

## 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

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Joseph David Howard, Jr.,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

August 13, 2021

Court of Appeals Case No.  
21A-CR-25

Appeal from the Grant Circuit  
Court

The Honorable Mark E. Spitzer,  
Judge

Trial Court Cause No.  
27C01-1908-F2-21

**Crone, Judge.**

## Case Summary

- [1] Joseph David Howard, Jr., appeals his conviction, following a jury trial, for level 2 felony burglary resulting in serious bodily injury. He contends that the State presented insufficient evidence to support his conviction. Finding the evidence sufficient, we affirm.

## Facts and Procedural History

- [2] On April 16, 2019, Tami Creamer was spending time with her daughter, Rachel Perry, at the apartment where both women resided. Howard and his friend came to the apartment and asked Perry to sell them some of her prescribed Suboxone, but she refused. The men left but later returned to the apartment and knocked on the door and also telephoned Perry. Perry did not answer the door or her phone.
- [3] That night, Creamer went to sleep in the front room of the apartment, and Perry went to sleep in her bedroom. Creamer was awakened sometime between 2:00 and 3:00 a.m. by a “big boom,” and she saw that the apartment door had been kicked in and broken “off the hinges.” Tr. Vol. 2 at 27. Creamer observed a person wearing a mask start to come through the door. Creamer grabbed two butcher knives from the kitchen and ran to Perry’s bedroom.
- [4] Perry held her bedroom door shut as two intruders, one being Howard, tried to push the door in and gain access to the room. Creamer sat straddling the window ledge, thinking that she may need to “hold on to the ledge and drop” down and go get help because the situation “was that severe.” *Id.* As they

pushed on the door, Howard and the other intruder yelled, “[G]ive us the subs,” which Creamer understood to be street slang for Suboxone. *Id.* at 28. Creamer “was in a panic mode” feeling like she “had no other choice[,]” so she held on to the window ledge, dangled herself out the second-story window, and dropped down to the ground below. In doing so, Creamer “landed backwards on a cinder block type thing ... concrete slab” that caused her to break three vertebrae in her back. *Id.* at 29. As she lay on the ground injured, Howard ran by wearing a red hat and mask that both came off, allowing Creamer to see “exactly who he was.” *Id.* Creamer was transported to the hospital, and police officers met her there to show her an array of mugshots, from which she positively identified Howard. Due to the injuries she sustained in the fall, Creamer required emergency spinal surgery that resulted in extensive scarring. She has a limited range of motion while bending, and she continues to experience extreme pain in her legs that requires daily medication.

- [5] The State charged Howard with level 2 felony burglary resulting in serious bodily injury. Following a trial, the jury found him guilty as charged, and the trial court sentenced him to a term of twenty years. This appeal ensued.

## **Discussion and Decision**

- [6] Howard challenges the sufficiency of the evidence to support his level 2 felony burglary conviction. When reviewing the sufficiency of the evidence required to support a criminal conviction, we do not reweigh the evidence or judge the credibility of the witnesses. *Bailey v. State*, 907 N.E.2d 1003, 1005 (Ind. 2009).

Instead, we consider only the evidence supporting the verdict and any reasonable inferences that can be drawn therefrom. *Morris v. State*, 114 N.E.3d 531, 535 (Ind. Ct. App. 2018), *trans. denied* (2019). And we consider conflicting evidence most favorably to the verdict. *Silvers v. State*, 114 N.E.3d 931, 936 (Ind. Ct. App. 2018). “We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt.” *Bailey*, 907 N.E.2d at 1005. It is not necessary for the evidence to overcome every reasonable hypothesis of innocence; it is sufficient if an inference may reasonably be drawn from the evidence to support the verdict. *Silvers*, 114 N.E.3d at 936.

[7] Indiana Code Section 35-43-2-1 provides that “[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.” The offense is a level 2 felony if it results in serious bodily injury to any person other than the defendant. Ind. Code § 35-43-2-1(3)(B).

[8] Howard does not challenge the sufficiency of the State’s proof that he broke and entered Perry and Creamer’s apartment with the intent to commit a theft in it. Nor does he dispute that Creamer suffered serious bodily injury. Rather, his sole assertion on appeal is that Creamer’s act of “jumping out a second story window” in response to the burglary was an intervening cause that broke the chain of causation, and therefore he cannot be held criminally liable for causing her serious bodily injury. Appellant’s Br. at 9. An intervening cause is an independent force that breaks the causal connection between a defendant’s

actions and the victim's injuries. *Watson v. State*, 776 N.E.2d 914, 920 (Ind. Ct. App. 2002). "In order for an intervening cause to break the chain of criminal responsibility, it must be so extraordinary that it would be unfair to hold the [defendant] responsible for the actual result." *Id.*

[9] In *Cannon v. State*, 142 N.E.3d 1039 (Ind. Ct. App. 2020), another panel of this Court explained:

The concept of causation in criminal law is similar to that found in tort law. Like in tort law, the criminal act must be both 1) the actual cause (sometimes called the "cause-in-fact"); and 2) the legal cause (sometimes called the "proximate cause") of the result. Cause-in-fact requires that "but for" the antecedent conduct, the result would not have occurred. If there is more than one cause which precipitates the result, the defendant's action is the cause-in-fact if it is a "substantial factor" in bringing about that result.

Legal or proximate cause is a distinct concept, speaking not to the physical relationship between the actor's conduct and the result, but instead embodying a value judgment as to the extent of the physical consequences of an action for which the actor should be held responsible. Thus, proximate cause questions are often couched in terms of "foreseeability"; an actor is not held responsible for consequences which are unforeseeable. In Indiana, a result is deemed foreseeable if it is a "natural and probable consequence" of the act of the defendant.

In cases where an action of the victim ... affects the chain of causation, foreseeability is again a factor. Such an occurrence is called an "intervening cause", and it becomes a superseding cause breaking the chain of causation if it was not foreseeable. If

an intervening and superseding cause aided in bringing about the result, the defendant is not criminally liable.

*Id.* at 1043 (citing *Bowman v. State*, 564 N.E.2d 309, 313 (Ind. Ct. App. 1990)).

It is well established that causation is a question for the trier of fact. *Gutenstein v. State*, 59 N.E.3d 984, 999 (Ind. Ct. App. 2016), *trans. denied*.

[10] Here, Creamer testified that she awakened to a masked intruder breaking down the door of her apartment. She was so scared for her safety that she grabbed two butcher knives and ran to the bedroom where her daughter was sleeping. When it became clear that there were two intruders and that they intended to force their way into the bedroom, Creamer attempted to flee the dangerous situation and get help through the only available exit point: the second-story window. Based upon the evidence presented, it was quite reasonable for the jury to conclude that Creamer's behavior was a natural and probable consequence of Howard's criminal act and therefore foreseeable. Indeed, a burglary victim's attempt to flee out a window is not so extraordinary that it would be unfair to hold Howard responsible for the actual result. In short, Howard's breaking and entering of Perry and Creamer's apartment with the intent to commit a theft in it was the proximate cause of Creamer's injuries, and her action of climbing out the window was not an intervening cause that broke the chain of causation. Howard's arguments to the contrary are simply a request to reweigh the evidence, which we will not do. Sufficient evidence supports Howard's conviction for level 2 felony burglary resulting in serious bodily injury.

[11] Affirmed.

Bailey, J., and Pyle, J., concur.