



Willie Pope was convicted after a jury trial of residential entry<sup>1</sup> as a Class D felony and battery<sup>2</sup> as a Class A misdemeanor and was sentenced to eighteen months and one year respectively, with the two sentences to run concurrently to each other. He appeals, raising the following restated question: whether sufficient evidence was presented to support his convictions.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

On June 21, 2004, Lora Chisonga (“Lora”) married Pope, and in March 2006, she attempted to file for divorce from him in Florida, where they lived at the time. Because Lora did not do everything necessary, the divorce was never finalized. After moving back to Mishawaka, Indiana, and realizing that the divorce was not final, Lora again filed in September or October of 2006, and the divorce was granted. In between the two filings, Lora married Hamalindi Chisonga (“Hamalindi”) on July 23, 2006, believing that her divorce to Pope had already been granted.

In the days leading up to November 26, 2006, Lora, Hamalindi, and two of their friends received threatening phone calls from Pope, his sister, Daisy Pope (“Daisy”), and Pope’s girlfriend, Amber Marquina (“Amber”). Amber had previously dated Hamalindi and was in a relationship with Pope in the fall of 2006. The callers told Lora, “they were going to kick her butt, they were going to come down here, they were going to teach [her] a lesson [she] would never forget.” *Tr.* at 116. During these calls, Pope also told

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<sup>1</sup> See Ind. Code § 35-43-2-1.5.

<sup>2</sup> See Ind. Code § 35-42-2-1.

Hamalindi to stay away from Lora and that Pope and Lora “were still married, [so] there was no way [Hamalindi] could be with her.” *Id.* at 171.

On November 26, 2006, at around 5:00 p.m., Hamalindi was lying on the living room couch, and Lora was sitting on the floor working on Christmas decorations. Lora heard a knock at the door, but when she looked through the peep hole, she could not see anything because it was blocked. Hamalindi thought it might be his cousin playing a trick, so he told Lora to open the door. As soon as Lora unlocked the deadbolt, the door was kicked open, and Lora was knocked to the ground. Daisy was the first person who entered the apartment followed by Pope. Daisy immediately began to attack Lora, and Pope began attacking Hamalindi. Lora did not see Pope, but could hear his voice. Daisy jumped on top of Lora, and began kicking her. This altercation eventually ended up in the kitchen, where Daisy attempted to stab Lora with a knife.

During the attack on Hamalindi, Pope punched him above his left eye. Hamalindi then fled the apartment to go get help. Although Hamalindi had never met Pope, he previously had seen pictures of him and knew that it was Pope attacking him. After Hamalindi left the apartment, Lora heard Pope say, “We have to get out of here.” *Id.* at 123. Daisy then threw a pot of hot coffee on Lora, and Lora observed three people fleeing the apartment.

After the incident, Lora heard a cell phone ringing in the apartment. This phone did not belong to either Lora or Hamalindi. Lora answered the phone, and it was Daisy, who made threats and told Lora, “she would come back and this wasn’t over.” *Id.* at 128. Both Lora and Hamalindi called 911. While on the phone with the police dispatch, Lora

identified Pope, Daisy, and Amber as the three perpetrators. The police later arrived, collected evidence, and took statements. Lora sought medical treatment for her injuries, and after returning home, she and Hamalindi received more threatening calls.

Shortly after the incident, Pope called a mutual friend of both him and Lora and told the friend that he and Daisy had driven up to Lora's apartment. *Id.* at 231. He told her that they had forced their way into the apartment and "roughed up the situation there." *Id.* at 233. The next day Pope called back, and when the friend asked, "Did you really do that?" Pope denied being in Mishawaka and being involved in the incident. *Id.*

The State charged Pope with residential entry as a Class D felony and battery as a Class A misdemeanor. A jury trial was held, at which both Lora and Hamalindi identified Pope as one of the perpetrators. At the conclusion of the trial, Pope was found guilty of both counts, and the trial court sentenced him to eighteen months for the residential entry conviction and one year for the battery conviction, with the two sentences to run concurrent with to each other. Pope now appeals.

### **DISCUSSION AND DECISION**

Our standard of review for sufficiency claims is well settled. We do not reweigh the evidence or judge the credibility of the witnesses. *Williams v. State*, 873 N.E.2d 144, 147 (Ind. Ct. App. 2007). We will consider only the evidence most favorable to the judgment together with the reasonable inferences to be drawn therefrom. *Id.*; *Robinson v. State*, 835 N.E.2d 518, 523 (Ind. Ct. App. 2005). We will affirm the conviction if sufficient probative evidence exists from which the fact finder could find the defendant guilty beyond a reasonable doubt. *Williams*, 873 N.E.2d at 147; *Robinson*, 835 N.E.2d at

523.

Pope initially argues that insufficient evidence was presented to support his conviction for residential entry as a Class D felony. In order to convict Pope of residential entry, the State was required to prove that he knowingly or intentionally broke and entered the dwelling of another. Ind. Code § 35-43-2-1.5. He contends that the State failed to present any evidence that he committed the element of breaking because the evidence showed that Daisy was the one who pushed the door open, and Pope only entered sometime after her.

“In order 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 entry.” *Young v. State*, 846 N.E.2d 1060, 1063 (Ind. Ct. App. 2006). The opening of an unlocked door is sufficient. *Id.* The element of breaking may be proved entirely by circumstantial evidence. *McKinney v. State*, 653 N.E.2d 115, 117 (Ind. Ct. App. 1995).

At trial, the State proceeded under the theory of accomplice liability. “A person who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense. . . .” Ind. Code § 35-41-2-4. The accomplice is as guilty as one who actually commits any criminal act that is “a probable and natural consequence of their concerted action.” *Berry v. State*, 819 N.E.2d 443, 450 (Ind. Ct. App. 2004), *trans. denied* (2005). It is not necessary that a defendant participate in every element of a crime to be convicted of that crime under a theory of accomplice liability. *Bruno v. State*, 774 N.E.2d 880, 882 (Ind. 2002). In determining whether there was sufficient evidence for

purposes of accomplice liability, we consider such factors as: (1) presence at the scene of the crime; (2) companionship with another at the scene of the crime; (3) failure to oppose commission of the crime; and (4) course of conduct before, during, and after occurrence of the crime. *Id.* Evidence must exist of “the defendant’s affirmative conduct, either in the form of acts or words, from which an inference of common design or purpose to effect the commission of a crime may be reasonably drawn.” *Turner v. State*, 755 N.E.2d 194, 198 (Ind. Ct. App. 2001), *trans. denied*.

In the present case, the evidence showed that, prior to the date of the incident, both Daisy and Pope made numerous threatening phone calls to Lora and Hamalindi. Although it was not clear who actually kicked the door open, the evidence did show that, as Lora unlocked the deadbolt, someone kicked the door open and Daisy and Pope entered the apartment one after the other. Pope attacked Hamalindi, while Daisy attacked Lora. When Hamalindi left the apartment, Pope said, “We have to get out of here,” and he and Daisy exited the apartment together. *Tr.* at 123. Additionally, evidence was presented that Pope called a mutual friend and told her that he and Daisy had driven up to Mishawaka, pushed their way into Lora’s apartment, and “roughed up the situation there.” *Id.* at 233. We conclude that sufficient evidence was presented to enable the jury to conclude that, even if Pope did not actually kick the door open, he acted in concert with Daisy to break and enter the apartment. The evidence of Pope’s conduct, through his actions and words, supported an inference of common design and purpose to effect the commission of residential entry. Sufficient evidence was presented to support his conviction.

Pope next argues that insufficient evidence was presented to support his convictions for residential entry and battery because there was an insufficient identification of him as the perpetrator. He specifically contends this is because Lora never saw Pope enter the apartment and claimed to identify him by the sound of his voice even though Hamalindi testified that no words were exchanged between him and Pope. He further claims that Hamalindi had never previously seen Pope except in pictures.

The evidence presented at trial showed that Lora heard Pope's voice from the living room while she was in the kitchen, when she heard him say, "We have to get out of here." *Id.* at 123. Pope was her ex-husband, with whom she had lived for several years. It was reasonable to assume that she would have been able to identify his voice. Voice identification has been held to be sufficient to sustain a conviction. *See Bane v. State*, 424 N.E.2d 1000, 1002 (Ind. 1981) (holding that voice identification evidence is independently sufficient to sustain a conviction). Further, Hamalindi testified that Pope was the male who entered the apartment and hit him. Although he had never previously seen Pope in person, Hamalindi had seen pictures of Pope and was able to identify him. Both Lora and Hamalindi also identified Pope in court as the perpetrator of these crimes. We conclude that sufficient evidence was presented to prove that Pope was the person who committed these crimes and to support his convictions. His arguments to the contrary are merely an invitation for this court to reweigh the evidence and judge the credibility of the witnesses, which we cannot do. *Williams*, 873 N.E.2d at 147.

Affirmed.

NAJAM, J., and BARNES, J., concur.