MEMORANDUM DECISION

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

Phillip Bernard Bibbs,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 27, 2021

Court of Appeals Case No. 21A-CR-578

Appeal from the Marion Superior Court

The Honorable Sheila A. Carlisle, Judge
The Honorable Stanley Kroh, Magistrate

Trial Court Cause No. 49D29-2009-F5-28281

Pyle, Judge.

Statement of the Case

[1] Phillip Bibbs, Jr. ("Bibbs") appeals his conviction, following a bench trial, for Level 6 felony residential entry.[1] He contends that there was insufficient evidence to support his conviction. Concluding that the evidence was sufficient to support Bibbs' residential entry conviction, we affirm the trial court's judgment.

[2] We affirm.

Issue

> Whether there is sufficient evidence to support Bibbs' residential entry conviction.

Facts

[3] In September 2020, Bibbs and the mother of his children, T.W. ("T.W."), returned to T.W.'s apartment after visiting T.W.'s mother. T.W. had three children with Bibbs, and T.W. and the three children lived in the apartment. Bibbs and T.W. began arguing after Bibbs discovered an iron on the ground in the apartment. The argument escalated, and Bibbs responded by drawing a handgun and pointing it at T.W. while she was cleaning the kitchen. T.W. screamed, ran into the restroom, and called the police. Meanwhile, Bibbs collected some bags of his belongings and left the apartment. T.W. shut the apartment door, and Bibbs knocked on it a few minutes later. T.W. told Bibbs

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[1] IND. CODE § 35-43-2-1.5.

that "there's nothing else in here for you[.]" (Tr. Vol. 2 at 18). T.W. then opened the front door of her apartment, brushed passed Bibbs, and went to her car to wait for the police. Bibbs was not found that day, and T.W. stayed at her sister's home that night.

[4] The next morning, T.W. returned to her apartment to prepare her children for school and daycare. After the children had left, T.W. returned home and began working her remote customer service job. Bibbs knocked on T.W.'s apartment door later that morning. Bibbs knocked with increasing intensity before he kicked the locked door in, damaging the door frame. Bibbs then punched T.W. repeatedly in the face, chest, and arms. While he struck her, Bibbs said, "[y]ou going to quit playing with me, you going to quit doing me like this[.]" (Tr. Vol. 2 at 23). Afterward, Bibbs fled the apartment.

[5] T.W. immediately called the police. She also went to the leasing office of her apartment to ask maintenance to repair her door and frame. The police arrived ten minutes later. Later that day, T.W. received messages from Bibbs' Facebook Messenger account stating, "[y]ou know me all you could've done was open the door[.]" (State's Ex. 3-4).

[6] The State charged Bibbs with Level 6 felony residential entry.[2] A bench trial was held in March 2021. T.W. testified at the bench trial. She explained that

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[2] The State also charged Bibbs with Level 5 felony intimidation with a deadly weapon, Level 5 felony pointing a firearm, Level 5 felony domestic battery, and Level 6 felony invasion of privacy. The trial court

she and her children were listed on the apartment lease and that Bibbs was not. She also stated that Bibbs neither helped pay for rent at the apartment nor paid any bills for the apartment. When asked if Bibbs had a key to the apartment, T.W. testified "[n]o, because he kicked the door in. If he had the key, he just would have used it." (Tr. Vol. 2 at 22).

[7] The trial court found Bibbs guilty of residential entry. The trial court addressed the credibility of T.W. when it made its decision, explaining that "the Court believes [T.W.] testified to the truth today and there is corroborating evidence to it[.]" (Tr. Vol. 2 at 68).

[8] Bibbs now appeals.

Decision

[9] Bibbs argues that the evidence was insufficient to support his Level 6 felony residential entry conviction. Our standard of review for sufficiency of the evidence claims is well settled. We 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 reweigh the evidence or judge witness credibility. *Id.* We will affirm the conviction unless no reasonable fact finder could find the elements of the crime proven beyond a reasonable doubt. *Id.* at 146-47. The

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found Bibbs guilty of Level 6 felony residential entry, Class A misdemeanor pointing a firearm (for pointing an unloaded firearm), and Class A misdemeanor domestic battery. However, Bibbs only challenges his residential entry conviction on appeal.

evidence is sufficient if an inference may be reasonably drawn from it to support the verdict. *Id.* at 147.

[10] INDIANA CODE § 35-43-2-1.5 provides that "[a] person who knowingly or intentionally breaks and enters the dwelling of another person commits residential entry[.]" Bibbs argues that "the State did not prove that the apartment that . . . Bibbs broke and entered was actually the dwelling of another person." (Bibbs' Br. 7). We disagree.

[11] Our review of the record reveals that T.W. and the three children lived at the apartment and were named on the apartment's lease. However, Bibbs was not listed on the lease. Bibbs did not have a key to T.W.'s apartment, did not pay rent towards T.W.'s apartment, and did not contribute to any bills for T.W.'s apartment. Bibbs' argument amounts to a request to reweigh the evidence, which we will not do. *See Drane*, 867 N.E.2d at 146. Given all of these facts, the trial court, as a fact finder in the bench trial, had sufficient evidence to make a reasonable inference that Bibbs broke and entered the dwelling of another person. Therefore, we conclude that the evidence was sufficient to support Bibbs' residential entry conviction.

[12] Affirmed.

Bailey, J., and Crone, J., concur.