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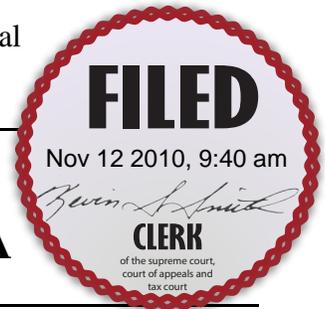
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**IN THE
COURT OF APPEALS OF INDIANA**



CHARLES GOULD,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 49A02-1004-CR-430

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Sheila Carlisle, Judge
Cause No. 49G03-0906-FA-57437

November 12, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Charles Gould appeals his conviction for Class A felony burglary. We affirm.

Issue

The sole issue before us is whether the State presented sufficient evidence to sustain Gould's conviction for Class A felony burglary.

Facts

Gould and Wanda Bonds began dating in November 2008, and lived together until March 2009, in Bonds's Indianapolis apartment. The two continued to see each other occasionally after Gould moved out. On June 17, 2009, Gould and Bonds were at Gould's niece's house in Indianapolis where the two drank alcohol and smoked marijuana. Over the course of the day Gould repeatedly asked Bonds to have sexual intercourse with him, but each time Bonds declined. Later in the day Bonds drove Gould in her car to get cigarettes. Gould was angry that Bonds would not have sex with him and he beat his fists on the dashboard of the car. Bonds drove to a gas station where Gould got out of the vehicle to buy cigarettes. Bonds was nervous because of Gould's aggressive behavior, so she drove away and left Gould at the gas station. Bonds returned home and realized she left her cell phone with Gould. Gould used Bonds's cell phone to make repeated calls to Bonds's home telephone. Gould called so many times that Bonds eventually called her cell phone provider to have her service turned off.

Bonds was at her home later that same evening when she heard a banging on her patio door. As she attempted to dial 911, Gould broke through the window, grabbed

Bonds, began beating her with her telephone, and yelled “I told you I’d get you, b****!” Tr. p. 36. Next, Gould ordered Bonds to grab her purse and keys. Then, he dragged her by the arm to her car. Bonds was only wearing a thin, white nightgown. Gould drove Bonds in her car to his niece’s apartment. He told her, “Now I got to kill you.” Tr. p. 40.

Robert Coon, a neighbor of Bonds, heard a window breaking and heard someone call for help. He called 911. Officers arrived and entered the apartment but did not find anyone inside. The officers told Coon that nothing could be done until the residents of the apartment returned. The officers then left. Coon entered Bonds’s apartment and took a watch and an X-box.

When Gould and Bonds arrived at Gould’s niece’s apartment, his niece was upstairs. Gould ordered Bonds to perform oral sex on him, and she did so. Gould attempted to have intercourse with Bonds in the bathroom. Gould then took Bonds into the dining room and forced her to have intercourse with him.

Bonds was worried that someone would enter her apartment through the broken window so Gould drove Bonds back to her apartment. When they arrived, Gould told Bonds to get dressed. Gould then grabbed Bonds’s arm and ordered her to go with him. As the two were leaving, a neighbor informed the two that someone had broken in and stolen her X-box. At this point the police arrived. Bonds told the police what Gould had done to her and she was taken to the hospital where a sexual assault examination was performed. DNA taken from Bonds was compared to the DNA of Gould and was found to be a match.

Gould was charged with burglary, a Class A felony; rape, a Class B felony; criminal confinement, a Class C felony; sexual battery, a Class D felony; battery, a Class A misdemeanor; and interference with reporting of a crime, a Class A misdemeanor. On March 16, 2010, after a trial by jury, Gould was found guilty on all counts. On March 25, 2010, the trial court sentenced Gould to an aggregate sentence of thirty years for all counts, except the sexual battery and battery counts, which were vacated. Gould now appeals only his conviction for burglary.

Analysis

Gould argues that the evidence at trial was insufficient to establish that he committed burglary. Burglary occurs when “[a] person . . . breaks and enters the building or structure of another person, with intent to commit a felony in it.” Ind. Code § 35-43-2-1. Burglary becomes a Class A felony if it results in “bodily injury” or “serious bodily injury” to another person. I.C. § 35-43-2-1(2). Therefore, in order to convict a defendant of burglary the State must prove beyond a reasonable doubt that a defendant had specific criminal intent to commit a felony when breaking and entering. See Baltimore v. State, 878 N.E.2d 253, 258 (Ind. Ct. App. 2007), trans. denied.

Gould was charged as follows:

Charles Gould, on or about June 18, 2009, did break and enter the building or structure and dwelling of Wanda Bonds, . . . with intent to commit the felony of confinement therein; that is, the intent to remove Wanda Bonds by force or threat of force from [the apartment] to another location, resulting in bodily injury to Wanda Bonds, to wit pain and/or swelling and/or contusions[.]

Appellant's App. pp. 26-27. Gould argues that the State did not present sufficient evidence that he acted, at the time of breaking and entering, with the specific intent to commit confinement.¹ Therefore, Gould argues, his conviction for burglary should be reversed.

When reviewing a claim of insufficient evidence, we neither reweigh evidence nor judge the credibility of witnesses. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). Only evidence favorable to the judgment is considered, along with the reasonable inferences drawn therefrom, to determine if there was sufficient evidence of probative value to support a conviction. Id. We will affirm the conviction if a reasonable trier of fact, using the reasonable inferences drawn from the evidence, could have concluded that the defendant was guilty of the crime charged beyond a reasonable doubt. Id.

Gould is correct in arguing that the State must prove beyond a reasonable doubt that at the time he entered Bonds's house, he had the specific intent to commit a felony. See Gentry v. State, 835 N.E.2d 569, 572 (Ind. Ct. App. 2005). That intent, however, can be inferred from a defendant's subsequent conduct while inside the premises. Id. at 573.

In Gentry, we found that actions subsequent to a burglary can show intent to commit a felony at the time the burglary occurred. Gentry, 835 N.E.2d at 572. There, the defendant was videotaped entering his landlord's bedroom in an attempt to steal the landlord's hydrocodone medication. Id. at 571-72. The defendant was charged with

¹ Under Indiana Code Section 35-42-3-3, criminal confinement occurs when "[a] person who knowingly or intentionally (1) confines another person without the other person's consent; or (2) removes another person, by fraud, enticement, force, or threat of force, from one (1) place to another."

burglary with the intent to commit felony theft. Id. at 572. On appeal of the burglary conviction, the defendant argued that the evidence was insufficient to convict him of burglary because the State failed to prove that, upon entering his landlord's bedroom, he possessed the requisite intent to commit theft. Id. This court affirmed his conviction, noting that intent may be inferred from a defendant's subsequent conduct while inside the premises. Id. Specifically, we noted that upon entering the landlord's bedroom the defendant proceeded directly to the nightstand, opened the drawer, examined the empty hydrcodone bottle, and left. Id. Defendant returned to the bedroom hours later and acted in the same manner. Id. We held these actions were sufficient to infer the defendant's specific intent to commit theft as he entered the bedroom. Id.

Here, the evidence was sufficient to show that Gould had the requisite intent to commit confinement when he entered Bonds's home. First, a reasonable jury could have inferred from Gould's behavior before the burglary that he did not enter Bonds's home with good intentions. He was angry at Bonds for refusing his advances and he called her so many times she had to cancel her cell phone service. He pounded on Bonds's patio door and broke through the window of her apartment yelling, "I told you I'd get you, b****!" Tr. p. 36. Second, Gould's actions after he broke into Bonds's apartment were sufficient for a reasonable jury to find he intended to commit confinement at the time of the breaking and entering. He grabbed Bonds's arm and ordered her out of the apartment before she could even change out of her nightgown. These actions are similar to those taken by the defendant in the Gentry case, in that it is clear that the defendant did not

have lawful intentions when entering the premises. Gould's subsequent actions taken together with his actions prior to and during the break-in are sufficient for a reasonable jury to conclude that Gould intended to commit confinement when he broke into Bonds's home.

Gould also argues that the "confinement did not occur until some unspecified period of time after the breaking and entering took place" and that Gould's intent to confine Bonds "was secondary to other intentions." Appellant's Br. p. 10. These arguments, however, are without merit. The State only had to prove Gould intended to confine Bonds at the time he entered her house. It is immaterial that Gould may not have confined Bonds immediately thereafter.

Conclusion

There was sufficient evidence to support Gould's burglary conviction. We affirm.

Affirmed.

FRIEDLANDER, J., and CRONE, J., concur.