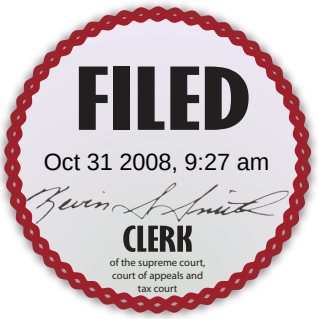

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IN THE
COURT OF APPEALS OF INDIANA

SCOTTY W. GARLAND, JR.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 03A05-0802-CR-69
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE BARTHOLOMEW SUPERIOR COURT
The Honorable Chris D. Monroe, Judge
Cause No. 03D01-0708-FD-1525

October 31, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Scotty Garland, Jr., appeals his conviction for residential entry as a class D felony.[1] Garland raises two issues, which we revise and restate as:

I. Whether the trial court abused its discretion when it refused to dismiss three prospective jurors for cause; and

II. Whether there was sufficient evidence to convict Garland of residential entry as a class D felony.

We affirm.[2]

The relevant facts follow. In April 2007, Belinda Garland ("Belinda") lived in a rented house in Columbus, Indiana. Garland and Belinda were married, but they had not "lived together for any real length of time as husband and wife" since 2002. Transcript at 166. On the evening of April 27, 2007, Belinda went to a friend's house to watch a movie. While Belinda was at her friend's house, Garland continuously sent her text messages. Garland told Belinda that "it's going to get bad, it's going to worse [sic], you need to be here." Id. at 149. Garland called Belinda and told her that she was a "bitch" and a "whore" and that she was "worthless." Id. Belinda told her friend that she needed to go home because Garland was threatening her.

Belinda called her daughter and arranged to meet at the house so that she would not have to go home by herself. When Belinda arrived, she noticed that her front door

[1] Ind. Code § 35-43-2-1.5 (2004).

[2] Garland also raises the issue of whether his Fourteenth Amendment Due Process rights were violated when the State failed to provide evidence beyond a reasonable doubt that he did not have legal authority to be at the residence. Because we conclude that there was sufficient evidence to convict Garland of residential entry as a class D felony, we need not address this issue.

was open. Belinda told her daughter to call 911 and then went into the house. Her front door was kicked in, and the television and DVD player were smashed. Belinda entered her doorway, and Garland grabbed her. Belinda reached for the phone, but Garland pulled the phone out of the wall, threw the phone, and said, "there will be no cops." Id. at 154. At some point, Garland and Belinda ended up near a car that Garland's friend was driving. Garland "let go" of Belinda, and he and his friend drove away before the police arrived. Id. at 155.

The State charged Garland with Count I, battery resulting in bodily injury as a class D felony; Count II, residential entry as a class D felony; Count III, interference with the reporting of a crime as a class A misdemeanor; and Count IV, criminal mischief as a class A misdemeanor.

During voir dire, Garland challenged prospective juror Hughes for cause, and the trial court denied Garland's challenge. Garland used his last peremptory challenge on Hughes. Garland then challenged prospective jurors Moore and Felicijan for cause, and the trial court denied Garland's challenges. The jury found Garland guilty of Count II, residential entry as a class D felony and not guilty of the remaining charges. The trial court sentenced Garland to the Department of Correction for two and one-half years with one year suspended.

I.

The first issue is whether the trial court abused its discretion when it refused to dismiss three prospective jurors for cause. See Ind. Code § 35-37-1-5 (2004).[3] The denial of a challenge to a juror is within the discretion of the trial court, and the decision will be sustained unless illogical or arbitrary. Wisehart v. State, 693 N.E.2d 23, 55 (Ind. 1998), reh'g denied, cert. denied, 526 U.S. 1040, 119 S. Ct. 1338 (1999). Within the jury selection process, the challenge procedure has the purpose of ensuring a fair trial by an impartial jury. Bradley v. State, 649 N.E.2d 100, 106 (Ind. 1995), reh'g denied. We

[3] Ind. Code § 35-37-1-5 governs challenges for cause and provides, in part:

> (a) The following are good causes for challenge to any person called as a juror in any criminal trial:
>
> * * * * *
>
> (2) That the person has formed or expressed an opinion as to the guilt or innocence of the defendant. However, such an opinion is subject to subsection (b).
>
> * * * * *
>
> (8) That the person is a mentally incompetent person.
>
> * * * * *
>
> (11) That the person is biased or prejudiced for or against the defendant.
> (12) That the person does not have the qualifications for a juror prescribed by law.
>
> * * * * *
>
> (b) If a person called as a juror states that the person has formed or expressed an opinion as to the guilt or innocence of the defendant, the court or the parties shall proceed to examine the juror on oath as to the grounds of the juror's opinion. If the juror's opinion appears to have been founded upon reading newspaper statements, communications, comments, reports, rumors, or hearsay, and if:
> (1) the juror's opinion appears not to have been founded upon:
> (A) conversation with a witness of the transaction;
> (B) reading reports of a witness' testimony; or
> (C) hearing a witness testify;
> (2) the juror states on oath that the juror feels able, notwithstanding the juror's opinion, to render an impartial verdict upon the law and evidence; and
> (3) the court is satisfied that the juror will render an impartial verdict;
> the court may admit the juror as competent to serve in the case.

defer substantially to trial judges on the decision to dismiss a juror because they see the jurors firsthand and are in a much better position to assess a juror's ability to serve without bias and decide the case according to law. Jervis v. State, 679 N.E.2d 875, 881-882 (Ind. 1997). Garland argues that the trial court abused its discretion by denying his challenges to three prospective jurors. We will review each challenge separately.

A. Prospective Juror Hughes

During voir dire, the following exchange occurred between Garland's attorney and prospective juror Hughes:

> [Garland's Attorney]: . . . And I noticed from your instruction, you have some medical issues of heart problems a while back. Do you think that's interfering, going to interfere with the way you're going to be able to listen to this case?
>
> PROSPECTIVE JUROR HUGHES: No. But not much sleep probably will have.

Transcript at 70. Later, when the trial court mentioned Hughes, Garland's attorney stated, "I just don't think he's, he's got the heart problem. His eyes were closed during (inaudible)." Id. at 84-85. The trial court said, "I've not seen that. I'm going to deny the cause." Id. at 85.

On appeal, Garland argues that prospective juror Hughes's answers presented a concern to his defense and "were ambiguous, equivocal, and conflicting, and therefore were cause for exclusion." Appellant's Brief at 4. However, Garland did not challenge Hughes on these bases during voir dire. Rather, when the trial court mentioned Hughes,

Garland's attorney mentioned that Hughes had a heart problem and that his eyes were closed. Because Garland challenged Hughes on a different basis at trial than he does on appeal, Garland has waived the arguments he now raises on appeal. See Morgan v. State, 755 N.E.2d 1070, 1076 (Ind. 2001) ("Defendant's argument on appeal is different than his argument at trial, and his objection is therefore waived."); Small v. State, 736 N.E.2d 742, 747 (Ind. 2000) ("A defendant may not raise one ground for objection at trial and argue a different ground on appeal."); Lehman v. State, 730 N.E.2d 701, 703 (Ind. 2000) ("When . . . a defendant presents one argument at trial and a different argument on appeal, the claims are forfeited.").

B. Prospective Juror Moore

Garland mentions prospective juror Moore and the trial court's denial of his challenge to Moore but does not develop an argument regarding juror Moore. Thus, Garland has waived this argument. See Cooper v. State, 854 N.E.2d 831, n.1 (Ind. 2006) (holding that the defendant's contention was waived because it was "supported neither by cogent argument nor citation to authority"); Shane v. State, 716 N.E.2d 391, 398 n.3 (Ind. 1999) (holding that the defendant waived argument on appeal by failing to develop a cogent argument).

Waiver notwithstanding, we will address Garland's argument. The following exchange occurred during voir dire:

> [Garland's Attorney]: . . . If the Defendant does not testify, will that prejudice your decision in coming up with, with a verdict?
>
> PROSPECTIVE JUROR MOORE: No.

Transcript at 78. Garland's attorney challenged prospective juror Moore because "she thought she'd hold it against the client if he didn't testify." Id. at 85. The trial court denied Garland's challenge. Based on the record, we conclude that the trial court's decision to deny Garland's challenge was not illogical or arbitrary. See, e.g., Smith v. State, 730 N.E.2d 705, 708 (Ind. 2000) (holding that the trial court's denial of defendant's challenge for cause to a prospective juror was not illogical or arbitrary), reh'g denied; Fox v. State, 717 N.E.2d 957, 962 (Ind. Ct. App. 1999) (holding that the trial court's decision was not illogical or arbitrary when the questioning revealed that the juror could render a fair and impartial verdict), reh'g denied, trans. denied.

C. Prospective Juror Felicijan

Garland argues that prospective juror Felicijan was biased or prejudiced against him and points to the following exchange:

> [Garland's Attorney]: . . . If the Defendant decides not to testify at the trial, do you think that will prejudice your decision?
>
> PROSPECTIVE JUROR FELICIJAN: I think, I think that I would be curious as to why, why the Defendant wouldn't testify. It, it may be an indication that he's, there's something he doesn't want to incriminate himself or something like that.
>
> [Garland's Attorney]: So it may point to guilt?

PROSPECTIVE JUROR FELICIJAN: Possibly.

[Garland's Attorney]: So if you're on the jury and the Defendant doesn't testify and we're up to the eighty percent range and you wish you had some answers and you're just going to bump it up to ninety-five range, percent, say, you know, had he testified, you know, there must be something so he must be guilty?

PROSPECTIVE JUROR FELICIJAN: No.

[Garland's Attorney]: So you're going to set that aside that he has a right to testify and doesn't have to explain to anyone why he does not.

PROSPECTIVE JUROR FELICIJAN: Yes I believe that's true. I believe at that point then he's, he's going to have to rely on his attorney.

[Garland's Attorney]: Okay. So the burden's on me then.

PROSPECTIVE JUROR FELICIJAN: Right.

* * * * *

SIDEBAR

THE COURT: Your cause is for?

[Garland's Attorney]: Well he, he said the burden was on me, not the State.

THE COURT: He doesn't know what burden means. Okay, that's denied.

Transcript at 110-112.

According to the exchange, Felicijan indicated that he would not take Garland's failure to testify into consideration. Further, the State points out that Felicijan did not use the word "burden" and that Gardner's attorney did not define the term "burden."

Appellee's Brief at 7. Based on the record, we cannot say that the trial court's decision to deny Garland's challenge was illogical or arbitrary. See, e.g., Smith, 730 N.E.2d at 708; Fox, 717 N.E.2d at 962.

II.

The next issue is whether there was sufficient evidence to convict Garland of residential entry as a class D felony. When reviewing the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). We do not assess witness credibility or reweigh the evidence. Id. We consider conflicting evidence most favorably to the trial court's ruling. Id. We affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." Id. (quoting Jenkins v. State, 726 N.E.2d 268, 270 (Ind. 2000)). It is not necessary that the evidence overcome every reasonable hypothesis of innocence. Id. at 147. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. Id.

The offense of residential entry as a class D felony is governed by Ind. Code § 35-43-2-1.5, which provides that "[a] person who knowingly or intentionally breaks and enters the dwelling of another person commits residential entry, a Class D felony." Thus, the State was required to prove beyond a reasonable doubt that Garland knowingly or intentionally broke and entered the dwelling of another person.

Garland argues that the State failed to prove beyond a reasonable doubt that he did not have the legal authority to be at the residence. The record reveals that the only names on the lease for Belinda's house were Belinda's and those of her daughter and son. On a few occasions, Garland stayed at Belinda's house but not more than three days at a time. Belinda testified that Garland was not living with her at the time and that they had not "lived together for any real length of time as husband and wife" since 2002. Transcript at 166. Rather, Garland was living with his girlfriend at the time. Since 2002, Garland had not paid living expenses or rent and did not receive mail at Belinda's residence. Belinda testified that she did not give Garland permission to come into her home and that he never had a key to her house. Given the facts of the case, we conclude that the State presented evidence of a probative nature from which a reasonable trier of fact could find Garland guilty of residential entry as a class D felony. See, e.g., Poore v. State, 681 N.E.2d 204, 208 (Ind. 1997) (holding that the evidence was sufficient to sustain defendant's conviction for residential entry as a class D felony); Mitchell v. State, 712 N.E.2d 1050, 1055 (Ind. Ct. App. 1999) (holding that the evidence was sufficient to prove beyond a reasonable doubt the elements of residential entry).

For the foregoing reasons, we affirm Garland's conviction for residential entry as a class D felony.

Affirmed.

BAKER, C. J. and MATHIAS, J. concur