

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.

ATTORNEY FOR APPELLANT:

BEAU J. WHITE
Marion, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

RICHARD C. WEBSTER
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

GUS N. LEFTAKES,)
)
Appellant-Defendant,)
)
vs.) No. 27A05-0603-CR-160
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE GRANT SUPERIOR COURT
The Honorable Jeffrey D. Todd, Judge
Cause No. 27D01-0403-FD-32

December 20, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Gustin Leftakes appeals his conviction for Class D felony residential entry. We affirm.

Issue

Leftakes raises one issue, which we restate as whether there is sufficient evidence to support his conviction.

Facts

At approximately 2:00 a.m. on January 12, 2004, Leftakes rang the security buzzer of the apartment of Victoria Gilbert. Leftakes sounded “garbled” through the speaker and Gilbert thought it was her neighbor, Aaron Troyer. Tr. p. 159. Gilbert believed that Troyer was locked out of his apartment, and she unlocked the main door to the common area of the apartment building. Thinking that Troyer might also be locked out of his actual apartment, Gilbert started to open the door to her apartment to see if she could further help Troyer. As she opened her door approximately one and half to two feet she saw Leftakes standing in front of her door. While Gilbert was standing in front of the door, Leftakes “pushed right by” her and entered her apartment. Id. at 168. Leftakes used Gilbert’s restroom and phone and, after her repeated requests, he left her apartment.

On March 3, 2004, the State charged Leftakes with Class D felony criminal confinement, Class D felony residential entry, and Class A misdemeanor trespass. The State later added an additional charge of Class B misdemeanor public intoxication. A jury found Leftakes guilty of the residential entry and trespass charges. Leftakes now appeals his conviction for residential entry.

Analysis

When faced with a challenge to the sufficiency of evidence to support a conviction, we neither reweigh the evidence nor judge the credibility of the witnesses, and we respect the jury's exclusive province to weigh conflicting evidence. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). We must consider only the probative evidence and reasonable inferences supporting the verdict. Id. If the probative evidence and reasonable inferences drawn therefrom could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt, we must affirm. Id.

Residential entry is defined as knowingly or intentionally breaking and entering the dwelling of another person. Ind. Code § 35-43-2-1.5. "A person engages in conduct 'intentionally' if, when he engages in the conduct, it is his conscious objective to do so." I.C. § 35-41-2-2(a). "A person engages in conduct 'knowingly' if, when he engages in the conduct, he is aware of a high probability that he is doing so." I.C. § 35-41-2-2(b). A person's intent may be determined from his or her conduct and the natural consequences thereof and intent may be inferred from circumstantial evidence. Chatham v. State, 845 N.E.2d 203, 206 (Ind. Ct. App. 2006).

Leftakes first argues that he neither knowingly nor intentionally broke and entered Gilbert's apartment. Leftakes contends that he reasonably believed Gilbert was inviting him into her apartment to lend assistance. He points to the fact that after he was inside Gilbert's apartment he used Gilbert's phone to call the landlord and that the landlord later let Leftakes into his apartment. Although Leftakes may have in fact been locked out of his apartment, this evidence does not show that Gilbert invited Leftakes into her

apartment. Gilbert testified that when she opened the door to her apartment at 2:00 a.m. she did not recognize Leftakes and did not expect to see him. She also stated that as she opened the door one and half to two feet, she stood in front of the opening. We cannot conclude that the mere act of opening her door one and half to two feet and standing in front of the opening supported a reasonable belief that Gilbert was inviting Leftakes to enter her apartment.

Further, Gilbert testified Leftakes “walked straight in” to her apartment and that to gain entry into her apartment, he “jus’ walked right on pushed me, right on by an’ came right inside the apartment itself.” Tr. pp. 167-68. This evidence indicates that when Leftakes entered Gilbert’s apartment he was aware of a high probability that he was entering another person’s dwelling or he entered the apartment with conscious objective to do so. There is sufficient evidence that Leftakes knowingly or intentionally entered Gilbert’s apartment.

Leftakes also argues that there is insufficient evidence that he broke into Gilbert’s apartment. As our supreme has observed, “The use of the slightest force in pushing aside a door in order to enter does constitute a breaking through the doorway.” Vasquez v. State, 762 N.E.2d 92, 95 (Ind. 2001) (quotations and citations omitted). Here, Gilbert testified that Leftakes “pushed right by” her. Tr. p. 168. Gilbert stated that to gain entry to her apartment, Leftakes’s body came in contact with her body and the door. Gilbert also testified that had her body not been moved by that contact, Leftakes could not have entered the apartment. Gilbert also testified that when Leftakes entered her apartment he caused the door to move. See id. at 246.

Although Leftakes points to Gilbert’s testimony on cross-examination in which she stated Leftakes “brushed” her and the door with his shoulder as he entered the apartment, this amounts to a request to reweigh the evidence. Id. at 215. We must decline this request. The evidence of Leftakes pushing past Gilbert is sufficient evidence of force. Therefore, there is sufficient evidence that Leftakes’s entry constituted a breaking as required by the statute.

Conclusion

There is sufficient evidence that Leftakes knowingly or intentionally broke and entered Gilbert’s apartment. We affirm.

Affirmed.

BAILEY, J., and VAIDIK, J., concur.