IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 122,660

STATE OF KANSAS,
Appellee,

v.

RON RICHARD LARSEN JR.
Appellant.

SYLLABUS BY THE COURT

1.

If the State charges an attempted crime under K.S.A. 2022 Supp. 21-5301(a), it must prove specific intent for each element of the target crime, even those elements of the target crime without a specific intent requirement. This means the State must prove a defendant charged with attempted aggravated burglary specifically intended to enter a dwelling in which there was a person, overruling *State v. Watson*, 256 Kan. 396, 401, 885 P.2d 1226 (1994).

2.

When a defendant challenges the sufficiency of the evidence supporting the defendant's conviction, an appellate court asks whether, viewing the evidence in the light most favorable to the State, a rational fact-finder could have found the defendant guilty beyond a reasonable doubt. In making this determination, an appellate court does not reweigh evidence, resolve evidentiary conflicts, or assess witness credibility.

3.

When a defendant is charged with an attempted crime, the State must prove the accused committed an overt act toward perpetration of the target crime. No definite rule

about what constitutes an overt act can or should be laid down. Each case depends on its particular facts and the reasonable inferences a jury may draw. But some guidelines are settled. The accused must have taken steps beyond mere preparation by doing something directly moving toward and bringing nearer the crime the accused intends to commit. The accused's action must approach near enough to consummation of the offense to stand either as the first or some later step in a direct movement toward the completed offense.

Review of the judgment of the Court of Appeals in an unpublished opinion filed July 29, 2022. Appeal from Johnson District Court; THOMAS KELLY RYAN, judge. Oral argument held February 2, 2023. Opinion filed August 4, 2023. Judgment of the Court of Appeals affirming the district court is affirmed. Judgment of the district court is affirmed.

Korey A. Kaul, of Kansas Appellate Defender Office, argued the cause and was on the brief for appellant.

Jacob M. Gontesky, assistant district attorney, argued the cause, and *Daniel G. Obermeier*, assistant district attorney, *Stephen M. Howe*, district attorney, and *Derek Schmidt*, attorney general, were on the brief for appellee.

The opinion of the court was delivered by

LUCKERT, C.J.: *State v. Watson*, 256 Kan. 396, 401, 885 P.2d 1226 (1994), held the State can convict a defendant for the crime of attempted aggravated burglary without proving the defendant intended to enter a dwelling that was occupied. Ron Richard Larsen Jr. contends this holding is contrary to K.S.A. 2022 Supp. 21-5301(a), which imposes a specific intent requirement for all elements. See *State v. Mora*, 315 Kan. 537, 541-42, 509 P.3d 1201 (2022).

We agree and overrule this holding in *Watson*. But our holding on this point does not lead to relief for Larsen because the State presented sufficient evidence that he

intended to enter an occupied dwelling at the time he committed an overt act. We therefore affirm his attempted aggravated burglary conviction.

FACTUAL AND PROCEDURAL BACKGROUND

The State charged Larsen with attempted aggravated burglary, aggravated burglary, felony and misdemeanor theft, and kidnapping arising out of three incidents. At trial, the State presented evidence relating to each incident and a jury convicted Larsen on all counts. The issues before us relate to only one incident and one count—the count of attempted aggravated burglary. We thus focus on the facts surrounding Count I but will briefly discuss the facts relating to the other two incidents because they supply evidence of Larsen's intent.

Count I: Attempted Aggravated Burglary (Donald Tinsley Incident)

Around 10:30 p.m. on the Saturday of a Memorial Day weekend, Donald Tinsley was in the main floor living room of his home watching television when his security system alerted him to motion on the back patio. Tinsley viewed a live video feed on his phone and saw an unfamiliar man looking into the house through a window located behind the couch where Tinsley was seated. Tinsley got up, went upstairs, called 911, got a gun, and woke his wife. He did not disturb his sleeping children.

Tinsley returned to the main floor, which he found empty. After police cleared the scene, Tinsley found mud on the patio and on stones underneath the window. He also saw that one of the gates to his fenced backyard, which he habitually closed, was open and a footprint was near the gate.

Tinsley described the person on the patio as a black male with a shaved head and ornate, goldish-colored glasses. The man wore a hooded sweatshirt and jeans, and he had a handkerchief over his face. Tinsley and Larsen's parole officer identified Larsen as the person shown in the security video.

Tinsley explained that several lights were on in the house, including a light on the patio above the door leading into the kitchen and one above the kitchen table. The television Tinsley was watching illuminated the room he was in and another "was lighting up the master bedroom," which was on the second floor directly above the living room.

Larsen testified in his own defense. He admitted that he was the person in the security video. He explained he was drunk at the time and upset because he had learned the baby he was expecting with his girlfriend was probably not his. Larsen was out walking and texting his girlfriend. At one point, he thought someone was chasing him, so he put his gray bandana over his face to hide. He ended up behind what he thought was his girlfriend's house, although she lived in Oklahoma. He looked inside and realized he was not familiar with the house. Larsen denied he was there to steal items.

The State questioned Larsen about text messages he exchanged with his girlfriend before and after he looked inside the Tinsley home. The State pointed out a text sent in which Larsen said he was "going to go out and get cash tonight." Then, about 20 minutes before Larsen appeared on Tinsley's video he texted: "Okay. I'm working on money for you. A car of your own. Take your time. I'll let you know what I got for you." Larsen answered the State's questions about the meaning of those messages by admitting he was not out looking for a job and denying that he planned to steal the money or the car.

The State also confronted Larsen with a text he sent after he left the Tinsley house in which he reported: "I just got my phone back, babe. I lost it running from the cops. Someone seen [*sic*] me . . . and I almost got caught breaking in." Larsen denied that he had dropped his phone while running to avoid apprehension.

Counts II-IV: Aggravated Burglary, Kidnapping, and Theft (Second Incident)

Two nights later, Larsen entered another house around 11 p.m. While Larsen was moving through the house, a male occupant surprised him. Larsen told the occupant he had a gun and ordered the occupant to move away from the backdoor and down some stairs. Larsen then fled. The occupant noticed a window was open as far as possible, and he found the gray bandana worn by the intruder on the house's deck. Keys to two cars and a purse were taken.

Count V: Theft (Third Incident)

The next day a car owner reported her car had been taken from her driveway. The woman and her family had returned from vacation the night before, at about 9 or 9:30 p.m. The family parked the car in their home's driveway and left some items in the vehicle to unpack later. Around 11 p.m., the woman retrieved some items from the car but left other items. She then went to bed. The next morning, they discovered the car was missing.

The car owner usually clipped her car keys in her purse, but she could not remember where she left her purse that night. After finding the purse's contents in the backyard, she came to believe she took her purse with her into her gated backyard and left it there when she took their puppy outside to use the bathroom. She also noticed the side gate to the yard was open.

Larsen was later driving the car when he was in a car accident and ended up in the hospital. He testified he had the car because he went to a park to buy drugs the night the car was stolen and was picked up by someone driving the car. No one other than Larsen was in the car at the time of the accident.

Verdict and Appeal

The jury convicted Larsen on all counts. He appealed to the Court of Appeals, which affirmed his conviction. *State v. Larsen*, No. 122,660, 2022 WL 3017317 (Kan. App. 2022) (unpublished opinion). He then petitioned this court for review of that decision, raising four issues. We granted review on two issues only, both of which relate to Count 1, the attempted aggravated burglary of the Tinsley home. We have jurisdiction under K.S.A. 20-3018(b) (allowing jurisdiction over petitions for review of Court of Appeals decisions); K.S.A. 60-2101(b) (Supreme Court has jurisdiction to review Court of Appeals decisions upon petition for review).

ANALYSIS

In the two issues we review, Larsen focuses on what he sees as the State's failure to prove he had the specific intent to burglarize a dwelling occupied by a human as required by the elements of aggravated burglary. In one issue, he asks us to revisit *Watson*'s holding that the intent requirement of attempted aggravated burglary does not apply to the aggravating element requiring a person be in the dwelling. 256 Kan. at 401. In the other issue, he argues the evidence is insufficient in two ways: (1) it failed to prove he had the intent to enter an occupied building and (2) it failed to prove he committed an overt act toward completion of an aggravated burglary.

We first address whether *Watson* incorrectly held the State need not prove a specific intent to enter a building that is occupied.

1. *Specific Intent and Attempted Aggravated Burglary*

Summarized, Larsen argues we could affirm his conviction for attempted aggravated burglary only if the State presented evidence showing he intended to enter an *occupied* dwelling with the intent to commit a felony, a theft, or a sexually motivated crime. His arguments require us to interpret statutes, a question of law subject to unlimited review. *Mora*, 315 Kan. at 541. When interpreting statutes, our purpose is to discern legislative intent and, to do so, we look to the language of the statute and apply the ordinary meaning of the words used by the Legislature. *Mora*, 315 Kan. at 541. The relevant statutes here define burglary and attempt.

Aggravated burglary is (1) without authority (2) entering or remaining in any dwelling, building, manufactured home, tent, or other structure that is not a dwelling, (3) in which there is a human being, (4) with the intent to commit a felony, theft, or sexually motivated crime. See K.S.A. 2022 Supp. 21-5807(b). Burglary, in its simple, unaggravated form, omits the requirement that a human being be present. See K.S.A. 2022 Supp. 21-5807(a).

In *Watson*, this court reviewed decisions discussing the intent requirement of the burglary statute. Those cases held that the aggravated burglary statute requires a defendant enter a building with the intent to commit one of the underlying crimes listed in the burglary statute. "'[B]ut there is no requirement of knowledge that there was someone within the building at the time the entry was made.' [Citation omitted.]" 256 Kan. at 400. Under *Watson* and the two decisions it cited, had Larsen entered the Tinsley house, he could have been guilty of burglary without proof that he intended to enter an occupied house. See *Watson*, 256 Kan. at 400-01; *State v. Price*, 215 Kan. 718, 721, 529

P.2d 85 (1974); *State v. Reed*, 8 Kan. App. 2d 615, 616-17, 663 P.2d 680, *rev. denied* 234 Kan. 1077 (1983).

Larsen was not charged with aggravated burglary, however. Rather, like Alonzo L. Watson, he was convicted of attempted aggravated burglary. Watson, like Larsen does here, argued the State needed to prove an intent to enter a dwelling occupied by a person. The *Watson* court rejected the argument. In doing so, it appeared persuaded by the State's argument that requiring it "to prove knowledge of the presence of a human being to prove attempted aggravated burglary would place a greater burden on the State than would be required in proving the greater offense of aggravated burglary." 256 Kan. at 401.

Here, the State urges us to apply *Watson*. But, as Larsen points out, the *Watson* court did not discuss the legislatively imposed requirements in the attempt statute, making its analysis incomplete. To complete the analysis, we turn to what the Legislature has said. Although recodified in 2010, the statutory definition of attempt found in K.S.A. 2022 Supp. 21-5301 has stayed the same since *Watson*. Compare K.S.A. 2022 Supp. 21-5301 with K.S.A. 1994 Supp. 21-3301.

We look to K.S.A. 2022 Supp. 21-5301, the default definition of attempt because the burglary statute does not include an attempt provision. See *Mora*, 315 Kan. at 542 (discussing different ways Legislature has addressed attempt crimes and when default definition applies). That default definition requires proof of "any overt act toward the perpetration of *a* crime done by a person who *intends to commit such crime* but fails in the perpetration thereof or is prevented or intercepted in executing such crime." (Emphasis added.) K.S.A. 2022 Supp. 21-5301(a). The default definition applies to attempted burglaries because the burglary statute does not have its own attempt definition.

Larsen argues the plain language of the default definition requires the defendant intend to commit the target crime, here aggravated burglary. Thus, the State must prove he intended to commit each material element of the offense, including that he intended to break into an occupied dwelling. For support he cites *Mora*, 315 Kan. 537, decided after briefing in the Court of Appeals.

In *Mora*, we considered the plain meaning of the phrase "intends to commit such crime" in the default attempt provision. We held those words "require[] the State to prove the defendant had the specific intent to commit the intended crime, even if that crime as a completed crime does not require specific intent." 315 Kan. 537, Syl. ¶ 1.

We found support in Ninth Circuit caselaw. That caselaw identified the uncertainty that exists "'regarding the defendant's purpose to commit the underlying crime—an uncertainty that is not present in the case of a principal who actually commits the crime.'" 315 Kan. at 543 (quoting *United States v. Sayetsitty*, 107 F.3d 1405, 1412 [9th Cir. 1997]). Because of that uncertainty, proof of specific intent to commit the underlying crime is required for an attempt offense even if that intent is not needed to prove the completed offense. 315 Kan. at 543.

Applying that reasoning in Mora's case meant the State had to prove the defendant had the specific intent to commit the underlying offense of aggravated robbery. See *Mora*, 315 Kan. at 543. Extending the *Mora* rule requiring specific intent of each element of the attempted crime, which rests on the plain language of the statute, would mean the State had to prove Larsen had the specific intent to commit each element of the crime of aggravated burglary. That would include the specific intent to "enter[] into or remain[] within any: (1)(A) Dwelling in which there is a human being." K.S.A. 2022 Supp. 21-5807(b). This holding overrules contrary language in *Watson*, 256 Kan. at 400.

We do not overrule *Watson*'s holding lightly but do so only after carefully considering stare decisis principles, including its purpose of ensuring stability and continuity. See *Crist v. Hunan Palace, Inc.*, 277 Kan. 706, 715, 89 P.3d 573 (2004). These principles usually suggest we will follow precedent. We do not always do so, however, because stare decisis "is not a rigid inevitability but a prudent governor on the pace of legal change." *State v. Jordan*, 303 Kan. 1017, 1021, 370 P.3d 417 (2016). Indeed, the principles of stare decisis recognize courts may abandon precedent that "'was originally erroneous or is no longer sound because of changing conditions and [when] more good than harm will come by departing from precedent.' [Citations omitted.]" *Crist*, 277 Kan. at 715.

Here, we can conclude *Watson* was originally erroneous or is no longer sound in light of K.S.A. 2022 Supp. 21-5301 and *Mora*, 315 Kan. 537. *Watson* ignored the default attempt statute and invoked policy rather than the plain language of the statute. We thus depart from *Watson* to hold the Legislature has required the State to prove Larsen had the specific intent to commit the intended crime of aggravated burglary. This means the State needed to prove beyond a reasonable doubt that Larsen specifically intended to enter a dwelling in which there was a person.

This holding sets up one of Larsen's sufficiency challenges, which we turn to next.

2. *Sufficiency of the Evidence*

Larsen raised two challenges to the sufficiency of the evidence. In the one dependent on our holding on the first issue, he argues there was insufficient evidence he intended to enter an occupied residence. In the other, he argues there was insufficient evidence of an overt act toward the perpetration of an aggravated burglary. In making this second argument, he contends the Court of Appeal conflated evidence of intent to commit a burglary with evidence of an overt act.

Our standard of review for each argument is the same: When a defendant challenges the sufficiency of the evidence supporting his conviction, an appellate court asks whether, viewing the evidence in the light most favorable to the State, a rational fact-finder could have found the defendant guilty beyond a reasonable doubt. In making this determination, an appellate court does not reweigh evidence, resolve evidentiary conflicts, or assess witness credibility. *State v. Roberts*, 314 Kan. 835, 849-50, 503 P.3d 227 (2022). Recognizing that standard, we reject both arguments.

2.1 *Intent to Enter an Occupied Dwelling*

As we have discussed, the State had the burden to prove that Larsen committed an overt act toward aggravated burglary with the intent—that is, with the desire or conscious objective—to enter a house that had a person in it. See K.S.A. 2022 Supp. 21-5202(h) ("A person acts 'intentionally,' or 'with intent,' with respect to the nature of such person's conduct or to a result of such person's conduct when it is such person's conscious objective or desire to engage in the conduct or cause the result.").

In doing so, we focus on Larsen's intent at the time he peered into the house. Our focus is directed on this act and this point of time for two reasons. First, the trial court instructed the jury the State had to prove that "[t]he defendant performed an overt act toward the commission of aggravated burglary, to wit: looked inside the windows of residence." Second, criminal conduct occurs when the accused commits the overt act. See K.S.A. 2022 Supp. 21-5301(a) ("An attempt is any overt act toward the perpetration of a crime done by a person who intends to commit such crime . . . .").

Larsen argues the State did not prove that intent. He points out the record includes no direct evidence of his intent to enter a dwelling with a person inside. While this is true, the intent to commit a burglary or aggravated burglary is rarely proved by direct

evidence. More often, intent must be discerned from the circumstances, as this court recognized in *State v. Harper*, 235 Kan. 825, 828-29, 685 P.2d 850 (1984), when it said:

> "The intent with which an entry is made is rarely susceptible of direct proof; it is usually inferred from the surrounding facts and circumstances. [Citations omitted.] The manner of the entry, the time of day, the character and contents of the building, the person's actions after entry, the totality of the surrounding circumstances, and the intruder's explanation, if he or she decides to give one, are all important in determining whether an inference arises that the intruder intended to commit a theft."

Harper was discussing intent to enter a building for the purpose of committing a theft or other felony. It was not considering proof of intent in the context of the occupancy requirement. But the Court of Appeals has correctly noted that intent can be shown by circumstances suggesting a defendant tried to learn whether anyone was in the dwelling. For example, in *State v. Hargrove*, 48 Kan. App. 2d 522, 565, 293 P.3d 787 (2013), the defendant rang the doorbell repeatedly, went to his car, returned to ring the doorbell, and tried the door handle. *Hargrove* noted such conduct "could be logically and readily construed as a means to determine if the house were unoccupied, making it a suitable target for a break-in and theft." 48 Kan. App. 2d at 563-64. Logically, similar circumstances can be used to show an accused intended to enter with a person inside. Here, a reasonable fact-finder would have considered several circumstances.

The most persuasive circumstance, according to Larsen, is that he left the Tinsley residence after discovering evidence of occupation. He argues this proves he lacked the intent to enter an occupied dwelling. We agree this is an inference the jury could have drawn from the evidence.

On the other hand, a reasonable jury could infer from the evidence that Larsen intended to enter an occupied dwelling. The State presented evidence supporting a

conclusion that Larsen wanted residents to be home so he could gain access to items often carried by a person when away from home—such as purses, billfolds, and keys—and then left near the home's entry upon the resident's return. Other circumstances suggest this was Larsen's intent.

For example, evidence about the other two incidents shows Larsen's plan was to enter houses and grab keys and purses. The three incidents occurred over a three to four-day period, and all reflect Larsen's text declaration that he would get money and a car for his girlfriend. Both other incidents occurred around the same time of night as when Tinsley's security alerted—one at 11 p.m. when Larsen entered an occupied dwelling and the other sometime after 11 p.m. when one of the car owners retrieved some items from the car and went to bed. In the incident in which Larsen entered a house, he took a purse and keys. And in the other, the thief took a billfold and keys. The keys were used to steal a vehicle, and a credit card taken from the billfold was fraudulently used. A jury could infer a plan and intent to enter occupied dwellings from this series of events so there would be quick access to money, keys, and other valuables while residents were likely to be home but asleep. See K.S.A. 2022 Supp. 60-455(b) (Evidence of other crimes "is admissible when relevant to prove some other material fact including motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.").

The jury could have also considered the State's questions to Tinsley about which rooms had lights on when Larsen was on the patio. Tinsley's answers could lead a reasonable jury to conclude the house looked occupied before Larsen approached to look through the window. Tinsley testified at least three rooms had lights on or televisions lighting up the room. These rooms—the kitchen, the room where Tinsley watched television, and the master bedroom—were on two levels and at the back of the house where Larsen stood. A reasonable jury could infer that someone planning a burglary of an

unoccupied dwelling would view this lighting pattern in multiple rooms in the house as a signal to retreat from the dwelling. Larsen did the opposite by moving onto the patio and looking inside the house.

These actions contrast with defendants in other appellate cases who wanted to enter an unoccupied dwelling. Sean Arnell Hargrove, for example, approached a house midday when people were unlikely to be home. Then, as previously noted, he rang the doorbell repeatedly, went to his car, returned to ring the doorbell, and tried the door handle. These actions suggest Hargrove tried to enter the house only after there was no response and no other sign the building was occupied. See 48 Kan. App. 2d at 565. Larsen, on the other hand, entered the Tinsley's fenced backyard, stepped onto the patio, and looked inside the house with lights on in multiple locations around 10:30 p.m.—a time when people commonly would be home and often would be asleep. Indeed, four of the five people in the Tinsley home were sleeping. It was only when Larsen saw an adult male who was not asleep that he fled.

Granted, reasonable fact-finders might view Larsen's peeking into the window to be a precaution like Hargrove's action of ringing the doorbell. And from this the jury could conclude Larsen hoped to find the house unoccupied. But when all the evidence is viewed in the light most favorable to the State, the fact Larsen ignored signs that the house was occupied before he approached the house weakens the inference in Larsen's favor. And the inference in Larsen's favor is further weakened by evidence from the other incidents that suggests a plan to enter occupied houses where purses, billfolds, and keys can be grabbed. Rather, the peeking inside the house suggests that Larsen's plan was to enter the house while the residents slept or were in a part of the house where they would not hear or see him.

In summary, considering the entire record in a light most favorable to the State, we hold a reasonable jury could decide beyond a reasonable doubt that Larsen looked inside with the desire or conscious objective to enter a house with people in it. In other words, the State presented sufficient evidence. Larsen's sufficiency claim based on the lack of evidence supporting an intent to enter an occupied dwelling fails.

2.2 *Sufficient Evidence of an Overt Act*

Finally, Larsen argues the State did not present sufficient evidence that he took an overt act in furtherance of the perpetration of aggravated burglary. Larsen more specifically argues that looking in the window of the Tinsley residence was mere preparation to commit a crime, not an overt act toward the commission of the crime. In making this argument, Larsen relies on *State v. Garner*, 237 Kan. 227, Syl. ¶ 3, 699 P.2d 468 (1985).

In *Garner*, this court held that "[n]o definite rule as to what constitutes an overt act for the purposes of attempt can or should be laid down. Each case must depend largely on its particular facts and the inferences which the jury may reasonably draw therefrom." The opinion elaborated: "The accused must have taken steps beyond mere preparation by doing something directly moving toward and bringing nearer the crime he intends to commit." An overt act sufficient to prove an attempt offense "must approach sufficiently near to consummation of the offense to stand either as the first or some subsequent step in a direct movement toward the completed offense." 237 Kan. at 238. Larsen argues he did not cross the line of preparation to an act that is a step toward the completed crime because "[h]e took no steps toward the actual entry into the house."

We disagree. The evidence of Larsen peeking into the window was a step toward the completed crime analogous to similar actions this court has found to be an overt act.

For example, we concluded that entering a backyard was a sufficient overt act to support a jury's verdict of felony murder while in perpetration of the crime of burglary or attempted burglary. *State v. Chism*, 243 Kan. 484, 490, 759 P.2d 105 (1988). We relied on the rule from *Garner* in concluding that the trial judge in *Chism* erred by taking the determination of an overt act from the jury because, "[u]nder the circumstances of the case at bar, the jury could have reasonably found the overt act had been committed when the appellants entered the victim's backyard." 243 Kan. at 490.

Below, Larsen tried to distinguish his case from *Chism*, pointing to other steps the two men involved in the *Chism* attempted burglary took in preparing to enter the house, including removing a window air conditioner. That distinction does not change the applicability of the *Chism* holding to the facts presented here, however. *Chism* did not base its holding on the series of acts. Instead, it recognized a reasonable jury could find the entry into the backyard was an overt act. 243 Kan. at 490. While the *Chism* court discussed the evidence of further action, it did so in the context of assessing harmless error. Again, it did not require more than the backyard entry as proof of an overt act. Likewise, Larsen's peek into the house was more than mere preparation. It was one in a series of acts—including entering the backyard—that moved him closer to the completed crime.

That point is made in *Hargrove*, 48 Kan. App. 2d 522, which the Court of Appeals relied on to find sufficient evidence Larsen committed an overt act. *Larsen*, 2022 WL 3017317, at *8. *Hargrove*, in discussing a sufficiency argument, cited *Garner* for the proposition that "[t]he divide between an overt act and mere preparation isn't always well marked; it often depends upon the facts of the case and the nature of the crime." *Hargrove*, 48 Kan. App. 2d at 563. The Court of Appeals considered Hargrove's actions—tampering with an alarm system and jimmying a backdoor—sufficient for a reasonable jury to conclude the acts exceeded mere preparation. But the *Hargrove*

decision also highlights other conduct that a reasonable jury could conclude was an overt act, including ringing the doorbell repeatedly, going to the car, returning to ring the doorbell, and trying the door handle. *Hargrove* distinguished these acts from mere preparation, "such as placing the gloves, screwdriver, or other burglary tools in the car." 48 Kan. App. 2d at 564.

Similarly, a reasonable fact-finder could determine that Larsen took logical steps toward the crime of aggravated burglary when he peeked into the house through the window. Larsen himself recognized he was breaking-in because he texted his girlfriend and said: "Someone seen me[,] and I almost got caught breaking in." He recognized his actions as part of the act of burglarizing the Tinsley home, and the jury had heard sufficient evidence of an overt act.

Larsen also complains that the Court of Appeals conflated his intent to commit burglary with an overt act. It did not. The Court of Appeals reviewed Larsen's intent because it is an element of the offense, and one Larsen disputed. But the Court of Appeals also separately considered Larsen's conduct that evening, noting Larsen entered a fenced backyard, then approached the house, and committed the overt act of looking through the window. See *Larsen*, 2022 WL 3017317, at *9. This discussion is distinct from the Court of Appeals' discussion of Larsen's intent.

In sum, the Court of Appeals correctly concluded that this evidence, viewed in the light most favorable to the State, supported a reasonable jury deciding that "Larsen did more than just prepare to commit the crime of burglary at the Tinsley residence." 2022 WL 3017317, at *9. We affirm.

CONCLUSION

We affirm Larsen's attempted aggravated burglary conviction.

Judgment of the Court of Appeals affirming the district court is affirmed. Judgment of the district court is affirmed.

STANDRIDGE, J., not participating.