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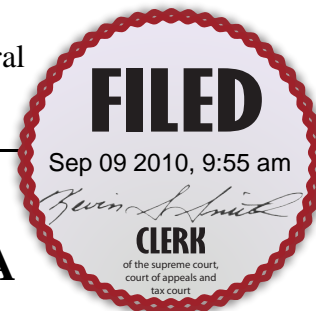
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**IN THE
COURT OF APPEALS OF INDIANA**

KEVIN DUNCAN,)

Appellant-Defendant,)

vs.)

STATE OF INDIANA,)

Appellee-Plaintiff.)

No. 49A02-1003-CR-244

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robert R. Altice, Jr., Judge
Cause No. 49G02-0910-FB-90907

September 9, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Kevin Duncan appeals his conviction for Burglary,¹ a class B felony, arguing that the evidence is insufficient to support his conviction. Finding sufficient evidence, we affirm.

FACTS

On October 20, 2009, Duncan spent the evening with LeSonjia Carter, who dropped him off in a residential neighborhood around 5:00 a.m. Duncan did not appear to be intoxicated, and Carter did not drop him off in front of any particular home.

Shannon Kwiatkowski and her family, including eleven-year-old B.K., lived four houses away from Duncan's residence. After Carter dropped him off, Duncan forced open the Kwiatkowskis' door and entered the residence without permission. He went to the second floor of the home and entered B.K.'s bedroom, where B.K. was asleep under the covers. She awoke to find Duncan kneeling at the foot of her bed with his hand underneath the covers, rubbing her bare right leg between her knee and ankle. She recognized Duncan. Feeling frightened, B.K. turned on the television next to her bed. Duncan then stood up and left the room without saying a word.

After Duncan left B.K.'s room, he crawled into Kwiatkowski's room. She was sleeping with her twin infant children at the time, and awoke to see Duncan on the floor, crawling out of the room. After Duncan left Kwiatkowski's room, Duncan walked downstairs and exited the house through the front door.

¹ Ind. Code § 35-43-2-1.

Kwiatkowski immediately reported the incident to the police. When officers arrived to investigate, they noticed fresh damage on the house's front door that Kwiatkowski said had not been there the prior evening. Kwiatkowski and B.K. both identified Duncan as the intruder. Police apprehended Duncan, and although he initially denied entering the Kwiatkowskis' home, he subsequently reversed his position and admitted entering the house without permission. Duncan also stated that he knew of the Kwiatkowskis because they lived in the same neighborhood but did not know them personally.

On October 28, 2009, the State charged Duncan with class B felony burglary, class D felony residential entry, and class B misdemeanor battery. Duncan waived his right to a jury trial, and at the close of his January 22, 2010, bench trial, the trial court found Duncan guilty as charged. The trial court entered judgments of conviction only on the burglary and battery counts. On February 3, 2010, the trial court sentenced Duncan to an aggregate ten-year sentence. Duncan now appeals.

DISCUSSION AND DECISION

Duncan's sole argument on appeal is that the evidence does not support his burglary conviction. Specifically, he contends that the evidence does not establish that he entered the Kwiatkowskis' home with the intent to commit a felony therein. When reviewing the sufficiency of the evidence supporting a conviction, we look only to the evidence most favorable to the conviction and all reasonable inferences that may be drawn therefrom. Vitek v. State, 750 N.E.2d 346, 352 (Ind. 2001). We will affirm if the

evidence and inferences could have allowed a reasonable factfinder to find the defendant guilty beyond a reasonable doubt. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005).

To convict Duncan of burglary, the State was required to prove beyond a reasonable doubt that he broke and entered the Kwiatkowskis' home with the intent to commit the felony of child molesting therein. I.C. § 35-43-2-1; see also Ind. Code § 35-42-4-3(b) (providing that a person commits child molesting when he touches a child under 14 years of age with intent to arouse the sexual desires of himself or the child).

It is well established that the intent element of burglary may be inferred from circumstantial evidence and the nature of the felony because “[b]urglars rarely announce their intentions at the moment of entry.” Gilliam v. State, 508 N.E.2d 1270, 1271 (Ind. 1987). The circumstantial evidence “need not be insurmountable, but only provide a solid basis to support a reasonable inference that the defendant intended to commit the underlying felony charged.” Id.; see also Cardin v. State, 540 N.E.2d 51, 58 (Ind. Ct. App. 1989) (holding that circumstantial evidence is not required to overcome every reasonable hypothesis of innocence). Our Supreme Court has elaborated that “to sustain a burglary charge, the State must prove a specific fact that provides a solid basis to support a reasonable inference that the defendant had the specific intent to commit a felony.” Freshwater v. State, 853 N.E.2d 941, 944 (Ind. 2006).

Here, the record establishes that Duncan forced his way into the Kwiatkowskis' home, causing damage to the door, and entered eleven-year-old B.K.'s bedroom. B.K., who had been asleep, awoke to find Duncan furtively rubbing her bare leg under the

covers. Duncan only left B.K.'s room after she awoke, and did not explain his presence or his actions, implying awareness of his guilty intent.

These facts provide a solid basis to support a reasonable inference that Duncan was touching B.K. with the intent to arouse himself sexually. In other words, the evidence was sufficient to infer that he intended to commit the felony of child molesting when he broke and entered the Kwiatkowskis' residence. See Ind. Code § 35-42-4-3 (child molesting statute, which does not require that the touching involve a sexual organ); Altes v. State, 822 N.E.2d 1116, 1121-22 (Ind. Ct. App. 2005) (finding sufficient evidence to support child molesting conviction where the defendant had touched his victim from her shoulders to her waist but had not touched her genitals or an erogenous zone).

To the extent that Duncan also appears to argue that the evidence does not establish that he intended to enter the Kwiatkowskis' home, but was instead intoxicated and intended to enter his own home, we note that the trial court credited Carter's testimony that Duncan was not intoxicated when she dropped him off at the end of their evening. Furthermore, there was evidence establishing that Duncan forcibly broke into the Kwiatkowskis' home, damaging the front door jamb in the process. Finally, once Duncan had entered the Kwiatkowskis' home, he then entered B.K.'s bedroom, rubbed her leg, left her room, and entered Kwiatkowski's bedroom. Had this been a mistake, as Duncan alleges, his actions make no logical sense. Therefore, we find that this evidence

supports the trial court's conclusion that Duncan intended to break and enter the Kwiatkowskis' home.

The judgment of the trial court is affirmed.

NAJAM, J., and MATHIAS, J., concur.