MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Matthew Joseph Frazier, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 2, 2023

Court of Appeals Case No. 22A-CR-686

Appeal from the Marion Superior Court

The Honorable Shatrese M. Flowers, Judge

The Honorable James K. Snyder, Magistrate

Trial Court Cause No. 49D28-2106-F5-18523

Memorandum Decision by Judge Robb
Judges Mathias and Foley concur.

Robb, Judge.

Case Summary and Issue

[1] Following a jury trial, Matthew Frazier was convicted of the following: resisting law enforcement; attempted residential entry; unlawful possession of a firearm; and carrying a handgun without a license. Frazier now appeals raising one issue for our review, which we restate as whether there was sufficient evidence to support Frazier's conviction of attempted residential entry. Concluding the State presented sufficient evidence to support Frazier's conviction, we affirm.

Facts and Procedural History

[2] On June 13, 2021, Frazier was driving near 30th Street in Indianapolis. Officers Nathan Lush and Ryan Bowersox of the Indianapolis Metropolitan Police Department attempted to initiate a traffic stop of Frazier; however, Frazier refused to stop his vehicle. A police chase ensued. Frazier eventually crashed his vehicle into a delivery van, exited the vehicle, and fled on foot. Officer Lush witnessed Frazier "jump a small black rod [sic] iron fence" into a backyard. Transcript of Evidence, Volume II at 177. The officers lost Frazier until bystanders in the neighborhood informed them where he was.

[3] Frazier had made his way into the backyard and up the back steps toward the back door of David Gardner's residence. Gardner's back door had been left open. Gardner was inside his home with his girlfriend's son, Tyler Warren, and

testified that Tyler began "grappling with somebody that was trying to get into the house."[1] *Id.* at 220. When asked whether this occurred in the entrance of the home, Gardner responded affirmatively. Further, Gardner heard Tyler say, "[Y]ou can't come in here, buddy. You've got to get on outside." *Id.* at 223. Officer Lush testified that when he got to Gardner's backyard, he witnessed Frazier "being pushed out of the back of the house." *Id.* at 178.

[4] On June 16, 2021, the State charged Frazier with carrying a handgun without a license, a Level 5 felony; resisting law enforcement, a Level 6 felony; resisting law enforcement, a Class A misdemeanor; residential entry, a Level 6 felony; and unlawful possession of a firearm, a Class A misdemeanor. At trial, the State requested a jury instruction on attempted residential entry as an included offense of residential entry. The jury was given the following instruction:

> To convict the Defendant of attempted Residential Entry, which is included in Count III: Residential Entry, the State must have proved each of the following elements beyond a reasonable doubt:
>
> 1. The Defendant
>
> 2. acting to knowingly break and enter the dwelling of David Gardner

[1] Gardner testified that he did not actually see anyone enter his home because of a condition he has with his vision. *See* Tr., Vol. II at 224. He did not elaborate on this condition.

3. did approach and go up the back steps to the back door to David Garner's [sic] dwelling

4. which the jury finds was conduct constituting a substantial step toward the commission of the crime of Residential Entry.

Appellant's Appendix, Volume II at 152.

[5] The jury found Frazier guilty of resisting law enforcement, attempted residential entry, unlawful possession of a firearm, and carrying a handgun without a license. The trial court then sentenced Frazier to an aggregate of four years to be executed in the Indiana Department of Correction followed by 545 days of probation. Frazier now appeals.

Discussion and Decision

Sufficiency of the Evidence

A. Standard of Review

[6] Our standard of reviewing claims of sufficiency of the evidence is well-settled: we neither reweigh the evidence nor judge the credibility of witnesses. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). Instead, we consider only the probative evidence and reasonable inferences therefrom supporting the verdict and consider conflicting evidence most favorably to the verdict. *Id*. We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Boggs v. State*, 928 N.E.2d 855, 864 (Ind. Ct. App. 2010), *trans. denied*. That is, the verdict will not be disturbed if

there is sufficient evidence of probative value to support the conclusion of the trier of fact. *Boyer v. State*, 883 N.E.2d 158, 162 (Ind. Ct. App. 2008).

B. Attempted Residential Entry

[7] Frazier argues the State presented insufficient evidence to convict him of attempted residential entry. To convict Frazier of attempted residential entry the State was required to show that Frazier knowingly or intentionally performed a substantial step toward breaking and entering the dwelling of another. Ind. Code § 35-41-5-1(a) (attempt); Ind. Code § 35-43-2-1.5 (residential entry). A substantial step is any overt act beyond mere preparation and in furtherance of an intent to commit the crime. *Williams v. State*, 685 N.E.2d 730, 734 (Ind. Ct. App. 1997).

[8] Frazier contends the State could not prove he performed a substantial step toward a "breaking" because Gardner's back door was open prior to Frazier's arrival.[2] Brief of Appellant at 9. Generally, to establish that a breaking has occurred, the State need only introduce evidence from which the trier of fact could reasonably infer that the slightest force was used to gain unauthorized

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[2] In his reply brief, Frazier argues "[w]ithout evidence of any force used to enter Gardner's home, Frazier's conviction for attempted residential entry cannot stand." Reply Brief of Appellant at 4. We disagree. The use of force is required to constitute a breaking. *Young v. State*, 846 N.E.2d 1060, 1063 (Ind. Ct. App. 2006). However, Frazier was convicted of *attempted* residential entry not residential entry. Therefore, the State was only required to show that he performed a substantial step toward the commission of the crime. Ind. Code § 35-41-5-1(a). The State was not required to show that Frazier's conduct amounted to breaking and entering. Further, Frazier does not challenge the jury's necessary determination that "approach[ing] and go[ing] up the back steps to the back door" constituted a substantial step. Appellant's App., Vol. II at 152. Therefore, we limit our analysis to Frazier's argument that the open door made a breaking impossible and as such Frazier could not have performed a substantial step toward that element of residential entry.

entry. *Young v. State*, 846 N.E.2d 1060, 1063 (Ind. Ct. App. 2006) (stating that "opening of an unlocked door is sufficient"). In *Hooker v. State*, this court addressed "breaking" as an element of burglary, stating that "[w]alking through an open door does not constitute a breaking[.]" 120 N.E.3d 639, 646 (Ind. Ct. App. 2019) (internal quotations omitted), *trans. denied*. However, in *Hooker*, the defendant admitted to having to "squeeze" through an opening to enter the residence. *Id.* We held that "[e]ven if we assume that the partially-open door did not move at all when [the defendant] squeezed through it, force was nonetheless used." *Id.*

[9] Our holding in *Hooker* suggests that an open or slightly ajar door would not automatically preclude a finding of attempted residential entry. Further, the force required to constitute a breaking need not be exerted on the door itself as shown in *Anderson v. State*, wherein this court held that "rushing someone to gain unauthorized entry into a dwelling is sufficient evidence of force." 37 N.E.3d 972, 975 (Ind. Ct. App. 2015), *trans. denied*. Therefore, the door being open does not preclude the force necessary to constitute a breaking from being used if, say, a person appears in the open doorway to repel the intruder. In fact, this is exemplified in this case by Gardner's testimony that, in the entrance of

the open back door, Tyler was "grappling with somebody that was trying to get into the house."[3] Tr., Vol. II at 220.

[10] We conclude that Gardner's back door being open does not preclude a finding that Frazier performed a substantial step toward knowingly or intentionally breaking and entering the dwelling of another. Accordingly, the State presented sufficient evidence to support Frazier's conviction of attempted residential entry.

Conclusion

[11] We conclude the State presented sufficient evidence to support Frazier's conviction. Accordingly, we affirm.

[12] Affirmed.

Mathias, J., and Foley, J., concur.

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[3] We note that the alleged altercation between Tyler and Frazier in the doorway was not alleged at trial to be the "substantial step" required for attempted residential entry. Tr., Vol. III at 27; *see also* Appellant's App., Vol. II at 152. However, based on our decision in *Anderson*, such an altercation would constitute the use of force.