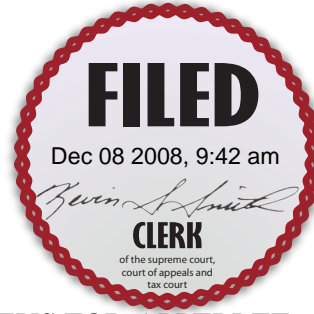


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

STEVEN COOK,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 49A05-0803-CR-171

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robert Altice, Judge
Cause No. 49G02-0710-FB-210294

December 8, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Following a bench trial, Steven Cook was convicted of Burglary¹ as a class B felony, Theft² as a class D felony, and Resisting Law Enforcement³ as a class D felony. As the sole issue on appeal, Cook challenges the sufficiency of the evidence only as to his burglary conviction.

We affirm.

The facts most favorable to the conviction follow. In October 2007, Samantha Price and her roommate, Liliya Romanova, lived at 1138 Racquet Club South Drive, Apartment C, in the Pickwick Apartments. During the afternoon of October 3, 2007, Joshua Harrell was asleep in his apartment located at 1138 Racquet Club South Drive, Apartment D, which was located next to Price and Romanova's apartment, when he was awakened by a loud noise at his front door that sounded as though someone was trying to kick the door down.⁴ Harrell got up, went to his front door, and peered out into the common area through a peephole in the door. Harrell saw Cook repeatedly enter Apartment C empty handed and then leave carrying items, including a television, a video recorder, a number of remote controls, and other electronic devices. Harrell also watched as Cook placed the items into a green Jeep Cherokee parked outside. Harrell called the police and reported the burglary, describing Cook's clothing and general appearance.

Officer Brian McCann of the Indianapolis Metropolitan Police Department responded to the dispatch of a burglary in progress. As Officer McCann arrived at the Pickwick

¹ Ind. Code Ann. § 35-43-2-1 (West, Premise through 2007 1st Regular Sess.).

² I.C. § 35-43-4-2 (West, Premise through 2007 1st Regular Sess.).

³ Ind. Code Ann. § 35-44-3-3 (West, Premise through 2007 1st Regular Sess.).

Apartments, he observed Cook, who matched the description given by Harrell in his 911 call, standing in front of the apartment next to a green Jeep Cherokee. As he drove past, Officer McCann made eye contact with Cook and also observed that the Jeep was filled with “numerous items”. *Transcript* at 48. As Officer McCann was turning his marked police cruiser around, he saw Cook get into the Jeep and drive away. A second officer, Daniel Kistner, arrived on the scene and began following Cook. McCann and Kistner initiated a stop of Cook’s vehicle and Cook initially complied and pulled over. Cook then sped off. Cook was eventually apprehended. Inside Cook’s Jeep police found electronic items, including a television, speakers, DVD player, VCR, laptop computer, and a number of remote controls, that Price and Romanova identified as belonging to them and as taken from their apartment. Price and Romanova did not know Cook and never gave him permission to enter their apartment or take property from it. Harrell also identified Cook as the man he saw removing items from Price and Romanova’s apartment.

On October 5, 2007, the State charged Cook with five counts: Count I, burglary as a class B felony; Count II, resisting law enforcement as a class D felony; Counts III and IV, resisting law enforcement as class A misdemeanors; and Count V, theft as a class D felony. A bench trial was held on February 19, 2008, at the conclusion of which the court found Cook guilty of Counts I, II, and V and acquitted him of Counts III and IV. At a sentencing hearing conducted on February 27, 2008, the trial court sentenced Cook to an aggregate sentence of ten years.

⁴ Later, Harrell learned that the lock to his front door had been broken.

On appeal, Cook challenges the sufficiency of the evidence only as to his conviction for burglary. To sustain a conviction for class B felony burglary, the State was required to prove that Cook broke and entered a dwelling with the intent to commit a felony in it – in this case, theft. *See* I.C. § 35-43-2-1(1)(B)(i).

Our standard of review for a challenge to sufficiency is well settled. When considering a challenge to the sufficiency of evidence to support a conviction, we respect the fact-finder’s exclusive province to weigh the evidence and therefore neither reweigh the evidence nor judge witness credibility. *McHenry v. State*, 820 N.E.2d 124 (Ind. 2005). We consider only the probative evidence and reasonable inferences supporting the verdict, and “must affirm ‘if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.’” *Id.* at 126 (*quoting Tobar v. State*, 740 N.E.2d 109, 111-12 (Ind. 2000)). “‘Where circumstantial evidence is used to establish guilt, the question for the reviewing court is whether reasonable minds could reach the inferences drawn by the [fact-finder]; if so, there is sufficient evidence.’” *Klaff v. State*, 884 N.E.2d 272 (Ind. Ct. App. 2008) (*quoting Maxwell v. State*, 731 N.E.2d 459, 462 (Ind. Ct. App. 2000), *trans. denied*).

Cook argues that “reasonable minds could not have reached the decision to find Mr. Cook had burglarized the Pickwick Place Apartment beyond a reasonable doubt” given the size, volume, and number of items stolen and the short time span (forty-eight minutes) that Cook had between the time stamp on his arriving at a gravel pit at 2:00 p.m. for his employer, returning to his place of employment with a load, and the 911 call reporting the burglary. *Appellant’s Brief* at 10-11. Under such circumstances, Cook asserts that his version of events

is more believable, i.e., that another individual identified as Skeeter or someone else burglarized the apartment, summoned Cook to that location, and then helped him load the items into his car. In setting forth his argument, Cook misstates the evidence that was presented, claiming that Harrell never identified him as the individual going in and out of the apartment and that more than one person carried items from the apartment to Cook's car.

Essentially, Cook is requesting that we credit his version of events. To do so would require us to reweigh the evidence and judge the credibility of the witnesses. We decline his invitation to do so. In reviewing the evidence, we begin with Harrell's testimony, an eyewitness to the crime. Contrary to Cook's assertion, Harrell testified that he saw only Cook going into apartment C and carrying items out:

- Q: Did you kind of check out – did you continue to hear banging?
A: Yeah. And that's when I walked downstairs and I looked at the doorway and I seen him walking into the apartment with a bag over his hand.
Q: Okay. You say "walked downstairs" you mean downstairs from the loft in your apartment?
A: Yeah.
Q: And how did you look out to see this happening?
A: Through the hole in the door.
Q: The peephole in your door? Now if I remember right your neighbor, is that across from your door, or next to you?
A: Next to me.
Q: Okay. And from looking out that peephole you saw somebody walking into your neighbor's [sic] apartment?
A: Uh-huh.
Q: Do you remember the description of that person?
A: He had on blue work pants and a white shirt.
Q: Okay. Was he white or black?
A: He was light skinned.
Q: Okay. Do you see the person in the courtroom today you saw walking into your neighbors' apartment?
A: Yes, sir.
Q: Would you please point him out and describe what he's wearing.

* * *

[PROSECUTOR]: Would the record please reflect the witness identified the Defendant here?

THE COURT: It will so reflect.

Q: Was he with anybody?

A: Hunt-uh, he was by himself, from where I seen.

Q: Is that a no? I'm sorry. I just need you to say yes or no when you answer.

A: No.

Q: What did you watch him do?

A: I watched him go in and out of the apartment with different electronics and stuff into his car.

* * *

Q: Aside form [sic] [Cook] did you see anybody enter that apartment and take anything out of it?

A: Hunt-uh.

Transcript at 69-71.

Harrell further testified on cross-examination:

Q: In fact, you can't see apartment C's door [i.e., the door to Price and Romanova's apartment] from your peephole, can you?

A: You can see people walking in and out of it.

Q: You cannot see the door from your peephole, can you?

A: No.

Q: Right. What you can see is that there are people on the landing next to the door, you can see them, but you can't actually see people going in or out of the door from your peephole can you?

A: You can see if there's no one outside if they go inside, yes, you can.

Id. at 76. Harrell's testimony is direct proof that Cook entered the apartment and stole property from it. Harrell's testimony, together with the testimony of Price, Romanova, and officers McCann and Kistner, is sufficient evidence to sustain Cook's conviction for class B felony burglary. The trial court was entitled to reject Cook's version of events.

Judgment affirmed.

MAY, J., and BRADFORD, J., concur