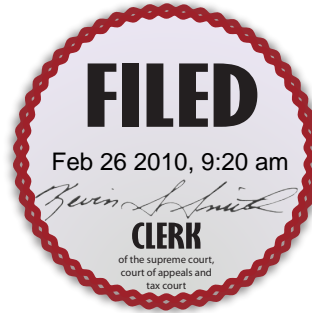


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

MICHAEL ORR,)
)
Appellant/Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee/Plaintiff.)

No. 49A02-0908-CR-782

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Lisa F. Borges, Judge
Cause No. 49G04-0612-FB-241914

February 26, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BRADFORD, Judge

CASE SUMMARY

Appellant/Defendant Michael Orr appeals following his convictions for Class B felony Burglary,¹ two counts of Class B felony Robbery,² and two counts of Class B felony Criminal Confinement.³ Orr contends that the State produced insufficient evidence to support a finding that any of the above crimes were actually committed. We affirm.

FACTS AND PROCEDURAL HISTORY

At approximately 9:00 a.m. on November 13, 2006, Jane Simon was in bed in the Indianapolis house she shared with her fiancé, Tark Shelby. Simon heard knocking at the door and, when she answered, Orr said, “[I]s the big guy here?” Tr. p. 12. When Simon said that “he’s asleep[,]” Orr asked if she could awaken him. Tr. p. 12. Simon refused and closed the door. Simon told Shelby that a man had been to the door asking for him, returned to the front door, and noticed that a red Chevrolet Blazer had backed into the driveway and that Orr was returning to the house.

When Orr knocked on the door a second time, Shelby answered, only to be pushed to the ground by Orr and a confederate and struck two or three times in the face, causing a laceration. While Orr displayed a gun, he and his confederate told Simon to “get down on the floor” and “said they were gonna kill” Simon and Shelby. Tr. p. 17. The invaders

¹ Ind. Code § 35-43-2-1 (2006).

² Ind. Code § 35-42-5-1 (2006).

³ Ind. Code § 35-42-3-3 (2006).

made Simon and Shelby move into the kitchen, where Shelby was made to sit on the floor and Simon's head was "shoved" down onto the kitchen table. When the invaders screamed and yelled at Simon and Shelby to tell them where their money was, Simon and Shelby responded that they did not have any. The invaders told Simon and Shelby repeatedly that they would kill them if they did not give them all of their money. As one of the invaders searched the home, the other stood in the kitchen with the gun. All in all, the invaders took a purse, a fanny pack, cash, a credit card, a check book, a television, two guitars, jewelry, a jewelry box, and telephones. Before leaving, the invaders put Simon and Shelby into the basement and told them that they would kill them if they left. One of the stolen credit cards was used within ninety minutes of the crime. Subsequently, Orr's fingerprints were found on a package of underwear that had been moved during the incident, and Simon identified Orr from a photo array as one of the invaders. Orr had never been in the house before, and Simon and Shelby did not know him.

On November 16, 2006, the State charged Orr with Class B felony burglary, two counts of Class B felony robbery, two counts of Class B felony criminal confinement, and Class A misdemeanor battery. On January 27, 2009, the trial court found Orr guilty of burglary, two counts of robbery, and two counts of criminal confinement. On March 20, 2009, the trial court sentenced Orr to an aggregate sentence of fourteen years of incarceration with four of those suspended to probation.

DISCUSSION AND DECISION

Our standard of review for challenges to the sufficiency of the evidence supporting a criminal conviction is well-settled:

In reviewing a sufficiency of the evidence claim, the Court neither reweighs the evidence nor assesses the credibility of the witnesses. We look to the evidence most favorable to the [finding of guilt] and reasonable inferences drawn therefrom. We will affirm the conviction if there is probative evidence from which a reasonable [finder of fact] could have found Defendant guilty beyond a reasonable doubt.

Vitek v. State, 750 N.E.2d 346, 352 (Ind. 2001) (citations omitted).

Orr argues that the State failed to produce several pieces of allegedly vital evidence and that that failure creates reasonable doubt. Specifically, Orr notes that the State did not place into evidence the gun used in the robbery or any of the items stolen. Moreover, Orr notes that the State did not introduce any details regarding the transaction involving the stolen credit card or that Orr participated. Orr, however, cites to no authority suggesting that the State was required to introduce any of this evidence in order to sustain his convictions and does not explain how its absence might have undermined any of his convictions. Orr's most specific argument seems to be that the State failed to prove that anything was actually taken from the house, which would undermine his robbery convictions. It is well-settled that "[t]o constitute robbery there must be an asportation." *Neal v. State*, 214 Ind. 328, 341, 14 N.E.2d 590, 596 (1938) (citation omitted). "In other words, it must appear that the property was taken from the possession of the victim into that of the robber." *Id.*, 14 N.E.2d at 596 (citation omitted). Simon,

however, specifically testified that several items were taken from the house. Orr's argument is an invitation to reweigh the evidence, one that we decline.

The judgment of the trial court is affirmed.

NAJAM, J., and FRIEDLANDER, J., concur.