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**IN THE
COURT OF APPEALS OF INDIANA**

KEI YOUNG,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 49A05-0901-CR-29

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Annie Christ-Garcia, Judge
Cause No. 49G17-0811-FD-251222

August 7, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Kei Young appeals his conviction for Domestic Battery,¹ a class D felony. Specifically, Young argues that the evidence was insufficient to convict him. Finding the evidence to be sufficient, we affirm the judgment of the trial court.

FACTS

On August 11, 2008, Laurie Green moved from Texas to Indianapolis under the belief that she and Young would “try to have a life together.” Tr. p. 7. Green moved into Young’s apartment, where they shared a bedroom and made joint household decisions.

On September 15, 2008, Green and Young moved into a different apartment that was leased solely under Green’s name. Because Young was unemployed and on home detention, Green paid most of the bills; however, Young assisted with the household chores and contributed money, which he earned from donating plasma. Green testified that the two “were never apart except for when [she] was at work.” Id. at 9.

On November 2, 2008, Green was watching television in the bedroom when Young entered the room and attempted to pull Green out of her chair. Young then grabbed the remote control from Green and changed the channel on the television. As Green attempted to unplug the television, Young shoved her into a dresser and a wall. After Green finally managed to unplug the television, Young called her several profane names and then threw her against the wall on the other side of the bedroom. Young pinned Green and told her that she should not have unplugged the television and warned her not to go to sleep that night. Green called the police.

¹ Ind. Code § 35-42-2-1.3(a), -1.3(b).

Officers Michael Wolley and Brian Wells of the Indianapolis-Metropolitan Police Department responded to the call. Young claimed that their confrontation had been verbal and that “nothing got physical.” *Id.* at 24-25. Green was crying and shaking and had faint red marks across her chest and a bruise on the inside of her arm. The officers arrested Young.

On November 3, 2008, Young was charged with Count I, domestic battery, a class A misdemeanor; Part II of Count I, domestic battery, a class D felony;² and Count II, battery, a class A misdemeanor. At the conclusion of Young’s December 12, 2008, bench trial, the trial court found Young guilty as charged.

On December 19, 2008, the trial court held a sentencing hearing, during which it vacated Young’s convictions for battery and domestic battery as a class A misdemeanor. Young was sentenced on the Class D felony Domestic Battery, to 545 days, with 365 days suspended and 180 days executed. Young now appeals.

DISCUSSION AND DECISION

Young’s sole argument on appeal is that there was insufficient evidence to convict him of domestic battery. The deferential standard of review for sufficiency claims is well settled. We will neither reweigh the evidence nor assess the credibility of the witnesses. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). Rather, this court will consider only the evidence and reasonable inferences most favorable to the trial court’s ruling, and we will affirm unless “no reasonable fact-finder could find the elements of the crime proven

² Part II of Count I was based on Young’s prior and unrelated conviction for domestic battery that occurred in June 2008.

beyond a reasonable doubt.” Id. at 146-47 (quoting Jenkins v. State, 726 N.E.2d 268, 270 (Ind. 2007)).

Indiana Code section 35-42-2-1.3(a) states, in relevant part, that “[a] person who knowingly or intentionally touches an individual who . . . is or was living as if a spouse of the other person . . . in a rude, insolent, or angry manner that results in bodily injury . . . commits domestic battery, a Class A misdemeanor.” Subsection (b) provides that the offense may be elevated to a class D felony if the defendant has a previous unrelated conviction for domestic battery.

Here, Young’s sole argument on appeal is that the evidence was insufficient for the trial court to conclude beyond a reasonable doubt that he and Green were living together as spouses. Indiana Code section 35-42-2-1.3(c) provides a list of factors for the court to consider when determining whether the defendant and victim were living together as spouses, including:

- (1) the duration of the relationship;
- (2) the frequency of contact;
- (3) the financial interdependence;
- (4) whether the two (2) individuals are raising children together;
- (5) whether the two (2) individuals have engaged in tasks directed toward maintaining a common household; and
- (6) other factors the court considers relevant.

Here, Green testified that she moved from Texas to Indianapolis because she believed that she and Young “were going to try to have a life together.” Tr. p. 7. In

addition, Green stated that Young was her boyfriend, that they shared a bedroom, and that they were always together except when she was at work or when he visited relatives in Fort Wayne. Furthermore, although the lease to the apartment was solely in Green's name, she explained that they made the decision to move into the new apartment together, including picking out the floor plan. Finally, Green testified that she was predominately responsible for the bills, but that Young contributed by assisting with the household chores and allowing Green to be on his cell phone plan. In light of these circumstances, the trial court could reasonably infer that Young and Green were living together as spouses.

Nevertheless, Young directs us Vaughn v. State, 782 N.E.2d 417 (Ind. Ct. App. 2003), to support his assertion that living together and engaging in an intimate relationship is insufficient to prove that two people are living together as spouses. In Vaughn, a panel of this court determined that the domestic battery statute was unconstitutionally vague as it applied to the defendant. Id. at 420. Specifically, this court stated "that the General Assembly must clarify what categories of individuals should receive the protection of the statute and conversely what persons should be subject to punishment for violation of the statute." Id. at 421. The court reasoned that whether two people are living together as spouses "may be based upon many things, depending upon the individual interpreting the facts." Id.

Young's reliance on Vaughn is misplaced, inasmuch as it involved a prior version of the domestic battery statute. Indeed, after this court's decision in Vaughn, the General Assembly amended the domestic battery statute to include the factors listed in Indiana

Code section 35-42-2-1.3(c). Williams v. State, 798 N.E.2d 457, 460 n.3 (Ind. Ct. App. 2003). Consequently, this argument fails.

Young also points out that “[t]wo of the criteria in I.C. [section] 35-42-2-1.3(c) were not clearly established,” namely, that the duration of the relationship was short and that Young and Green were not raising children together. Appellant’s Br. p. 7. However, in Williams v. State, this court stated that “we do not believe the legislature intended these factors to serve as a litmus test nor do we believe that the list of factors need even be consulted if the character of the relationship is clearly ‘domestic.’” 798 N.E.2d at 461. Thus, this argument is also unpersuasive and we conclude that the evidence was sufficient and affirm the judgment of the trial court.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and RILEY, J., concur.