

## MEMORANDUM DECISION

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IN THE  
**Court of Appeals of Indiana**

Richard A. Evans,  
*Appellant-Defendant*

v.

State of Indiana,  
*Appellee-Plaintiff*



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April 29, 2024

Court of Appeals Case No.  
23A-CR-2564

Appeal from the Marion Superior Court  
The Honorable Cynthia L. Oetjen, Judge

Trial Court Cause No.  
49D30-2204-F1-10336

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**Memorandum Decision by Judge Bradford**  
Chief Judge Altice and Judge Felix.

## **Bradford, Judge.**

### Case Summary

- [1] Richard Evans was charged with and convicted of Level 1 felony burglary and Level 5 felony battery by means of a deadly weapon after he entered his neighbor's home without permission and beat him with a piece of rebar, causing the neighbor to suffer serious bodily injury. Evans contends on appeal that the evidence is insufficient to sustain his conviction for Level 1 felony burglary. We affirm.

### Facts and Procedural History

- [2] In April of 2022, Meguel Ramirez lived on South Hawthorne Street in Indianapolis with his girlfriend Georgia Osman and Osman's daughter. Evans lived in a neighboring home.
- [3] After Ramirez had returned home from work on April 11, 2022, he was seated at the kitchen table preparing food when he heard the door open. Evans entered Ramirez's home, without permission or knocking, holding a piece of "rebar in his hand." Tr. Vol. II p. 106. Evans hit Ramirez with the rebar, striking him in the ribs and on the head. Ramirez bent over in an attempt to protect himself and did not fight back. He remembered being hit two or three times in the head before losing consciousness.
- [4] During the attack, Osman, who had been in another room, heard Evans yell "[y]ou're gonna f[\*\*\*]ing respect me. I'll f[\*\*\*]ing kill you." Tr. Vol. II p. 122.

After the attack, Ramirez was bleeding from his “whole face” and his blood was splattered around the kitchen. Tr. Vol. II p. 107. As a result of the attack, Ramirez suffered significant pain and “couldn’t feel [his] hands.” Tr. Vol. II p. 108. He also suffered fractured fingers and ribs, a lost tooth, vision problems, and a head wound.

[5] Later that day, Evans told police that he had been involved in an incident with Ramirez the week before when he had been burning leaves at 11:00 p.m. and Ramirez had come to his home and asked him to stop. Evans claimed that he had been “fed up” after the leaf-burning incident and admitted that he had gone to Ramirez’s residence armed with rebar and had entered without permission. Ex. 32 at 3:06–3:07. Evans made derogatory comments about Ramirez and blamed the severity of Ramirez’s injuries on the fact that Ramirez had allegedly ducked down and lowered his head during the attack. Evans stated that he had told Ramirez “don’t you ever disrespect me again” but claimed that he had only intended “to hurt [Ramirez] a little bit.” Ex. 32 at 4:16–4:20, 4:55–4:58.

[6] On April 18, 2022, the State charged Evans with Level 1 felony burglary and Level 5 battery by means of a deadly weapon. As of trial, Ramirez was still struggling with his injuries and testified that he could not “use [his] hands very well anymore, I can’t work like I used to. I still have problems with my ribs and my head, [and] sometimes I feel -- I get dizzy spells.” Tr. Vol. II p. 110. After a jury found Evans guilty as charged, the trial court sentenced Evans to an aggregate twenty-year term, with fifteen years executed in the Department of Correction and five years executed in community corrections.

## Discussion and Decision

- [7] Evans contends that the evidence is insufficient to sustain his conviction for Level 1 felony burglary.

When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable factfinder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

*Drane v. State*, 867 N.E.2d 144, 146–47 (Ind. 2007) (cleaned up). Stated differently, in reviewing the sufficiency of the evidence, “we consider only the evidence and reasonable inferences most favorable to the convictions, neither reweighing evidence nor reassessing witness credibility[,]” and “affirm the judgment unless no reasonable factfinder could find the defendant guilty.” *Griffith v. State*, 59 N.E.3d 947, 958 (Ind. 2016).

- [8] “A person who breaks and enters the building or structure of another person, with the intent to commit a felony or theft in it, commits burglary, a Level 5 felony.” Ind. Code § 35-43-2-1. However, the offense is “a Level 1 felony if:

(A) the building or structure is a dwelling; and (B) it results in serious bodily injury to any person other than a defendant.” Ind. Code § 35-43-2-1(4).

A criminal conviction of burglary requires proof beyond a reasonable doubt of a specific criminal intent which coincides in time with the acts constituting the breaking and entering. The State need not establish by direct evidence that an individual possessed a specific intent; circumstantial evidence will suffice. Typically, the intent to commit a felony can be inferred from the subsequent conduct of the individual inside the premises or by the manner in which the crime was committed.

*Johnson v. State*, 605 N.E.2d 762, 765 (Ind. Ct. App. 1992) (internal citations omitted), *trans. denied*.

[9] In challenging the sufficiency of the evidence to sustain his conviction, Evans argues that the record establishes that he had only intended to hurt Ramirez “a little bit,” meaning that he had “intended to commit only misdemeanor battery, not a felony.” Appellant’s Br. p. 8. While Evans is correct that some acts of battery are misdemeanors, other acts of battery are felonies. For instance, battery is a Level 6 felony offense if it “results in moderate bodily injury to any other person.” Ind. Code § 35-42-2-1(e). Battery is a Level 5 felony offense if it “results in serious bodily injury to another person” or “is committed with a deadly weapon.” Ind. Code § 35-42-2-1(g).

[10] The jury heard evidence that Evans had entered Ramirez’s home armed with a rod of steel rebar, which Evans had estimated as being about two-and-one-half feet long, and had hit Ramirez multiple times in the head with it. The question

of whether an object qualifies as a “deadly weapon” is a question of fact to be determined from a description of the object, the manner of its use, and the circumstances of the case. *Gleason v. State*, 965 N.E.2d 702, 708 (Ind. Ct. App. 2012). Evans does not argue that the rebar could not qualify as a deadly weapon and we have no hesitation in concluding that, given the manner in which Evans had used the rebar, the jury could have reasonably found the rebar to be a deadly weapon. Moreover, Evans had yelled “I’ll f[\*\*\*]ing kill you” as he was hitting Ramirez, suggesting that he had intended to kill Ramirez with the rebar, or, at the very least, had been aware of the possibility that striking someone with rebar could result in death. Tr. Vol. II p. 122. From these facts alone, the jury could have reasonably inferred that Evans had intended to commit Level 5 felony battery when he entered Ramirez’s home, as he had used a deadly weapon during the commission of the battery.

[11] Evans’s conviction is also supported by the inferred intent regarding the level of injuries sustained by Ramirez. Again, an act of battery is a felony if it results in either moderate or serious bodily injury to another. *See* Ind. Code § 35-42-2-1(e) & (g). As mentioned, Ramirez had suffered the following injuries as a result of Evans’s actions: lost consciousness, bleeding from his “whole face,” Tr. Vol. II p. 107, significant pain, “couldn’t feel [his] hands,” fractured fingers and ribs, a lost tooth, vision problems, and a head wound. Tr. Vol. II p. 108. Even as of trial, Ramirez was still struggling with his injuries and had testified that he could not “use [his] hands very well anymore, I can’t work like I used to. I still have problems with my ribs and my head, [and] sometimes I feel -- I

get dizzy spells.” Tr. Vol. II p. 110. While Evans claimed that he had only intended to “hurt [Ramirez] a little bit,” Ex. 32 at 4:55–4:58, he does not dispute that the injuries actually suffered by Ramirez were serious, and the evidence detailing Ramirez’s injuries supports a reasonable inference that Evans had intended to cause serious bodily injury to Ramirez.<sup>1</sup> Evans’s claim to the contrary amounts to nothing more than a request for this court to reweigh the evidence, which we will not do. *See Griffith*, 59 N.E.3d at 958.

[12] The judgment of the trial court is affirmed.

Altice, C.J., and Felix, J., concur.

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<sup>1</sup> Having concluded that the evidence supports a reasonable inference that Evans had intended to commit a felony when he entered Ramirez’s home, we further conclude that Evans’s reliance of the Indiana Supreme Court’s opinion in *Freshwater v. State*, 853 N.E.2d 941, 944–45 (Ind. 2006), is unavailing. The reasonable inference of Evans’s intent differentiates the instant case from *Freshwater*, in which the Indiana Supreme Court concluded that the evidence had been insufficient to prove that the defendant had intended to commit a felony or theft therein when he had entered a car wash without permission.