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To convict for Burglary, more than a break-in has to be proved. Some fact in evidence must point to an intent to commit a specific felony inside, usually a theft. A recent Indiana Supreme Court case involved a fact situation that did not satisfy this requirement.

A man was sitting on the front porch of his residence one night and observed a man wearing light-colored shorts attempting to enter a car wash nearby. The witness observed the man try unsuccessfully to enter through two different doors. Shortly thereafter the man went out of the witness's sight and then appeared inside the building. When the car wash alarm sounded, the man ran out of the building. The witness called the police.

Soon after the call, a police officer spotted a man who matched the description given by the witness, carrying a screwdriver in his right hand. It was later determined that the screwdriver matched the pry marks on the car wash door. The owner of the car wash testified that nothing was missing and that he did not think the office had been disturbed at all. The man was charged with and convicted of Burglary.

The law is that an intent to commit a felony may not be inferred from proof of breaking and entering alone. Also, evidence of flight alone may not be used to infer the required intent.

There must be a specific fact that provides a solid basis to support a reasonable inference that the defendant had the specific intent to commit a felony inside. The Indiana Supreme Court said the evidence in this case was insufficient.

The time and manner by which the defendant entered the car wash suggested nothing more than that he broke in. In the court's view, he could have done so for any number of reasons that did not include theft. There was no evidence that the defendant was near or approaching anything valuable in the car wash. He was found by the police outside the building. Finally, the owner said that nothing was missing from the building or the cash register, and that the office did not appear to have been disturbed.

The court said that where the State cannot establish intent to commit a particular underlying felony, criminal trespass is the appropriate charge.
Freshwater v. State, 853 N.E.2d 941 (Ind. 2006).

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A recent case examined who can be a "child care worker" within the child seduction statute, IC 35-42-4-7. The defendant in the case was a school bus driver, and the victim was a girl under 18 years of age riding on the defendant's bus. The defendant allegedly touched the girl's leg and asked her about having sex at some other time. The defendant contended he was not a "child care worker" under the statute.

The defendant was employed by an independent contractor who contracted with the school corporation to transport students to and from school. However, the school corporation had to approve all drivers. All drivers reported to and were responsible to school officials. Duties of the drivers included managing the children on the bus and disciplining the children.

A "child care worker" is a person who occupies a position of trust, authority, and responsibility akin to that of a parent. The defendant fit within this definition. The fact that the defendant was employed and compensated by an independent contractor did not matter. He directly reported to and was supervised by the school corporation. And his compensation included payment for the services rendered for the school corporation. Smith v. State, ___ N.E.2d ___ (Ind. App. Sept. 20, 2006).

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