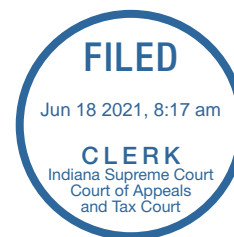


## MEMORANDUM DECISION

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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David Len Pace,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

June 18, 2021

Court of Appeals Case No.  
21A-CR-94

Appeal from the St. Joseph  
Superior Court

The Honorable Jeffrey L. Sanford,  
Judge

Trial Court Cause No.  
71D03-1906-F4-39

**May, Judge.**

[1] David Len Pace challenges the sufficiency of evidence supporting his conviction of Level 4 felony burglary.<sup>1</sup> We affirm.

## Facts and Procedural History

[2] On May 16, 2018, George McGookin returned to his apartment in Mishawaka, Indiana, after a long-haul delivery job. When McGookin approached his apartment, he noticed the door was open. Inside, McGookin found things strewn about, which was unlike how he left his apartment, so he called the police.

[3] Officer Brian Long and Officer Kyle Miner arrived, and McGookin reported several missing items, including a TV, two guns, money, a watch set, two screw guns, and some paperwork. Police also found a cigarette butt and a crowbar in the apartment. McGookin did not own the crowbar, and he reported that neither he nor anyone else smoked in his apartment. Officer Long collected the crowbar and cigarette butt for DNA testing. The crowbar had no fingerprints, but police sent a swab from the cigarette butt to the lab for analysis.

[4] On September 17, 2018, Detective Scott Robinson found Pace with Martell Murphy, a former resident of McGookin's apartment complex, at CheckSmart in Mishawaka. Detective Robinson learned from one of McGookin's neighbors that Murphy had called the neighbor prior to the burglary to determine whether

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<sup>1</sup> Ind. Code § 35-43-2-1(1).

McGookin was out of town. The police questioned Pace about the burglary at McGookin's apartment. Pace identified the location of McGookin's apartment as one he had visited prior with Murphy but claimed he knew nothing about a burglary. Additionally, Pace told the police they would not find his DNA in McGookin's apartment because Murphy had moved out of a different apartment over a year and a half prior. Shortly thereafter, Detective Robinson executed a warrant for Pace's DNA and collected a DNA sample to compare to the DNA from the cigarette butt. The lab compared the samples and determined the DNA on the cigarette butt matched Pace's DNA.

[5] On June 4, 2019, the State charged Pace with Level 4 felony burglary. A jury trial began on October 12, 2020. At trial, Pace testified that he went inside an apartment he thought belonged to Murphy but indicated he could not remember the date of that visit. The apartment was actually McGookin's apartment. Pace testified that he knew Murphy from helping him with odd jobs and admitted that he removed a TV and some clothes from the apartment. Despite what Pace told the police, he testified that the apartment belonged to Murphy and he was helping him move. The State presented the DNA evidence from the cigarette butt and various pictures depicting personal aspects of McGookin's apartment that would have put Pace on notice that it was not Murphy's apartment. Pace admitted that the cigarette butt belonged to him but denied seeing any personal aspects of the apartment.

[6] Detective Robinson testified about the DNA evidence and his investigation into the burglary. Murphy did not testify at Pace's trial about his relationship with

Pace or the burglary. Officers Long and Miner testified to the chaotic state of the apartment, which did not match the claim that Pace and Murphy were moving Murphy's things out. On October 13, 2020, a jury found Pace guilty as charged. The trial court sentenced Pace to six years in the Indiana Department of Correction.

## Discussion and Decision

- [7] Pace argues the State presented insufficient evidence to sustain his conviction. When reviewing the sufficiency of evidence, we consider only the evidence, and any inferences reasonably drawn therefrom, that support the verdict. *Taylor v. State*, 514 N.E.2d 290, 291 (Ind. 1987). We do not reweigh evidence or consider the credibility of witnesses. *Id.* It is the fact finder's responsibility to evaluate the evidence and decide whether it supports a conviction. *Wright v. State*, 828 N.E.2d 904, 906 (Ind. 2005). We affirm if the probative evidence and reasonable inferences drawn from the evidence could have led a reasonable fact finder to find each element proven beyond a reasonable doubt. *Id.* A person commits Level 4 burglary when he breaks and enters into another person's dwelling with the intent to commit a felony or theft. Ind. Code § 35-43-2-1(1). Circumstantial evidence alone may support a conviction of burglary. *Taylor*, 514 N.E.2d at 291.
- [8] While no one witnessed Pace and Murphy burglarizing McGookin's apartment, the State presented substantial circumstantial evidence indicating that they did so. Police matched DNA from a cigarette found in McGookin's apartment

with a DNA sample obtained from Pace. McGookin testified that he lived alone and did not know Pace. McGookin also reported that he lived in Apartment 6. Detective Robinson testified that, according to prior police records, Murphy previously had lived in Apartment 3.

[9] Further, Pace admitted that he was at the apartment and carried a TV and clothes from the apartment to Murphy's car. Even though Pace claimed that he was helping Murphy move, Officer Long and Officer Miner testified that when they entered McGookin's apartment to investigate, it appeared that someone had rummaged through McGookin's things. Pace's argument invites us to reweigh the evidence, which we cannot do. *See Taylor*, 514 N.E.2d at 291 (the appellate court does not reweigh evidence). The State presented sufficient evidence to prove Pace committed Level 4 felony burglary. *See Meehan v. State*, 7 N.E.3d 255 (Ind. 2014) (an item with the defendant's DNA found at a building where he did not have authorization to be was sufficient to support a conviction of burglary); *and see Brink v. State*, 837 N.E.2d 192 (Ind. Ct. App. 2005) (the defendant's presence at the scene coupled with his conduct surrounding the offense is enough to support a reasonable inference that he committed the burglary), *trans. denied*.

## Conclusion

[10] The State presented sufficient evidence to prove Pace committed Level 4 felony burglary. Accordingly, we affirm.

[11] **Affirmed.**

Bailey, J., and Robb, J., concur.