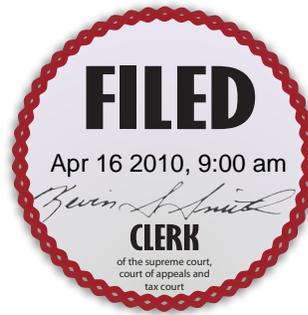


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

DAVID P. FREUND
Indianapolis, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

HENRY A. FLORES, JR.
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

LARRY CRITTENDEN)
(a.k.a. LARRY CRITTENDER),)
)
Appellant-Defendant,)

vs.)

No. 49A02-0909-CR-926)

STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark D. Stoner, Judge
The Honorable Jeffrey L. Marchal, Commissioner
Cause No. 49G06-0904-FB-42194

April 16, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Larry Crittenden (a.k.a. Larry Crittender) appeals his class B felony burglary conviction. The sole issue is whether the trial court abused its discretion by admitting certain testimony over Crittenden's hearsay objection. We affirm.

At about 4:30 p.m. on April 22, 2009, Jessie Ross, Michael Lee, and Russell Marcum ("the victims") left their Indianapolis home to go to the grocery store. They closed all the doors before leaving. They also closed the gate to the fence surrounding their residence. At approximately 5:00 p.m., next-door neighbor Jose Deciano was playing outside with his children, when he observed Crittenden walking near the back of the victims' residence, looking at vehicles. After briefly losing sight of Crittenden, Deciano saw him inside the victims' house and then saw him exit via the front door, set down a plastic bag by the fence, and re-enter the house.

Just as Deciano yelled to his sister to call the police, the victims returned home. When Deciano informed them that there was a man in their house, Marcum called 911, and Ross entered the house, finding Crittenden in the bathroom. Ross told Crittenden to leave, and Crittenden exited through the front door. Police arrived and found the plastic bag by the fence. The bag contained a cordless drill and charger belonging to Lee, which Lee indicated he had placed on the kitchen counter before he went to the store. When police arrested Crittenden at the scene, they found him in possession of a piece of mail belonging to one of the victims. Crittenden had permission neither to be inside the house nor to take the items.

On April 28, 2009, the State charged Crittenden with class B felony burglary and class

D felony theft. On August 19, 2009, a jury found him guilty as charged. Crittenden appeals his burglary conviction.

On appeal, Crittenden challenges the trial court's admission of alleged hearsay evidence. The decision to admit evidence, including hearsay, lies within the trial court's sound discretion. *Ballard v. State*, 877 N.E.2d 860, 861 (Ind. Ct. App. 2007). As such, we will not reverse it unless it represents an abuse of discretion that results in the denial of a fair trial. *Id.* at 862. An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances before it or where it misinterprets the law. *Id.*

Hearsay is an out-of-court statement offered in court to prove the truth of the matter asserted. Ind. Evidence Rule 801(c). Hearsay is generally inadmissible under Indiana Evidence Rule 802. Here, Crittenden challenges the admissibility of a statement made by Deciano's daughter, who was not called to testify. The statement was admitted as part of Deciano's trial testimony. When the prosecutor asked Deciano whether he had entered the victims' backyard, he answered, "No. I did not go back there because my daughter said that [Crittenden] was inside the house." Tr. at 22. Immediately thereafter, the following exchange took place in the jury's presence:

[Defense Counsel]: Objection, Your Honor. Hearsay.

THE COURT: Response?

[State]: Not using it to prove that [Crittenden] went into the house, Judge, I'm using it to prove what [Deciano's] actions were as a result of him hearing that statement from his daughter.

THE COURT: With that limitation that objection is overruled.

Id. at 22-23.

Crittenden entered only a general hearsay objection. However, both the State's response and the record as a whole indicate that Deciano's daughter's statement was not offered to prove the truth of the matter asserted, i.e., that Crittenden was inside the house. Instead, it was offered to establish that Deciano chose not to enter the backyard because he did not think Crittenden would be there. Thus, Deciano's daughter's statement does not fall within the definition of inadmissible hearsay. Ind. Evidence Rule 801(c).

Crittenden claims for the first time on appeal that the challenged statement is inadmissible because it has "no tendency to make a fact of consequence to the case more or less probable." Appellant's Br. at 7. Thus, he essentially challenges the statement not only on hearsay grounds but also on relevancy grounds. *See* Ind. Evidence Rule 401 (defining relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence"). Because he failed to enter a specific objection on relevancy grounds, he has waived that argument on appeal. *Simmons v. State*, 760 N.E.2d 1154, 1158 (Ind. Ct. App. 2002) (stating that trial objection must be specific in order to preserve issue for appeal).

Regardless, any error in the admission of the statement was harmless. When the conviction is supported by substantial independent evidence of guilt so as to satisfy us that there is no substantial likelihood that the evidence contributed to the conviction, any error in

its admission is harmless. *Mathis v. State*, 859 N.E.2d 1275, 1280 (Ind. Ct. App. 2007). Here, substantial independent evidence exists to establish the elements of class B felony burglary.¹ Notably, this evidence includes Deciano’s firsthand observations of Crittenden when he was inside the house, exiting the house with the stolen items, and re-entering the house. Accordingly, we affirm.

Affirmed.

BAKER, C.J., and DARDEN, J., concur.

¹ Indiana Code Section 35-43-2-1(1)(B)(i) states: “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 B felony if ... the building or structure is a ... dwelling.”