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# IN THE
# COURT OF APPEALS OF INDIANA

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| MICHAEL ENGLEHARDT, | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 82A01-1103-CR-107 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Mary Margaret Lloyd, Judge
Cause No. 82D02-1009-FD-941

**October 25, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**FRIEDLANDER, Judge**

Michael Englehardt appeals his conviction of Invasion of Privacy[1] and Criminal Trespass,[2] both as class A misdemeanors, and two counts of Criminal Mischief,[3] both as class B misdemeanors. Englehardt challenges the sufficiency of the evidence supporting those convictions.

We affirm.

The facts favorable to the convictions are that Englehardt had an on-and-off relationship with Kelly Raaf for approximately four years. The two lived only two houses apart on the same street. The relationship ended acrimoniously in April 2010. Raaf obtained a protective order against Englehardt on June 3, 2010. The order was made permanent on June 30, 2010.

On June 16, 2010, at approximately 3:00 a.m., Raaf's fourteen-year-old daughter, Kourtney, was watching television in the living room when a small rock was thrown through the living room window. She looked out through an opening in the curtains and saw a man she recognized as Englehardt standing on the sidewalk outside of the front window. At that point, the man was turned such that she could not see his face. As she watched, the man turned and walked away in the direction of Englehardt's house. She got up and looked out the window and saw Englehardt standing near his house. Kourtney went upstairs and told her mother what had happened.

At about 2:00 p.m. on September 10, 2010, Raaf and her twenty-year-old daughter, Macy, each arrived at Raaf's home at the same time. It was raining at the time, and Raaf ran

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[1] Ind. Code Ann. § 35-46-1-15.1 (West, Westlaw through end of 2011 1st Regular Sess.).
[2] Ind. Code Ann. § 35-43-2-2 (West, Westlaw through end of 2011 1st Regular Sess.).

inside her house to prepare a birthday cake. Macy looked over and saw Englehardt standing in his backyard, staring at her with "a little smirk on his face." *Transcript* at 104. The two stared at one another for about thirty seconds before Macy walked into the house and told her mother that Englehardt was staring at her. Raaf and Macy walked back outside, where Raaf discovered that approximately 100 nails had been scattered across her driveway. Raaf then discovered that a window in her garage was broken and someone had entered the garage and destroyed a disposable camera. It was also determined that the nails in the driveway had come from her garage. Further inspection revealed that two of Raaf's bedroom windows had been broken and a bedroom screen had been cut.

On September 20, 2010, the State charged Englehardt with invasion of privacy and criminal mischief, both as class A misdemeanors, in connection with the June 16 incident. The State later added counts of criminal trespass and criminal mischief, both as class B misdemeanors, in connection with the September 10 incident. Englehardt was convicted of these offenses following a jury trial. He was convicted of other counts as well in connection with these incidents, but appeals only the ones set out above.

Englehardt contends the evidence was insufficient to support his convictions.

> When reviewing the sufficiency of the evidence needed to support a criminal conviction, we neither reweigh evidence nor judge witness credibility. *Henley v. State*, 881 N.E.2d 639, 652 (Ind. 2008). "We consider only the evidence supporting the judgment and any reasonable inferences that can be drawn from such evidence." *Id*. We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt. *Id*.

*Bailey v. State*, 907 N.E.2d 1003, 1005 (Ind. 2009).

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[3] I.C. § 35-43-1-2 (West, Westlaw through end of 2011 1st Regular Sess.).

Englehardt's challenge to the sufficiency of evidence is the same with respect to all four convictions, i.e., he contends the evidence implicating him as the perpetrator of those acts consisted only of his mere presence at the scene. If true, this would contravene the principle stated in *Pratt v. State*, 744 N.E.2d 434, 436 (Ind. 2001), that "[m]ere presence at the crime scene with the opportunity to commit a crime is not a sufficient basis on which to support a conviction." It is true that there was no eyewitness or direct testimony that Englehardt threw the rock through Raaf's window on June 16, 2010 or that he vandalized her house on September 10, 2010. It is also true, however, that "circumstantial evidence will be deemed sufficient if inferences may reasonably be drawn that enable the trier of fact to find the defendant guilty beyond a reasonable doubt." *Id*. at 437 (quoting *Bonds v. State*, 721 N.E.2d 1238, 1242 (Ind. 1999)). We conclude that there was sufficient evidence in both instances from which to draw a reasonable inference that Englehardt was the perpetrator.

With respect to the June 16 incident, Kourtney testified that from where she was sitting when the rock came through the window, she could see outside through an opening in the curtains and she saw a man standing near the window that she believed to be Englehardt. Although she could not see Englehardt's face, she testified that she knew "the back of him really well[. ]" *Transcript* at 70. This is not surprising in view of the facts that he was a nearby neighbor and had dated her mother for several years. Also, although it was dark out, the front of Raaf's house was illuminated by a front door light, and the general area was illuminated by street lights. Moreover, she watched as the man walked down the sidewalk and out of the gate in her front yard and turned toward Englehardt's house. When she got up and looked out the window in the direction the man had turned, she saw Englehardt standing

in or near his front yard. It must also be remembered that this incident occurred at approximately 3:00 a.m., presumably when few people are moving about. Considered in their totality, the foregoing constitutes sufficient direct and circumstantial evidence that Englehardt was the person who threw the rock through Raaf's front window on September 16, 2010 and thus was sufficient to prove he committed the attendant offenses stemming from that incident.

With respect to the September 10 offenses, Englehardt claims that the only evidence implicating him as the perpetrator of those offenses is that he was standing in his yard staring at Macy "with a smirk on his face" when she and Raaf arrived home. *Id*. at 104. That description ignores several other pertinent facts. There was much evidence that Raaf had recently severed her romantic relationship with Englehardt and he was angry about it. There was also evidence that he had recently vandalized her house on at least one other occasion, and possibly two. Also, Englehardt did not merely stand outside and stare at Macy. There was evidence that it was raining at the time. Notwithstanding that fact, Englehardt stood there for thirty seconds staring at Macy with a "smirk" on his face. Also, pieces of the camera that had been destroyed in Raaf's garage were found in a grass alley that connected Raaf's and Englehardt's houses.

The evidence was sufficient to prove that Englehardt was the perpetrator of the acts of vandalism that occurred at Raaf's home on June 16 and September 10, 2010.

Judgment affirmed.

DARDEN, J., and VAIDIK, J., concur.