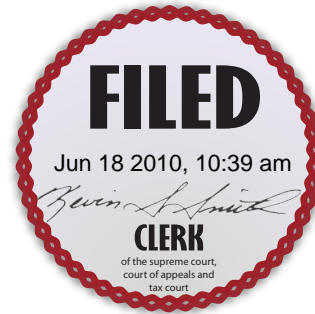


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

**HILARY BOWE RICKS**  
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

**GREGORY F. ZOELLER**  
Attorney General of Indiana

**ZACHARY J. STOCK**  
Deputy Attorney General  
Indianapolis, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

JEROME McKINNEY,  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
Appellee-Plaintiff.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

No. 49A05-0911-CR-642

---

APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Kurt M. Eisgruber, Judge  
The Honorable Steven J. Rubick, Magistrate  
Cause No. 49G01-0610-FB-203436

---

**June 18, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BRADFORD, Judge**

Following a jury trial, Appellant-Defendant Jerome McKinney was convicted of Class B felony Burglary<sup>1</sup> and found to be a Habitual Offender,<sup>2</sup> for which he received an aggregate thirty-year sentence in the Department of Correction. Upon appeal, McKinney challenges the sufficiency of the evidence to support his burglary conviction and contests the trial court's permitting the State to amend the charging information to include his alias. We affirm.

### **FACTS AND PROCEDURAL HISTORY**

At approximately 3:00 p.m. on June 20, 2006, Craig Roberts drove to his home at 3815 Englewood Drive in Indianapolis. Roberts saw a pair of slippers and a glove, which did not belong to him, on the front porch. Roberts additionally noticed that the front door, which was dented and had a footprint on it, had been kicked in, and that the doorframe was broken. Roberts retrieved his pistol from his truck, entered his home, and announced his entry. Upon entering his dining room area, Roberts saw a male whom he later identified to be McKinney standing with his hands in the air. McKinney ran past Roberts, out the front door of the house, and down the street, grabbing his slippers from the front porch as he left.

Roberts chased McKinney, who ran from Englewood Drive to 38th Street to Shadeland Avenue, where McKinney disappeared inside the Low Rate Inn. Roberts waited at the scene for authorities to arrive. Authorities did not find anyone matching McKinney's description in the vicinity of the Inn.

---

<sup>1</sup> Ind. Code § 35-43-2-1 (2005).

<sup>2</sup> Ind. Code § 35-50-2-8 (2005).

Authorities accompanied Roberts back to his home, where he discovered that his roommate Gary Shinnamon's room had been ransacked. According to Shinnamon, his dresser drawers had been pulled out, and certain items, including a bucket of change and a Crown Royal box, had been moved from his dresser to his bed. Shinnamon claimed that approximately \$200 to \$300 was missing from his dresser drawer. Authorities recovered fingerprints from several items at the scene. One latent print recovered from the Crown Royal box was matched to McKinney.

Within one month of the incident, authorities presented Roberts with a photographic array. Roberts identified McKinney, who was pictured in that array, as the intruder.

On October 19, 2006, the State charged McKinney with Class B felony burglary (Count I) and Class D felony theft (Count II). On June 1, 2007, the State alleged McKinney to be a habitual offender based upon an August 1997 conviction for Class D felony theft and a September 1998 conviction for Class B felony burglary.

Prior to trial, the State moved to amend the charging information to add McKinney's alias, Ivan Davis, in all counts and in the caption. Apparently, McKinney's booking photograph listed him as Ivan Davis, and in the event of a challenge, the State wished to have the option of referring to McKinney as Davis in the photographic array. In addition, certain documents relating to the September 1998 conviction used to establish McKinney's habitual offender status were in Davis's name. Defense counsel objected on the grounds that there was no dispute as to whether McKinney was the individual pictured in the photographic array, making McKinney's alias unnecessary and

potentially prejudicial in the first phase of the trial. The trial court granted the State's motion.

During the September 30, 2009 jury trial, the jury found McKinney guilty of Count I and acquitted him of Count II. McKinney waived his right to a jury trial for the habitual offender phase, after which the trial court found him to be a habitual offender. This appeal follows.

## **DISCUSSION AND DECISION**

### **I. Sufficiency of the Evidence**

Upon appeal, McKinney first contends that there was insufficient evidence to support his burglary conviction. In making this argument, McKinney points out that Roberts did not identify him at trial and claims that Roberts's original description of the intruder did not match McKinney's height, weight, or age.

In evaluating the sufficiency of the evidence to support McKinney's conviction, we do not reweigh the evidence or judge the credibility of the witnesses. *Kien v. State*, 782 N.E.2d 398, 407 (Ind. Ct. App. 2003), *trans. denied*. We consider only the evidence which supports the conviction and any reasonable inferences which the trier of fact may have drawn from the evidence. *Id.* We will affirm the conviction if there is substantial evidence of probative value from which a reasonable trier of fact could have drawn the conclusion that the defendant was guilty of the crime charged beyond a reasonable doubt. *Id.* It is the function of the trier of fact to resolve conflicts of testimony and to determine the weight of the evidence and the credibility of the witnesses. *Jones v. State*, 701 N.E.2d 863, 867 (Ind. Ct. App. 1998).

McKinney's challenge to the evidence is simply an invitation to reweigh it, which we decline. Roberts testified that he had a clear look at McKinney, and he subsequently identified McKinney as his intruder from a photographic array. To the extent Roberts's estimates of McKinney's height, weight, and age were not accurate, the jury was within its fact-finding discretion to place more weight upon Roberts's affirmative identification of McKinney than on these generally flexible details. The jury was similarly entitled to conclude that Roberts's identification of McKinney one month after the incident carried more weight than his alleged inability to re-identify McKinney at trial three years later. In addition, of course, McKinney's fingerprint was found on one of the displaced objects at the scene, supporting the reasonable inference that he was the intruder who moved it. Accordingly, we reject McKinney's challenge to the sufficiency of the evidence to support his conviction for burglary.

## **II. Amendment to Charging Information**

McKinney contends that the trial court abused its discretion in permitting the State to amend the charging information to include his alias. In *Moore v. State*, 156 Ind. App. 687, 689-90, 298 N.E.2d 17, 18 (1973), this court disapproved of the unnecessary use of aliases on the grounds that it would not be difficult "to conceive a situation wherein the unnecessary, or excessive, or unproved use of aliases would create a connotation of criminality sufficient to thwart the fairness of the trial." See *Hyppolite v. State*, 774 N.E.2d 584, 592-93 (Ind. Ct. App. 2002), (citing *Moore*), *trans. denied*. The Supreme Court has indicated its agreement that such cases may exist. See *Edgecomb v. State*, 673 N.E.2d 1185, 1194-95 (Ind. 1996).

Arguably, the use of McKinney's alias was unnecessary for the first phase of the trial. The State wished to use the alias only in the event of a challenge from defense counsel regarding the photographic array, and defense counsel indicated that there was no dispute that McKinney was the individual photographed in that array. While the alias may have been necessary for the second/habitual offender phase of the trial, the trial court could have avoided all risk of unfair prejudice to the defendant by allowing the amendment to the habitual offender charging information only. Nevertheless, given the strong incriminating nature of the eyewitness and fingerprint evidence pointing to McKinney as the perpetrator of the instant burglary, we cannot say that the mere fact of his alias would have been so overwhelmingly distracting to the jury as to thwart the overall fairness of his trial. Indeed, our view on this point is supported by the jury's verdict, which acquitted McKinney of his theft charge, despite the existence of his alias in the charging information. Obviously, the existence of an alias did not make the jury hostile to McKinney's defense.

The judgment of the trial court is affirmed.

RILEY, J., and MATHIAS, J., concur.