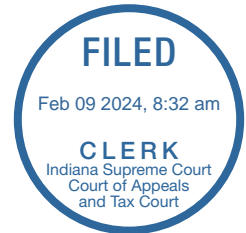


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE Court of Appeals of Indiana

Justin Shinabarger,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

February 9, 2024
Court of Appeals Case No.
23A-CR-1213

Appeal from the Madison Circuit Court
The Honorable Angela Warner Sims, Judge
Trial Court Cause No.
48C01-2210-F6-2927

Memorandum Decision by Judge Kenworthy
Chief Judge Altice and Judge Weissmann concur.

Kenworthy, Judge.

Case Summary

- [1] Justin Shinabarger appeals his conviction for Level 6 felony residential entry arguing the State did not provide sufficient evidence to support his conviction. Concluding otherwise, we affirm.

Facts and Procedural History

- [2] James Binnion lives with his girlfriend and six children in Anderson, Indiana. On October 8, 2022, Shinabarger—who lived across the street from Binnion—entered Binnion’s home while Binnion was upstairs. Binnion’s Ring Doorbell camera captured Shinabarger’s entry. Once Binnion was alerted of Shinabarger’s entry, he went downstairs and found Shinabarger in his kitchen. Shinabarger claimed he lived in Binnion’s home and was looking for his sister. Binnion had not invited Shinabarger into his home on this date.
- [3] Binnion escorted Shinabarger out of his home and called the police. Anderson Police Officer Jacob Beasley arrived and spoke with Binnion, who showed him a photograph of Shinabarger in his kitchen. Officer Beasley then went across the street to Shinabarger’s home and spoke with him. Shinabarger admitted to entering Binnion’s home, but claimed he had knocked and heard a voice tell him to “come in.” *Tr. Vol. 2* at 20.
- [4] The State charged Shinabarger with Level 6 felony residential entry. Following a bench trial, Shinabarger was found guilty as charged.

Sufficient Evidence Shinabarger Committed Residential Entry

[5] Shinabarger contends the State failed to present sufficient evidence to support his conviction for Level 6 felony residential entry. A sufficiency-of-the-evidence claim warrants a “deferential standard of appellate review, in which we ‘neither reweigh the evidence nor judge witness credibility[.]’” *Owen v. State*, 210 N.E.3d 256, 264 (Ind. 2023) (quoting *Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018), *cert. denied*). Rather, “we consider only probative evidence and reasonable inferences that support the judgment of the trier of fact.” *Hall v. State*, 177 N.E.3d 1183, 1191 (Ind. 2021). “We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.” *Id.* It is “not necessary that the evidence ‘overcome every reasonable hypothesis of innocence.’” *Drane v. State*, 867 N.E.2d 144, 147 (Ind. 2007) (quoting *Moore v. State*, 652 N.E.2d 53, 55 (Ind. 1995)). “It is the job of the fact-finder to determine whether the evidence in a particular case sufficiently proves each element of an offense, and we consider conflicting evidence most favorably to the trial court’s ruling.” *Willis v. State*, 27 N.E.3d 1065, 1066-67 (Ind. 2015) (quoting *Wright v. State*, 828 N.E.2d 904, 906 (Ind. 2005)).

[6] To convict Shinabarger of residential entry, the State had to prove beyond a reasonable doubt that Shinabarger knowingly or intentionally broke into and entered Binnion’s dwelling. I.C. § 35-43-2-1.5. “Lack of consent is not an element of the offense the State is required to prove.” *Townsend v. State*, 33 N.E.3d 367, 373 (Ind. Ct. App. 2015) (quoting *McKinney v. State*, 653 N.E.2d

115, 118 (Ind. Ct. App. 1995)), *trans. denied*. “Rather, it is the defendant who must claim and prove the defense of consent.” *Id.* “A defendant’s belief that he has permission to enter must be reasonable for the defendant to avail himself of the defense of consent.” *Id.*

- [7] Turning to this case, the State presented sufficient evidence from which a reasonable fact-finder could determine that Shinabarger committed residential entry. Binnion’s Ring Doorbell camera captured footage of Shinabarger knocking on Binnion’s front door and then entering Binnion’s home. Binnion later found Shinabarger in his kitchen. Further, Binnion testified that he did not give Shinabarger permission to enter his home on that date.
- [8] In a statement to Officer Beasley, Shinabarger admitted to entering Binnion’s home. But Shinabarger claimed he had knocked, and a voice told him to “come in.” *Tr. Vol. 2* at 20. Whether Shinabarger’s belief that he had permission to enter Binnion’s home was reasonable was a matter for the fact-finder to determine. Shinabarger asserted this defense during the bench trial, but the trial court rejected it.
- [9] Shinabarger’s argument on appeal is merely a request to reweigh evidence and reassess witness credibility, which is something we may not do. *Owen*, 210 N.E.3d at 264. Based on the evidence presented at trial, a reasonable fact-finder could find beyond a reasonable doubt that Shinabarger knowingly or intentionally broke into and entered Binnion’s dwelling.

Conclusion

[10] Because sufficient evidence supports Shinabarger's conviction, we affirm.

[11] Affirmed.

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

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