**Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.**

FILED
Mar 27 2009, 9:43 am
CLERK
of the supreme court, court of appeals and tax court

ATTORNEY FOR APPELLANT:

**MICHAEL W. REED**
Reed & Earhart
Warsaw, Indiana

ATTORNEYS FOR APPELLEE:

**GREGORY F. ZOELLER**
Attorney General of Indiana

**ZACHARY J. STOCK**
Deputy Attorney General
Indianapolis, Indiana

# IN THE
# COURT OF APPEALS OF INDIANA

| | | |
|---|---|---|
| JONATHAN D. SKINNER, | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 43A03-0809-CR-434 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE KOSCIUSKO SUPERIOR COURT
The Honorable Duane G. Huffer, Judge
Cause No. 43D01-0707-FB-152

**March 27, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BROWN, Judge**

Jonathan D. Skinner appeals his convictions for burglary as a class B felony[1] and theft as a class D felony.[2] Skinner raises one issue, which we revise and restate as whether the evidence is sufficient to sustain his convictions. We affirm.

The relevant facts follow. In June 2007, Marc Evans was "fishing a night tournament" on Lake Wawasee. Transcript at 113. Around two or three in the morning, as Evans progressed down the channel, he heard chains rattling and saw a flashlight and a reflection from a boathouse nearby. Evans called the police.

When Syracuse Police Department Officer Justin Curtis arrived to investigate the call, he found Skinner "placing objects into the back of [a] pickup truck." Id. at 13. Officer Curtis shined his spotlight on Skinner, who became nervous, quickly removed a pair of gloves from his hands, and grabbed a fishing pole that was lying next to the truck. Officer Curtis asked him what he was doing there, and Skinner replied that he was fishing. Officer Curtis noted that the fishing pole was dusty and covered with cobwebs and asked Skinner why he had no tackle box or bait. Skinner responded that he "didn't need bait" because "the fish just bite without bait." Id. at 16.

Officer Curtis noticed that there were tracks in the dewy grass leading from Skinner's truck to the boathouse and that the boathouse door was "wide open." Id. at 18. In the back of the truck were numerous items, including "construction stuff, cleaning supplies, . . . TV's, Nintendo, boating stuff, wetsuits, ski gloves, extension cords. Just all

[1] Ind. Code § 35-43-2-1 (2004).

[2] Ind. Code § 35-43-4-2 (2004).

kinds of stuff." Id. at 19. Inside the boathouse, Officer Curtis noticed that the deadbolt to the door had been disassembled and that several things appeared to be missing. Shoe prints on the floor matched Skinner's shoes and glove marks left in the dust exhibited the same pattern as Skinner's gloves, which had raised "black dots on them." Id. at 13. The owner of the boathouse, James Tunny, later identified a number of items found in the back of Skinner's truck as items missing from the boathouse, including fishing gear, a wetsuit, various cleaning equipment, a video game system, thirty video games, and two televisions. Tunny had not given permission to anyone to enter the house and take those items.

The State charged Skinner with burglary as a class B felony and theft as a class D felony. A jury found Skinner guilty as charged, and the trial court sentenced Skinner to six years for the burglary conviction and a concurrent term of two years for the theft conviction.

The issue is whether the evidence is sufficient to sustain Skinner's convictions. Skinner argues that he was just fishing on the night in question and that the State failed to prove beyond a reasonable doubt that he broke and entered Tunny's boathouse or took Tunny's property.

When reviewing the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). We do not assess witness credibility or reweigh the evidence. Id. We consider conflicting evidence most favorably to the trial

court's ruling. Id. We affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." Id. (quoting Jenkins v. State, 726 N.E.2d 268, 270 (Ind. 2000)). It is not necessary that the evidence overcome every reasonable hypothesis of innocence. Id. at 147. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. Id. "A conviction of burglary may be sustained upon circumstantial evidence alone." Gilliam v. State, 509 N.E.2d 815, 817 (Ind. 1987).

The offense of burglary is governed by Ind. Code § 35-43-2-1, which provides: "A person who breaks and enters the building or structure of another person, with intent to commit a felony in it, commits burglary, a Class C felony." However, the offense is a class B felony if the building or structure is a dwelling. See Ind. Code § 35-43-2-1. Thus to convict Skinner of burglary as a class B felony, the State needed to prove that Skinner broke and entered Tunny's dwelling with the intent to commit theft in it.

The offense of theft is governed by Ind. Code § 35-43-4-2, which provides: "A person who knowingly or intentionally exerts unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use, commits theft, a Class D felony." To convict Skinner of theft as a class D felony, the State needed to prove that Skinner knowingly or intentionally exerted unauthorized control over Tunny's property, with the intent to deprive Tunny of its value or use.

Here, Skinner was loading items onto the back of his truck when Officer Curtis found him. Skinner became nervous, quickly removed his gloves, and picked up a

fishing pole. He told Officer Curtis that he had been fishing, but the pole was dusty and covered with cobwebs. There were tracks in the grass leading from Skinner's truck to Tunny's boathouse. The deadbolt to the boathouse had been disassembled, and Skinner's shoe prints and glove markings matched prints and markings found in the house. Tunny testified that the boathouse contains a bath and two bedrooms where his children and grandchildren sleep when his family stays at the lake, and we have held that a three-room log cabin used by family and friends overnight to fish, hunt, and as a retreat is a dwelling within the meaning of the burglary statute. See Jones v. State, 457 N.E.2d 231, 234 (Ind. Ct. App. 1983). Finally, Tunny identified some of the items in Skinner's truck as his property, including fishing gear, a wetsuit, various cleaning equipment, a video game system, thirty video games, and two televisions. We hold that the State presented evidence of a probative value from which a reasonable trier of fact could have found Skinner guilty beyond a reasonable doubt of burglary as a class B felony and theft as a class D felony.

For the foregoing reasons, we affirm Skinner's convictions for burglary as a class B felony and theft as a class D felony.

Affirmed.

KIRSCH, J. and BRADFORD, J. concur