

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20050075-CA
v.)	
)	
Kendal Jacob Davis,)	F I L E D
)	(March 16, 2006)
)	
Defendant and Appellant.)	<u>2006 UT App 101</u>

Third District, Salt Lake Department, 041902269
The Honorable J. Dennis Frederick

Attorneys: Linda M. Jones and Lisa J. Remal, Salt Lake City, for
Appellant
Mark L. Shurtleff and Christine Soltis, Salt Lake
City, for Appellee

Before Judges Bench, Davis, and Thorne.

BENCH, Presiding Judge:

Defendant Kendal Davis appeals a conviction of burglary, a second-degree felony, in violation of Utah Code section 76-6-202. See Utah Code Ann. § 76-6-202 (2003). Davis contends that the evidence was insufficient to support the conviction.

This court will uphold a jury verdict unless "the evidence[, when viewed in the light most favorable to the verdict,] is so inconclusive or inherently improbable that reasonable minds must have entertained a reasonable doubt that the defendant committed the crime." State v. Gonzales, 2000 UT App 136, ¶10, 2 P.3d 954 (quotations and citation omitted). "So long as there is some evidence, including reasonable inferences, from which findings of all the requisite elements of the crime can reasonably be made, [the appellate court's] inquiry stops." State v. Brooker, 709 P.2d 342, 345 (Utah 1985).

The jury convicted Davis pursuant to section 76-6-202(1)(c), which provides that "[a]n actor is guilty of burglary if he enters or remains unlawfully in a building or any portion of a building with intent to commit: . . . (c) an assault on any person." Utah Code Ann. § 76-6-202(1)(c). Davis specifically

asserts that the evidence did not support a finding that he had the intent to commit an assault.

The Utah Supreme Court has held "that a person is guilty of burglary under section 76-6-202(1) if he forms the intent to commit a felony, theft, or assault at the time he unlawfully enters a building or at any time thereafter while he continues to remain there unlawfully." State v. Rudolph, 970 P.2d 1221, 1229 (Utah 1998). Therefore, even if Davis did not have the requisite intent upon entering the home, the evidence supports a finding that he formed the intent to assault thereafter when he stomped on Ken's foot.¹ Davis argues that because Ken physically stopped him from escaping, Davis could lawfully respond with force. We find no basis in the law to support this argument. Thus, the evidence is sufficient for a conviction of burglary with the intent to commit assault pursuant to Utah Code section 76-6-202.

Accordingly, we affirm.

Russell W. Bench,
Presiding Judge

WE CONCUR:

James Z. Davis, Judge

William A. Thorne Jr., Judge

¹The State points to other plausible evidence to support the conviction. In particular, the State asserts that the evidence supports a finding of intent to commit an assault on Alyssa. Because we conclude that Davis's actions in regards to Ken established the requisite intent, we do not need to consider this alternate argument.