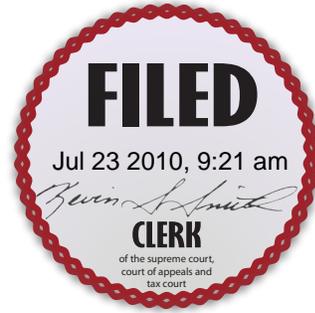


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JIMMY YARBROUGH,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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) No. 49A02-0912-CR-1217
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APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Lisa F. Borges, Judge
The Honorable Stanley E. Kroh, Commissioner
Cause No. 49G04-0907-FB-62728

July 23, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Jimmy Yarbrough appeals his conviction for Burglary, as a Class B felony.¹ We affirm.

Issue

The dispositive issue raised by Yarbrough is whether the trial court erred in admitting the stolen jewelry into evidence over Yarbrough's chain of custody objection.

Facts and Procedural History

On the afternoon of July 8, 2009, Indianapolis Metropolitan Police responded to a house alarm in Marion County. K-9 Officer David Whitesell and his canine partner "Buddy" were among those that responded. Officer Whitesell and Buddy assisted the investigation by searching the home for the intruder. After finding the house empty, the pair responded to another call regarding a suspicious individual in the same neighborhood.

At approximately 5 p.m., Officer Whitesell observed a man wearing dark clothing and white gardening gloves with a camouflage backpack at his feet "actively trying to force his way into the back door of [a] residence." Trial transcript at 18. Officer Whitesell observed the individual for several seconds before calling for backup and driving closer to the man, later identified as Yarbrough. Officer Whitesell, along with Buddy, approached Yarbrough and yelled, "Police, don't move." Tr. at 22 To the contrary, Yarbrough ran. Officer Whitesell pursued until the chase began weaving through the houses. Soon thereafter, Buddy apprehended Yarbrough on command of Officer Whitesell. Once apprehended, Officer

¹ Ind. Code § 35-43-2-1.

Whitesell recognized Yarbrough as the same man that had been attempting to break into the residence.

After arriving on the scene, Officer Daniel Roseberg searched Yarbrough incident to his arrest. Among other items, several earrings and a necklace were recovered from Yarbrough's pockets. Caroline Lampert, one of the residents of the house the police initially responded to, was brought to the scene and identified the jewelry as items belonging to her.

The State charged Yarbrough with Burglary, as a Class B felony, Theft, as a Class D felony,² Attempted Residential Entry, as a Class D felony,³ and Resisting Law Enforcement, as a Class A misdemeanor.⁴ After a bench trial, Yarbrough was found guilty as charged. The trial court vacated the counts for Theft and Attempted Residential Entry due to double jeopardy concerns. Yarbrough was sentenced to an aggregate sentence of eight years imprisonment.

Yarbrough now appeals only the Burglary conviction.

Discussion and Decision

Yarbrough asserts that the trial court abused its discretion in admitting the gold jewelry into evidence because the State did not demonstrate a complete chain of custody. Admission of evidence is within the sound discretion of the trial court. Davis v. State, 907 N.E.2d 1043, 1048 (Ind. Ct. App. 2009). We will only reverse a decision of the trial court to admit evidence if there is an abuse of that discretion. Id. An abuse of discretion occurs if the

² Ind. Code § 35-43-4-2.

³ Ind. Code §§ 35-43-2-1.5; 35-41-5-1.

⁴ Ind. Code § 35-44-3-3.

trial court's decision is against the logic and effect of the facts and circumstances before the court. Id.

Yarbrough contends that the failure of the State to establish the location of the jewelry between when it was seized from Yarbrough's possession until trial did not create a proper foundation for its admission into evidence. We disagree. "A proper foundation for the introduction of physical evidence is laid if a witness is able to identify the item and the item is relevant to the disposition of the case." Kilpatrick v. State, 746 N.E.2d 52, 57 (Ind. 2001). "The less susceptible an exhibit is to fungibility, alteration or tampering, the less strictly is the chain of custody rule applied." Reaves v. State, 586 N.E.2d 847, 859 (Ind. 1992). For an exhibit to be admissible, it must be shown that it is relevant and material, it is properly identified, and it is in substantially the same condition as at the time of the crime. Id. Such is the case here. Shortly after the jewelry was taken from Yarbrough's possession, Lampert identified the jewelry as hers. Moreover, photographs were taken of the jewelry at the time of the crime and were admitted into evidence without objection. The trial court properly admitted the jewelry into evidence.

Yarbrough raises a second issue of sufficiency of the evidence but bases his analysis and conclusion solely on the inadmissibility of the jewelry. As we conclude that the jewelry is properly admitted, we affirm the Burglary conviction.

Affirmed.

MAY, J., and BARNES, J., concur.