# MEMORANDUM DECISION




ATTORNEY FOR APPELLANT

Jerry T. Drook
Marion, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Tina L. Mann
Deputy Attorney General
Indianapolis, Indiana

IN THE
# COURT OF APPEALS OF INDIANA

Timothy Wayne Henderson,
*Appellant-Defendant,*

v.

State of Indiana,
*Appellee-Plaintiff.*

March 30, 2021

Court of Appeals Case No.
20A-CR-1994

Appeal from the
Grant Superior Court

The Honorable
Dana J. Kenworthy, Judge

Trial Court Cause No.
27D02-2002-F4-11

**Kirsch, Judge.**

[1] Timothy Wayne Henderson ("Henderson") appeals his conviction for Level 6 felony residential entry.[1] He raises one issue, which we restate as whether the State's evidence was sufficient to sustain his conviction.

[2] We affirm.

## Facts and Procedural History

[3] The facts most favorable to the conviction are as follows. Henderson and Lavonna Smith ("Smith") were engaged in a sexual relationship around the end of August in 2019. *Tr. Vol. 2* at 12-13. Smith was married to another person at the time, and around the end October or early November of 2019 Smith broke off the relationship with Henderson. *Id.* at 13, 15-16. Henderson did not take the relationship's ending well and continued to reach out to Smith to restore the relationship. *Id.* at 13, 15.

[4] On February 7, 2020, Smith went to work and returned to her residence in Marion, Indiana between 2:10 p.m. and 2:15 p.m. *Id.* at 9-10, 16. Smith's residence has "an enclosed front porch and it's got a secure door on it with a doorbell and everything," which leads to the interior door of the residence. *Id.* at 17; *State's Ex. 1*. When Smith arrived home, she let her Chihuahua outside through the front door, which required her to open both the interior door into the front porch and the exterior door leading out of the front porch. *Tr. Vol. 2* at

[1] *See* Ind. Code § 35-43-2-1.5.

16-17. Smith then let her German shepherd out in the back yard through her back door. *Id.* at 16. Smith usually locked the door to the front porch, and she stated that when people come to the house they knock on the exterior front porch door. *Id.* at 17. Smith's enclosed front porch also had windows and contained furniture and was "more than just a screened-in front porch." *Id.* at 17-18. Smith testified she did not lock either the interior door to the residence or the exterior porch door after she let her Chihuahua out. *Id.* at 18.

[5] After Smith let her German shepherd out the back door, she heard "loud pounding on my front door and yelling" and saw from the living room window that it was Henderson who was inside the front porch and at her "door that comes into [the] living room." *Id.* at 18, 31-32. Smith had not invited Henderson over to her residence or allowed him entry into the front porch. *Id.* at 19. At that point, Smith testified that the following occurred:

> Q: So you told him, uh, in no uncertain terms that he was not permitted to be on your property.
>
> A. Yes. Told him to get off, get out, get off my front porch.
>
> Q Um, how were you able to tell him? So when you opened that front door ---
>
> A. I opened the door.
>
> Q What did he -- how did he react when you opened that door?

A. I didn't even get the chance to say anything. He had already came forward and grabbed ahold of my arms and kind of turned me around and going that way, and I don't even hardly remember anything after that.

Q. Okay, so did you invite him in?

A. No.

Q. Did he force his way into the house?

A. Yes, he did.

Q. You say he grabbed your arms. Where did he grab you?

A. Yes. The top arms right here.

Q. Is there any reason in particular that you remember him grabbing your arms?

A. Yeah, it hurt. I'd just had surgery on this arm, right here, this right one.

*Id.* at 20-21.

[6] Smith described Henderson's demeanor as "scary" and "angry" and that he told her she had disrespected him, and he wanted her back. *Id.* at 21. Henderson let go of Smith's arms, and she was able to push him out of the house and down the front porch stairs. *Id.* at 22. She saw Henderson's red truck parked outside with the driver's side door open and did not see anyone

else in the truck. *Id.* at 22-23. Once Henderson was outside, Smith locked the exterior door on her front porch. *Id.* at 23. In response, Henderson "punched out" the exterior door's window, and Smith went back into her house and locked the interior door. *Id.* at 24. After Henderson left, Smith called her brother and the police. *Id.* at 28-29.

[7] Marion Police Department Officer Billy Cole ("Officer Cole") responded to the call and spoke with Smith, whom he described as upset. *Id.* at 45, 48. Officer Cole took pictures of the front porch, took a recorded statement from Smith, and prepared a written police report. *Id.* at 48-49, 51-52; *State's Exs. 1-4.* Officer Cole attempted to locate Henderson but was not able to find him. *Tr. Vol. 2* at 49.

[8] On February 21, 2020, the State charged Henderson as follows: (1) Count I, Level 4 felony burglary; (2) Count II, Level 6 felony intimidation; (3) Count III, Class A misdemeanor interference with the reporting of a crime; (4) Count IV, Class B misdemeanor battery; and (5) Count V, Class B misdemeanor criminal mischief. *Appellant's App. Vol. 2* at 13-14. On August 25, 2020, the State amended the charging information by replacing the burglary charge in Count I with one count of Level 6 felony residential entry and reducing the intimidation charge in Count II from a Level 6 felony to a Class A misdemeanor. *Id.* at 39. On that same day, the trial court also granted the State's motion to dismiss Count III, Class A misdemeanor interference with the reporting of a crime due to insufficient evidence. *Id.* at 40-41.

[9] On September 1, 2020, the trial court held a jury trial. *Id.* at 9. Henderson testified that he first knocked on Smith's exterior porch door but no one came to the door, so he opened that door, entered Smith's enclosed front porch and knocked on the interior door, but stated that he never went into the interior of Smith's home. *Tr. Vol. 2* at 76-78. At the conclusion of trial, the jury found Henderson guilty of Count I, Level 6 felony residential entry and not guilty of the remaining counts. *Appellant's App. Vol. 2* at 46-47. The trial court sentenced Henderson to two years executed in the Indiana Department of Correction. *Id.* at 62-63. Henderson now appeals.

## Discussion and Decision

[10] Henderson contends that the evidence was insufficient to support his conviction for residential entry. We review the sufficiency of the evidence as follows:

> Upon a challenge to the sufficiency of evidence to support a conviction, a reviewing court does not reweigh the evidence or judge the credibility of the witnesses, and respects "the jury's exclusive province to weigh conflicting evidence." We have often emphasized that appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. Expressed another way, we have stated that appellate courts must affirm "if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt."

*McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005) (footnotes omitted).

[11] Indiana Code section 35-43-2-1.5 provides that "[a] person who knowingly or intentionally breaks and enters the dwelling of another person commits residential entry, a Level 6 felony." The Indiana Code defines "dwelling" as "a building, structure, or other enclosed space, permanent or temporary, movable or fixed, that is a person's home or place of lodging." Ind. Code § 35-31.5-2-107. To convict Henderson of Level 6 felony residential entry, the State was required to prove that he knowingly or intentionally broke and entered Smith's dwelling.

[12] Henderson challenges only whether the State proved beyond a reasonable doubt that he entered Smith's dwelling. Specifically, he argues that he testified he entered Smith's front porch but did not enter the interior of her residence. Henderson contends that Smith's front porch "should not be considered the interior of her residence" and that because there was no "substantial proof of probative value that Henderson entered the residence and not just the outside porch" the State's evidence against him was insufficient. *Appellant's Br.* at 8.

[13] Here, the evidence supporting the verdict established that Henderson entered Smith's enclosed front porch and knocked loudly on the interior door to the residence, and Smith told him to leave. *Tr. Vol. 2* at 18-21. While Henderson was on the front porch, Smith opened the interior door to the residence and testified that Henderson "came forward and grabbed ahold of my arms and kind of turned me around." *Id.* at 20-21. Smith testified that she did not invite Henderson in and when she was asked, "Did [Henderson] force his way into the *house*" she replied "Yes, he did." *Id.* at 21 (emphasis added). Henderson

contends that Smith's testimony was "not clarified or specified as to whether she was referring to the outside porch or the actual interior of the residence." *Appellant's Br.* at 8. Instead, Henderson cites his own testimony that he knocked on the exterior porch door and when no one came to the door he opened it, entered Smith's enclosed front porch, knocked on the interior door, but never went inside Smith's home in support of his argument that his entry (which he concedes) into Smith's enclosed front porch was not a dwelling or part of the dwelling. The jury heard both accounts, and it was the jury's prerogative to weigh conflicting testimony. Henderson's argument asks us to reweigh the evidence and judge the credibility of the witnesses which our standard of review does not allow. *See McHenry*, 820 N.E.2d at 126.

[14] Nevertheless, even assuming for the sake of argument that Smith's testimony that Henderson not only entered the enclosed front porch but also entered the residence was not substantial evidence of probative value, the evidence was sufficient to convict Henderson by virtue of his entry onto the front porch. At closing, the prosecutor argued that there were two ways that the evidence could show Henderson broke and entered Smith's dwelling:

> I told you in my openings that there are really two different ways we could show breaking and entering, that I was hoping that the testimony, I was anticipating the testimony would show two different ways. First I submit to you that when [Henderson] walked into the enclosed front porch of that house without [] Smith's consent which he admitted to doing he broke and entered. Crystal clear. He was not allowed in there, and he went in, but secondly even if you say "I don't know. It's an enclosed

> front porch, but I don't know." The testimony was he shoved his way into the house through the second door.

*Tr. Vol. 2* at 88.

[15] Indiana case law with respect to what qualifies as a dwelling recognizes entry into an attached garage as entry into a dwelling under the burglary statute, which also uses the term "dwelling." *See Davidson v. State*, 907 N.E.2d 612, 615 (Ind. Ct. App. 2009) (citing *Minneman v. State*, 466 N.E.2d 438, 439-40 (Ind. 1984), *cert. denied*, 470 U.S. 1030 (1985) and *Gaunt v. State*, 457 N.E.2d 211, 213-14 (Ind. 1983)), *trans. denied*. *See also Abbott v. State*, 175 Ind. App. 365, 370-71, 371 N.E.2d 721, 724-25 (1978) (holding that an attached garage was part of the dwelling for purposes of the burglary statute and explaining that the garage had an interior door permitting entry and exit from the house to the garage, that the garage contained a freezer full of food and a pool table, and that it was "clear from the evidence that the garage was part and parcel of the family dwelling.") While our research has not uncovered an Indiana case concluding that an enclosed porch such as Smith's qualifies as a dwelling or part of a dwelling, courts in other states addressing porches with similar characteristics to Smith's and similar statutory definitions of dwelling have so held. *See e.g. State v. Stone*, 567 S.E.2d 244, 246-47 (S.C. 2002) (holding that a fully enclosed screened porch attached to a home is a dwelling under South Carolina's burglary statute); *Johnson v. Commonwealth*, 875 S.W.2d 105, 106-07 (Ky. Ct. App. 1994) (holding that a screened-in porch attached to a residence constitutes a dwelling under Kentucky's burglary statute); *People v. McIntyre*, 578 N.E.2d

314, 315-16 (Ill. App. Ct. 1991) (concluding that an attached, enclosed porch was part of the "living quarters of the house" and constituted a dwelling for purposes of Illinois's burglary statute.)

[16] The evidence presented showed that Smith's front porch was a fully enclosed permanent structure that was attached to the frame of the house and led to the interior door to her residence, contained furniture and other possessions, and had a front door with a deadbolt lock, doorbell, and mail slot. *Tr. Vol. 2* at 17-18; *State's Exs. 1-4.* Smith also testified that she usually kept the front porch's exterior door locked and that was where visitors approaching the house would knock or ring the doorbell but testified that both doors were unlocked at the time of the incident. *Tr. Vol. 2* at 17-18. Even Henderson's testimony that he knocked first on the exterior porch door before entering and approaching the house's door suggests that the front porch was part of Smith's dwelling. *Id.* at 77. *See Trice v. State*, 490 N.E.2d 757, 759 (Ind. 1986) (noting that "even opening an unlocked door" is sufficient to establish a breaking). The physical characteristics of the front porch, presence of furniture, and deadbolt lock, doorbell, and mail slot suggest that like an attached garage under our case law, and the porches in *Stone*, *Johnson*, and *McIntyre*, Smith's front porch was a part of the dwelling.

[17] Based on the evidence presented, the jury could have concluded that Henderson broke and entered Smith's dwelling. The State's evidence was sufficient to sustain Henderson's conviction of residential entry.

[18] Affirmed.

Altice, J., and Weissmann, J., concur.