

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GREGORY A. BORDLEY,	§	
	§	No. 79, 2000
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware
STATE OF DELAWARE,	§	in and for Kent County
	§	Cr.A. Nos. IK98-01-0264
Plaintiff Below,	§	through 0267
Appellee.	§	

Submitted: August 22, 2000

Decided: October 25, 2000

Before **VEASEY**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

O R D E R

This 25th day of October, 2000, upon consideration of the briefs of the parties, it appears to the Court that:

(1) Gregory A. Bordley appeals from his conviction, following a jury trial, of first degree burglary.¹ He argues that he did not cause physical injury to anyone “in” a dwelling, since the assault took place outside the victim’s dwelling on the front porch. We do not decide this issue because the error, if any, did not affect Bordley’s sentence and, therefore, was harmless.

¹ Bordley also was convicted of third degree assault and criminal mischief, but he did not appeal those convictions.

(2) At about 1:30 a.m. on the day of the incident, Bordley called his girlfriend, Elizabeth Loper, and told her he was coming over to her house. She told him not to, and reminded him that a no-contact order had been entered against him. About one half hour later, Loper heard Bordley banging on her front door and calling her name. While Loper was trying to call the police, Bordley kicked the door in and started walking through one side of the house. Loper ran through a different part of the house out to the front porch. As Bordley was chasing Loper, he said, “I’m going to kill you.” Bordley caught up with Loper on the porch and punched her in the face.

(3) To convict him of first degree burglary, the State had to prove that Bordley “knowingly [entered] or [remained] unlawfully in a dwelling at night with intent to commit a crime therein, and ... when in the dwelling ... [caused] physical injury to [Loper].”² Bordley’s only argument on appeal is that the front porch, which is where the assault took place, is not “in the dwelling.” In this case, however, it makes no difference whether Bordley is correct because he is subject to a mandatory life sentence as an habitual offender even if the conviction is reduced to second degree burglary.

(4) To convict him of second degree burglary, the State had to prove that Bordley “knowingly [entered] or [remained] unlawfully ... in a dwelling with intent to commit a crime therein....”³ By finding Bordley guilty of first degree burglary, the jury must have concluded that he knowingly entered Loper’s home unlawfully with the intent to commit a crime. Thus, if Bordley’s argument about

² 11 *Del. C.* § 826(2).

³ 11 *Del. C.* § 825(1).

the porch is correct, the first degree burglary conviction would be modified to the lesser offense of second degree burglary.⁴

(5) Bordley was sentenced as an habitual offender to life in prison. Pursuant to 11 *Del.C.* §4214 (b), a person who has been convicted of two prior felonies must be sentenced to life upon a third conviction if the third conviction is for any of the felonies listed in the statute. Both first and second degree burglary are included in the list. As a result, Bordley's sentence would be the same if his conviction were modified to second degree burglary, and the error, if any, was harmless beyond a reasonable doubt.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

⁴ *Porter v. State*, Del. Supr., 243 A.2d 699 (1968).