

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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Steven D. Lemons,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

March 16, 2023

Court of Appeals Case No.  
22A-CR-1994

Appeal from the LaPorte Circuit  
Court

The Honorable Thomas J.  
Alevizos, Judge

Trial Court Cause No.  
46C01-2005-F6-539

**Memorandum Decision by Judge Bailey**  
Judges Brown and Weissmann concur.

**Bailey, Judge.**

# Case Summary

- [1] Steven Lemons appeals his conviction following a jury trial for attempted residential entry, as a Level 6 felony.<sup>1</sup> Lemons raises one issue for our review, namely, whether the State presented sufficient evidence to support his conviction. We affirm.

## Facts and Procedural History

- [2] On March 2, 2020, Katie Nichols decided to stay home from work. At approximately 9:30 a.m. that day, she heard a “consistent metal banging” noise coming from outside her house. Tr. at 71. Initially, Nichols thought the noise was coming from her neighbor’s house, but she realized that “it was very close sounding.” *Id.* Nichols looked out of her second-story bedroom window and saw a man wearing an orange shirt and a “yellow reflective jacket” crouched under her utility meter next to her air conditioner. *Id.* at 72.
- [3] Nichols thought the man was from the utility company, so she went downstairs to speak with him. Nichols approached the individual, and she observed that he had a “hood over [his] head.” *Id.* at 72. As Nichols began to speak, the man lifted his head, and Nichols recognized him as Lemons, a person with whom she had previously been in a relationship and with whom she shares a child. Nichols was “overcome with fear and anger,” and she felt “targeted” by

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<sup>1</sup> Ind. Code § 35-42-5-1; I.C. § 35-43-2-1.5 (2022).

Lemons. *Id.* at 75. Before Nichols could speak, Lemons stated: “I’m trying to fix this. This is going to start a fire.” *Id.* Nichols observed that Lemons “had a crowbar and a hammer in his hand.” *Id.* Nichols “started freaking out” and ran into her house to call 9-1-1. *Id.* By the time Nichols had placed the call, Lemons “was gone.” *Id.*

[4] Officers with the LaPorte City Police Department responded to Nichols’ 9-1-1 call. Detective Chae Uhlemann observed a “boarded up basement window” located behind Nichols’ air conditioner. *Id.* at 96. Detective Victor Aguilar observed a “tool marking” on the brick, and he saw that the wood covering the window showed a “recent disturbance” and was “fresh-splintered” on the lower left corner. *Id.* at 97. The officers also discovered a partial shoe print on top of Nichols’ air conditioner and the “same type of shoe print” in the alley behind Nichols’ house. *Id.* at 98.

[5] Uhlemann spoke with Lemons, and Lemons reported that he had been at the gym during the relevant time frame. Detective Uhlemann called Lemons’ gym, but he was unable to confirm that Lemons had been at the gym as reported. When Detective Uhlemann asked Lemons about his whereabouts again, Lemons stated that he had not gone inside the gym but that he “ran around” the gym and “did some pushups outside[.]” *Id.* at 103.

[6] The State charged Lemons with attempted residential entry, as a Level 6 felony. At the ensuing jury trial, Detective Uhlemann testified that it would have taken “force” to cause the damage to the brick and that it could have been caused by a

hammer and crowbar. *Id.* at 98. Detective Aguilar testified that the wood covering the basement window had “pry marks” and that it looked like “someone could have used a tool to kind of hit the edge of the wood and try to pry it open.” *Id.* at 117. And Detective Aguilar testified that a crowbar “could cause the type of damage to the piece of wood[.]” *Id.* at 117-18.

- [7] At the conclusion of the jury trial, the jury found Lemons guilty as charged. The court entered judgment of conviction accordingly and sentenced Lemons to eighteen months, with six months to be served at the LaPorte County Jail and twelve months to be served on work release. This appeal ensued.

## Discussion and Decision

- [8] Lemons contends that the State failed to present sufficient evidence to support his conviction. Our standard of review on a claim of insufficient evidence is well settled:

For a sufficiency of the evidence claim, we look only at the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We do not assess the credibility of witnesses or reweigh the evidence. *Id.* We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Id.*

*Love v. State*, 73 N.E.3d 693, 696 (Ind. 2017).

- [9] To prove that Lemons committed attempted residential entry, as a Level 6 felony, the State was required to show that Lemons had knowingly or

intentionally taken a substantial step toward breaking and entering Nichols' dwelling. *See* Ind. Code § 35-41-5-1(a); I.C § 35-43-2-1.5 (2022). On appeal, Lemons contends that the State failed to present sufficient evidence because Nichols "did not testify that she had recently observed the boarded-up window without damage" or "eliminate the possibility that Lemons may have been working on her air conditioner[.]" Appellant's Br. at 9. And he maintains that the "State's case that Lemons was trying to break into [Nichols'] home is pure speculation." *Id.*

[10] However, Lemons' argument on appeal is merely a request that we reweigh the evidence, which we cannot do. Nichols testified that she heard the sound of metal banging "close" to her house. Tr. at 71. When she looked out of her window, she saw someone she assumed to be a utility worker "crouched down" under her utility meter next to her air conditioner. *Id.* at 72. When Nichols went to speak to the person, she discovered it was Lemons. And she observed that Lemons "had a crowbar and a hammer in his hands." *Id.* at 76.

[11] In addition, officers saw a "boarded up basement window" behind Nichols' air conditioner, and they observed that the wood was "fresh-splintered" and showed signs of a "recent disturbance." *Id.* at 97. Officers also discovered a shoe print on top of Nichols' air conditioner and in the alley behind her house as well as a "tool marking" on the nearby brick. *Id.* at 96. Detective Uhlemann testified that it would have taken "force" to cause the damage to the brick and that it could have been caused by a hammer and crowbar. *Id.* at 98. And Detective Aguilar testified that a crowbar could have caused the "pry marks"

on the wood covering the basement window. *Id.* at 117. Further, when officers questioned Lemons about his whereabouts at the time, he initially informed officers that he was at the gym. But when the officers could not verify his presence at the gym, he changed his story and simply told officers that he was outside the gym.

[12] In other words, the evidence most favorable to the jury's verdict demonstrates that Lemons was outside of Nichols' house next to her air conditioner during a time Nichols would usually be at work, that Nichols had a boarded-up window to her basement located behind the air conditioner, that there was recent damage to the wood covering the window that could have been caused by a crowbar and hammer, and that Lemons was in possession of a crowbar and hammer when Nichols confronted him. Based on that evidence, a reasonable jury could determine that Lemons had taken a substantial step toward breaking and entering Nichols' dwelling.

## Conclusion

[13] The State presented sufficient evidence to demonstrate that Lemons had taken a substantial step toward breaking into Nichols' dwelling. We therefore affirm Lemons' conviction.

[14] Affirmed.

Brown, J., and Weissmann, J., concur.