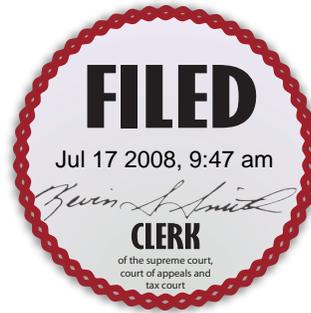


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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ALLEN LEE HOWELL,  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 71A03-0804-CR-183

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APPEAL FROM THE ST. JOSEPH SUPERIOR COURT  
The Honorable Jerome Frese, Judge  
Cause No. 71D03-0606-FC-161

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**July 17, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**VAIDIK, Judge**

## **Case Summary**

Allen Lee Howell appeals his conviction for Class C felony burglary. Specifically, he contends that the evidence is insufficient to support his conviction and that the trial court erred in ordering him to pay \$125,000 in restitution to the owner of the building he burglarized. Concluding that the evidence is sufficient to support Howell's conviction and that the trial court did not abuse its discretion in ordering Howell to pay \$125,000 in restitution, we affirm.

## **Facts and Procedural History**

On May 30, 2006, Officer Chris Krueger of the South Bend Police Department drove by a vacant industrial building that was for sale at 921 South Louise Street and noticed that a door was open. Officer Krueger was unable to secure the door because it could only be locked from the inside. He called the listing agent and left a message that the door was open.

The following day, Officer Krueger met broker Doris Portolese to assist her in securing the building. However, the door that was open the previous day was now shut and locked. Portolese thought this to be impossible because she had the only key. Officer Krueger and Portolese walked around the building and noticed two cars. Officer Krueger heard voices and tools operating inside the building. Because Joseph Grabill, the building's owner, had not given anyone permission to use the building, Officer Krueger immediately instructed Portolese to go to her car and called for backup.

When backup arrived, Officer Krueger and another officer, Corporal Demler, positioned themselves outside a door. A man, later identified as Howell's brother,

Charles Howell,<sup>1</sup> walked outside wearing work-type clothes and safety glasses and carrying tools and a flashlight. After Howell's brother was quickly handcuffed, Corporal Demler ordered those remaining inside to exit the building or else he would release his K-9. Howell exited the building wearing dirty clothes and safety glasses. Howell was then handcuffed.

Grabill, who had since arrived on the scene, then entered the building to survey the damage. The building was "trashed," and there "was conduit ripped down all over the place." Tr. p. 134. There was water running into the building because the brothers had cut an active water line, which was a high-pressure water line. In addition, service panels, which were loaded with copper, were pried open and ripped apart.

Thereafter, the State charged Howell with Class C felony burglary and also alleged that he was a habitual offender. Following a jury trial, the jury found him guilty of burglary. However, the judge found that Howell was not a habitual offender. At the sentencing hearing, Grabill testified that the estimates he received to repair the damage to 921 South Louise Street were "well in excess of \$125,000." Sent. Tr. p. 19. The trial court sentenced Howell to "six years in the DOC as a condition of probation . . . for a very specific reason which is that I can at any time modify that condition of probation and I can release you from prison. And the State is not going to be able to say, well, you have to have our approval." Sent. Tr. p. 54. The court also ordered Howell to pay \$125,000 in restitution to Grabill. Howell now appeals.

### **Discussion and Decision**

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<sup>1</sup> Charles Howell ultimately pled guilty to theft for his role in these events.

Howell raises two issues on appeal. First, he contends that the evidence is insufficient to support his conviction for burglary. Second, he contends that the trial court erred in ordering him to pay \$125,000 in restitution to Grabill.

### **I. Sufficiency of the Evidence**

Howell contends that the evidence is insufficient to support his conviction for burglary. When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. *Id.* To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider only the evidence most favorable to the trial court's ruling. *Id.* Appellate courts affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Id.* (quotation omitted). It is therefore not necessary that the evidence "overcome every reasonable hypothesis of innocence." *Id.* at 147 (quotation omitted). The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. *Id.*

In order to convict Howell of Class C felony burglary as charged in this case, the State had to prove that Howell broke and entered the building at 921 South Louise Street in South Bend, Indiana, with the intent to commit a theft therein. Ind. Code § 35-43-2-1. On appeal, Howell argues that he testified at trial that he believed he had permission to enter the building and take what he wanted. However, Grabill also testified at trial that

he did not give anybody permission to enter the building. Thus, Howell's argument is merely an invitation for us to reweigh the evidence, which we will not do. Next, Howell argues that the fact that he was wearing work clothes and protective gear makes it unlikely that he was there to steal. As the State points out, Howell was also dressed appropriately to remove copper wiring from a building. Again, Howell's argument is a request for us to reweigh the evidence, which we will not do. Finally, Howell argues that because the jury instructions provided that to convict Howell of burglary, he must have knowingly broken and entered a building or structure of another person, specifically Grabill, the court's instructions "thereby ma[de] it necessary that Howell knew whose building he was breaking and entering into." Appellant's Br. p. 7. However, Howell provides no authority whatsoever that a defendant must know the owner of the structure he breaks into before he can be found guilty of burglary. The evidence is sufficient to support Howell's conviction for burglary.

## **II. Restitution**

Howell next contends that the trial court erred in ordering him to pay \$125,000 in restitution to Grabill. Indiana Code § 35-50-5-3 governs restitution and provides:

(a) Except as provided in subsection (i) or (j), in addition to any sentence imposed under this article for a felony or misdemeanor, the court may, as a condition of probation or without placing the person on probation, order the person to make restitution to the victim of the crime, the victim's estate, or the family of a victim who is deceased. The court shall base its restitution order upon a consideration of:

(1) property damages of the victim incurred as a result of the crime, based on the actual cost of repair (or replacement if repair is inappropriate) . . . .

Ind. Code § 35-50-5-3(a)(1). In construing this statute, this Court has determined that the amount of restitution ordered must reflect the actual loss incurred by the victim. *Myers v. State*, 848 N.E.2d 1108, 1109 (Ind. Ct. App. 2006). The amount of restitution ordered is within the trial court’s discretion, and it will be reversed only upon a finding of an abuse of that discretion. *Id.*

On appeal, Howell, using calculations based upon the purchase price of the building and the listing price of the building, argues that Grabill is entitled to only \$20,000 in restitution. However, the restitution statute speaks in terms of “actual cost of repair,” and Grabill testified at the sentencing hearing that the estimates he received from mechanical and electrical contractors to repair the building were “well in excess of \$125,000.” Sent. Tr. p. 19. The trial court did not abuse its discretion in ordering Howell to pay Grabill \$125,000 in restitution.

Affirmed.

MAY, J., and MATHIAS, J., concur.