and yelled "Come on Mikey. Come on, big boy. Come get

ya some.” (Transcript p. 457). Beard and his girlfriend heard the yelling and, upon looking out the door, they saw House and Smith in the street. Larry O’Bryant (O’Bryant), who lived in the other side of the duplex, also heard the yelling. Looking outside, he saw a scuffle and went onto his porch for a better look. O’Bryant noticed House hitting Smith, picking her up by her hair, and slamming her back to the ground. Because O’Bryant thought House was going to kill Smith, he walked into the street to stop him. As O’Bryant confronted House about hitting Smith, House lunged at him and stabbed him with a knife. O’Bryant was stabbed three times in the face, once in the middle of the chest and once in the shoulder. After the attack, House grabbed Smith by the hair forcing her back into the car and they sped off. Smith suffered an injury to her chest area.

On September 19<sup>th</sup>, 2005, the State charged House with Count I, aggravated battery, a class B felony; Count II, criminal confinement, a class B felony; and Count III, battery resulting in bodily injury, a class A misdemeanor. On October 6<sup>th</sup>, 2005, the State filed an Amendment to the Information, adding Count IV, attempted murder, a class A felony. On June 8 through June 9, 2006, a jury trial was conducted. At the conclusion of the evidence, the jury found House guilty as charged. Thereafter, on June 26<sup>th</sup>, 2006, the trial court “set aside the conviction of Count I, aggravated battery” and entered judgment of conviction on Counts II, III, and IV. (Appellant’s App. p. 5). The trial court sentenced House to ten years for criminal confinement, one year for battery resulting in bodily injury, to run concurrent with the sentence on Count II, and fifty years for

attempted murder, to run consecutive to Counts II and III. Thus, House received an aggregate term of sixty years.

House now appeals. Additional facts will be provided as necessary.

## DISCUSSION AND DECISION

### *I. Prior Bad Acts*

House first alleges that the trial court committed reversible error by admitting into evidence House's statement to Smith that he wanted to kill Beard.<sup>1</sup> Specifically, House asserts that the statement should have been excluded pursuant to Ind. Evidence Rule 404(b).

We review a trial court's decision to admit or exclude evidence for an abuse of discretion. *Timberlake v. State*, 690 N.E.2d 243, 255 (Ind. 1997), *reh'g denied, cert. denied*. An abuse of discretion occurs if a trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. *Joyner v. State*, 678 N.E.2d 386, 390 (Ind. 1997), *reh'g denied*. However, if a trial court abused its discretion by admitting the challenged evidence, we will only reverse for that error if "the error is inconsistent with substantial justice" or if "a substantial right of the party is affected." *Timberlake*, 690 N.E.2d at 255. Any error caused by the admission of evidence is harmless error for which we will not reverse a conviction if the erroneously admitted

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<sup>1</sup> We acknowledge that House is challenging the trial court's denial of his Motion in Limine, which requested the trial court to exclude House's statement under Ind. Evid. Rule 404(b). However, predating error on the admission of evidence that had been excluded preliminarily by an order in limine presents nothing for review. *Banks v. State*, 761 N.E.2d 403, 404-05 (Ind. 2002). Rather, if the trial court errs by admitting evidence, the exclusion of which was sought by a motion in limine, the error is in admitting the evidence in violation of an evidentiary rule, not in rescinding a previous order in limine. *Id.* Accordingly, we interpret House's argument as a claim that the trial court abused its discretion by admitting the disputed statement at trial.

evidence was cumulative of other evidence appropriately admitted. *Stephenson v. State*, 742 N.E.2d 463, 481 (Ind. 2001), *cert. denied*.

Indiana Evidence Rule 404(b) provides, in pertinent part, that:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, intent, preparation, plan, knowledge, identity, or absence of mistake or accident . . .

This rule is “designed to prevent the jury from assessing a defendant’s present guilt on the basis of his past propensities, the so-called ‘forbidden inference.’” *Iqbal v. State*, 805 N.E.2d 401, 406 (Ind. Ct. App. 2004) (quoting *Hicks v. State*, 690 N.E.2d 215, 218-19 (Ind. 1997)). Thus, in assessing the admissibility of evidence under Evid. R. 404(b), the trial court must: (1) determine whether the evidence of other crimes, wrongs, or acts is relevant to a matter at issue other than the defendant’s propensity to commit the charged act; and (2) balance the probative value of the evidence against its prejudicial effect pursuant to Evid. R. 403. *Iqbal*, 805 N.E.2d at 406. To determine whether the trial court abused its discretion, we employ the same test. *See, e.g., id.*

However, House’s statement that he wanted to kill Beard was not a prior bad act under Evid. R. 404(b). Our supreme court has ruled that the paradigm of inadmissible evidence under Evid. R. 404(b) “is a crime committed on another day in another place, evidence whose only apparent purpose is to prove the defendant is a person who commits crimes.” *Swanson v. State*, 666 N.E. 2d 397, 398 (Ind. 1996), *reh’g denied*; *see also Howard v. State*, 761 N.E.2d 449, 453 (Ind. Ct. App. 2002), *trans. denied*. The challenged evidence in this case was not evidence of a crime committed on another day

in another place, nor was the purpose of the evidence to prove that House is a person who commits crimes. Rather, the evidence at issue was that of uncharged misconduct, inextricably bound up with the charged crime since the statement of House to which Smith testified was within the chain of events that led to the charged crime. *See Garner v. State*, 754 N.E.2d 984, 992-93, *opinion vacated in part*, 777 N.E.2d 721 (Ind. 2000). Smith testified that House was acting erratically and told her that he wanted to go to Beard's house to kill him. The testimony merely clarified why House was at Beard's residence, it did not establish an unrelated bad act occurring at another time and offered only to create the inference that House is a person of bad character. Consequently, we conclude that the trial court did not abuse its discretion by admitting House's statement.

## II. *Sufficiency of the Evidence*

Next, House contends that the State failed to present sufficient evidence to prove beyond a reasonable doubt his conviction for criminal confinement and battery.

### A. *Standard of Review*

Our standard of review with regard to sufficiency claims is well settled. In reviewing sufficiency of the evidence claims, this court does not reweigh the evidence or judge the credibility of the witnesses. *Williams v. State*, 714 N.E.2d 671, 672-73 (Ind. Ct. App. 1999). We only consider the evidence most favorable to the verdict and the reasonable inferences therefrom and will affirm if there is substantial evidence of probative value to support the conclusion of the trier-of-fact. *Id.* at 673. This court has held that a conviction for the crime charged may be based on circumstantial evidence. *Marrow v. State*, 699 N.E.2d 675, 677 (Ind. Ct. App. 1998); *Duren v. State*, 720 N.E.2d

1198, 1201 (Ind. Ct. App. 1999), *trans. denied*. Reversal is only appropriate when reasonable persons would be unable to form inferences as to each material element of the offense. *Mabbitt v. State*, 703 N.E.2d 698, 700 (Ind. Ct. App. 1998).

### B. *Criminal Confinement*

Criminal confinement, a Class B felony, is codified in I.C. § 35-42-3-3 which provides, in pertinent part, that

- (a) A person who knowingly or intentionally:
  - (1) confines another person without the other person's consent; . .
- (b) The offense of criminal confinement defined in subsection (a) is: . .
- (2) a Class B felony if it:
  - (A) is committed while armed with a deadly weapon;
  - (B) results in serious bodily injury to a person other than the confining or removing person; . . .

Accordingly, to convict House of criminal confinement, the State was required to prove beyond a reasonable doubt that House knowingly or intentionally confined Smith while armed with a knife and resulting in serious bodily injury to a person other than House. House's sole contention relates to the confinement element of the charge. Specifically, he claims that the evidence establishes that Smith stayed with him voluntarily after he stabbed O'Bryant. We disagree.

In the case before us, Smith testified that after House stabbed O'Bryant, House pulled her back into the car by her hair. Specifically, she stated that "[h]e told me to get in the car. I said no. He grabbed me by the hair and put me in the car." (Tr. p. 387). At trial, she clarified that she refused to get in the car because he was acting erratically. The record further reflects that after leaving the scene, House drove to a friend's residence.

Smith did not ask to exit the car because she “was afraid of what might happen.” (Tr. p. 389). Furthermore, Smith knew House was in possession of a knife, “because it was [hers] and it was in the car.” (Tr. p. 390). Therefore, we conclude that based on the evidence most favorable to the verdict and the reasonable inferences therefrom, there is substantial evidence of probative value to support the jury’s conclusion that Smith was confined by House. *See Williams*, 714 N.E.2d at 672-73.

### C. Battery

Battery resulting in bodily injury as a Class A misdemeanor is codified in I.C. § 35-42-2-1(a)(1)(A), which provides in pertinent part that “[a] person who knowingly or intentionally touches another person in a rude, insolent, or angry manner commits battery, a Class B misdemeanor.” However, the offense is a Class A misdemeanor if “it results in bodily injury to any other person.” I.C. § 35-42-2-1(a)(1)(A). Accordingly, to convict House, the State was required to prove beyond a reasonable doubt that House knowingly or intentionally touched Smith in a rude, insolent or angry manner which resulted in bodily injury to her. House now particularly disputes the element of bodily injury.

The record establishes that when Smith refused to point out her son’s residence, House became belligerent, threatened her with a knife, and pushed her to the ground. She testified that, at that point, she was afraid House would kill her. Beard’s girlfriend corroborated Smith’s testimony by stating at trial that she saw House hitting Smith, causing her to fall down. That same night, the police took photographs of Smith’s injuries, showing a large red scrape or bruise on her chest area. Thus, based on the



evidence presented, the jury could reasonably find that House's violence towards Smith resulted in bodily injury.

### CONCLUSION

Based on the foregoing, we find that (1) the trial court properly admitted House's statement and (2) the State presented sufficient evidence to prove beyond a reasonable doubt House's conviction for criminal confinement and battery.

Affirmed.

NAJAM, J., and BARNES, J., concur.