

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

James Huspek-Hein,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

April 26, 2024

Court of Appeals Case No.
23A-CR-1866

Appeal from the LaPorte Circuit Court
The Honorable Thomas Alevizos, Judge

Trial Court Cause No.
46C01-2103-F5-261

Memorandum Decision by Judge Crone
Judges Bailey and Pyle concur.

Crone, Judge.

Case Summary

- [1] James Huspek-Hein appeals his conviction for level 5 felony burglary. He contends that the State presented insufficient evidence to support his conviction. Finding the evidence sufficient, we affirm.

Facts and Procedural History

- [2] On October 4, 2020, Jorge Montemayor, one of the co-owners of Mickey’s Bar in La Porte, arrived at the bar around 4:30 a.m. to check on the property after closing time. When Montemayor arrived and unlocked the door to enter the establishment, he noticed that the alarm was going off inside the building. He immediately realized “something was wrong.” Tr. Vol. 2 at 63. As he entered, he saw out of the corner of his eye a person “running away” from behind the bar to the kitchen and then to the basement. *Id.* at 64. Montemayor went outside and contacted police. La Porte City Police Department officers responded to the scene. Although they did not locate the individual that Montemayor had seen, a ski mask was found in the bar’s kitchen, and a backpack containing a hammer, bolt cutters, and a pry bar was located at the bottom of the basement stairs. Officers observed pry marks on the cash register, and part of the register was broken. No items appeared to be missing or taken from the bar.
- [3] It was also discovered that the wall between the basement and the cellar door was “all busted up” with a hole big enough for a person to fit through. *Id.* at 68.

To further their investigation, officers looked at surveillance video from Mickey's Bar and from a building next door. The video from the building next door depicted a man wearing shoes with white markings and a dark hoodie with striped sleeves emerging from trees and heading toward the bar. The camera outside the cellar door recorded that same man pulling out a flashlight, putting a ski mask on, opening the cellar door, and entering the bar's basement with a backpack. The video from the camera inside the bar showed the man standing behind the bar and then later running toward the basement stairs as Montemayor entered the building at 4:38 a.m. Video from the camera above the cellar door showed the man running out of the door without a backpack.

[4] The ski mask and pry bar were sent to the Indiana State Police Laboratory, and the DNA profile came back with a probable match to Huspek-Hein. A search warrant was subsequently obtained and executed at Huspek-Hein's residence, which was located approximately a block away from Mickey's Bar. Officers collected a pair of shoes with white markings and a black hoodie with white stripes on the sleeves. Officers also collected a buccal swab from Huspek-Hein for verification of the prior DNA profile match between Huspek-Hein and the DNA found on the ski mask and pry bar. The results from the sample indicated a match.

[5] The State charged Huspek-Hein with level 5 felony burglary and level 6 felony possession of methamphetamine. The State subsequently dismissed the possession charge. A jury trial was held in June 2023. The parties stipulated to the admission of the DNA evidence which showed the match between Huspek-

Hein's DNA and the DNA on the ski mask and pry bar found at Mickey's Bar the morning of the burglary. The jury found Huspek-Hein guilty as charged. Following a hearing, the trial court sentenced Huspek-Hein to an executed term of five years, with one year suspended to probation. This appeal ensued.

Discussion and Decision

- [6] Huspek-Hein challenges the sufficiency of the evidence to support his conviction. In reviewing a challenge to the sufficiency of the evidence, we neither reweigh the evidence nor judge the credibility of witnesses. *Anderson v. State*, 37 N.E.3d 972, 973 (Ind. Ct. App. 2015), *trans. denied*. We view all evidence and reasonable inferences drawn therefrom in a light most favorable to the conviction. *Walker v. State*, 998 N.E.2d 724, 726 (Ind. 2013). On appeal, it is not necessary that the evidence overcome every reasonable hypothesis of innocence. *Gray v. State*, 957 N.E.2d 171, 174 (Ind. 2011). We must affirm if the evidence and the reasonable inferences drawn therefrom could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. *Anderson*, 37 N.E.3d at 974.
- [7] To convict Huspek-Hein of level 5 felony burglary, the State was required to prove that he broke and entered a building or structure of another person, with the intent to commit a felony or theft in it. Ind. Code § 35-43-2-1. Huspek-Hein's sole assertion on appeal is that the State failed to prove his identity as the burglar.

- [8] It is well established that identity may be established entirely by circumstantial evidence and the logical inferences drawn therefrom. *Cherry v. State*, 57 N.E.3d 867, 877 (Ind. Ct. App. 2016), *trans. denied*. Moreover, DNA is a marker of identity, and therefore DNA evidence, coupled with other evidence tying a defendant to a crime, is sufficient to support a conviction. *Meehan v. State*, 7 N.E.3d 255, 258 (Ind. 2014). Here, as already noted, the parties stipulated to the admission of the DNA evidence which showed that Huspek-Hein's DNA was found on the ski mask and pry bar found at Mickey's Bar the morning of the burglary. In addition, surveillance video showed the burglar entering and exiting the bar wearing distinctive shoes and a hoodie with striped sleeves that matched items found during a search of Huspek-Hein's residence, which was located near Mickey's Bar in the same direction from which video surveillance depicted the burglar approaching the crime scene.
- [9] Despite the ample evidence tying him to the crime, Huspek-Hein emphasizes that "no witness positively identified" him as the burglar and that the stipulated DNA evidence "showed a mix of two unknown and unrelated individuals with [his] DNA." Appellant's Br. at 8. This is simply a request for this Court to reweigh the evidence in his favor, which we may not do. Viewing the evidence presented in the light most favorable to the conviction, we conclude that a reasonable trier of fact could have logically inferred that Huspek-Hein was the individual who committed the burglary. Sufficient evidence supports his conviction.

[10] Affirmed

Bailey, J., and Pyle, J., concur.

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