

Carlee Smith appeals his conviction of Class C felony burglary.¹ As there was sufficient evidence to sustain his conviction, we affirm.

FACTS AND PROCEDURAL HISTORY

Barnaby's Pizza in South Bend, Indiana, has what one might describe as "double windows," because each window casing contains an inner and an outer window, with a small space between those two windows. The outer window is a solid pane of glass that is affixed into the window frame. This outer window does not open and acts as the outer barrier of the building. The inner window is a pane of glass in a sash on hinges so that it opens and closes like a door. The inner window has latches connected to the restaurant's security system and these windows are to remain latched during business hours.

At approximately 3:43 a.m. on March 27, 2009, an alarm sounded at Barnaby's Pizza. South Bend Police officers arrived shortly thereafter. They discovered one outer window was broken and its inner window had been forced open. Officers also found broken cash registers thrown on the floor and the rear door of the building unlocked from the inside. The police did not find a suspect in the building.

One of the officers, Corporal Mullins, noticed fingerprints on what remained of the interior surface of the broken outer window. That portion of the window was still in the frame. The evidence technician, Officer Camparone, also saw a large print on the surface of that glass, removed the entire pane from the window frame, and took it to the police department to lift the prints. The only identifiable print on the window was Smith's palm

¹ Ind. Code § 35-43-2-1.

print, which was on the side of the pane that had faced into the building.

On April 6, 2009, the State charged Smith with Class C felony burglary, and on November 3, 2009, a jury found him guilty.

DISCUSSION AND DECISION

Smith argues the State did not present sufficient evidence that he committed Class C felony burglary. Our standard of review with regard to sufficiency claims is well settled. We do not reweigh the evidence or judge the credibility of the witnesses. *Jones v. State*, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the verdict and the reasonable inferences that may be drawn from that evidence to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. *Id.* If there is substantial evidence of probative value to support the conviction, we will affirm. *Id.*

To support a conviction of burglary as a Class C felony, the State had to prove beyond a reasonable doubt that Smith broke and entered the building of another person with the intent to commit a felony in it. *See* Ind. Code § 35-43-2-1. A conviction may be based on circumstantial evidence alone. *Fought v. State*, 898 N.E.2d 447, 450 (Ind. Ct. App. 2008). Circumstantial evidence need not exclude every reasonable hypothesis of innocence. *Burton v. State*, 526 N.E.2d 1163, 1167 (Ind. 1988). All that is necessary is that an inference may be drawn that supports the fact finder's determinations. *Id.* Reversal is appropriate only when a reasonable person would not be able to form an inference of guilt as to each material element of the offense. *Fought*, 898 N.E.2d at 450.

The thrust of Smith’s argument is that the palm print evidence is not enough to identify him as the person who broke the window and entered the structure with intent to commit a felony. Smith notes his palm print was in a location where it could have been made when he was at the business legitimately, because the window was located in the public dining area. He further notes there is no evidence when the palm print was made.² He argues, “[T]his is not a situation where it would have been impossible for Smith to leave prints in the area where they were found unless it was connected to the burglary at hand.” (Appellant’s Br. at 6.)

Smith’s argument is similar to the question presented to our Supreme Court in *Mediate v. State*, 498 N.E.2d 391, 392 (Ind. 1986): “[w]hat quantum of additional evidence, if any, is necessary to sustain a conviction based principally upon a fingerprint?” The *Mediate* court observed, “The only circumstances under which fingerprint evidence was alone sufficient to sustain a conviction is when the print was found at the point of entry.” *Id.* at 393. When the location of the print does not readily indicate a forced or illegal entry, additional evidence may be necessary to sustain the conviction. *Id.* A significant factor in determining the conclusiveness of a print is whether appellant had legitimate access to the fingerprinted object. *Id.* at 393.

² Smith cites *Curry v. State*, 440 N.E.2d 687 (Ind. Ct. App. 1982), where a fingerprint examiner testified the defendant touched the window after it was broken, because fingerprints were found on each side of the broken piece of glass. Smith argues his conviction should be reversed because, unlike in *Curry*, “there was no testimony from the fingerprint examiner with respect to when [Smith’s] print was made.” (Appellant’s Br. at 6.) However, *Curry* does not compel us to reverse Smith’s conviction. As we discuss hereinafter, the jury had evidence and testimony that, when coupled with the palm print, permitted the jurors to reasonably believe Smith was the burglar.

The facts most favorable to Smith's conviction demonstrate his guilt. Someone broke the outer window from outside the restaurant. Smith's palm print was on the inside of the broken window. That glass surface was not accessible to patrons during normal business hours because the inner windows remained latched and access to the space between the windows was restricted to authorized persons. Thus, Smith's handprint could have been on the inside of that window only if placed there after the outer window was broken. *See, e.g., Johnson v. State*, 512 N.E.2d 1109, 1110 (Ind. 1987) (fingerprints on a window covered with a screen prior to the burglary were sufficient evidence of defendant's guilt); *Shuemak v. State*, 258 N.E.2d 158, 159 (Ind. 1970) (fingerprints on coin box from a machine were sufficient to sustain conviction, where defendant could have touched coin box only after machine was broken and entered); *Chambers v. State*, 551 N.E.2d 1154, 1157 (Ind. Ct. App. 1990) (sufficient evidence where a palm print on a glass door could be made only by illegitimate access).

Smith's arguments are invitations to reweigh the evidence, which we cannot accept. We find sufficient evidence to sustain Smith's conviction, and we affirm.

Affirmed.

BAILEY, J., and BARNES, J., concur.