

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JULY TERM 2006

D.O.A., A CHILD,

Appellant,

v.

Case No. 5D06-826

STATE OF FLORIDA,

Appellee.

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Opinion filed November 17, 2006

Appeal from the Circuit Court
for Orange County,
Anthony H. Johnson, Judge.

James S. Purdy, Public Defender, and
Rebecca M. Becker, Assistant Public
Defender, Daytona Beach, for Appellant.

Charles J. Crist, Jr., Attorney General,
Tallahassee, and Ann M. Phillips,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

D.O.A. was adjudicated guilty of two counts of burglary of a dwelling in violation of section 810.02, Florida Statutes (2006). He appeals the adjudication of only one count, contending that there was insufficient evidence that he entered or remained in the dwelling of Kimberly Waddy. Based on our review of the record, we agree. Ms. Waddy opened the door that D.O.A. was rattling and was about to enter, causing him to

run away. Thus, Ms. Waddy prevented a burglary that no doubt would have been completed but for her fortuitous intervention.

We reverse one adjudication of burglary of a dwelling and remand with directions that the adjudication be amended to reflect the offense of attempted burglary of a dwelling, which was clearly shown by the evidence. The remaining burglary adjudication is unaffected.

AFFIRMED IN PART; REVERSED IN PART; REMANDED.

ORFINGER, LAWSON and EVANDER, JJ., concur.