Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **16th day of October, 2012**, are as follows:

BY JOHNSON, J.:

2012-K -0233 STATE OF LOUISIANA v. JEROME BRYANT, JR. (Parish of Caddo)
(Aggravated Burglary)

For the above reasons, we reverse the ruling of the court of appeal and reinstate defendant's conviction for aggravated burglary as well as the second-felony habitual offender adjudication and sentence on that count.
REVERSED. JUDGMENT OF THE TRIAL COURT REINSTATED.

KIMBALL, C.J., dissents for reasons assigned by Justice Knoll.
KNOLL, J., dissents and assigns reasons.

10/16/12

SUPREME COURT OF LOUISIANA

No. 12-K-233

STATE OF LOUISIANA

VERSUS

JEROME BRYANT, JR.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL SECOND CIRCUIT, PARISH OF CADDO

JOHNSON, Justice

We granted this writ application to determine whether the court of appeal erred in overturning defendant's conviction for aggravated burglary. Finding the evidence sufficient to support the trial judge's finding that defendant, Jerome Bryant, Jr., entered the victim's home, we reverse.

FACTS AND PROCEDURAL HISTORY

On February 5, 2009, Jason Goetz, who resided at 433 Pennsylvania Avenue in Shreveport, Louisiana, was home alone with his two-year-old daughter. Mr. Goetz testified he heard a noise at the french doors at the back of his house and walked over to investigate. The blinds on the french doors were only partially lowered, and he was able to see the bottom of an unknown man's pants through the glass of the doors. The man then kicked in the back doors. Mr. Goetz testified the man appeared surprised to see him and immediately fired two shots in his direction and then ran away. Mr. Goetz testified that the man did not enter his house, but shot at him while standing on a step outside of the back door. After the man ran away, Mr. Goetz went to his daughter's room, looked through the window blinds and observed the man drive away in a white vehicle. Mr. Goetz then called 911.

Defendant was apprehended shortly thereafter at another location. Mr. Goetz was brought to that location and positively identified Jerome Bryant as the man who kicked in his doors and fired the two shots. Defendant and a co-defendant, Deandrae Jackson, were subsequently charged relative to burglaries at three separate residences on the same date. Specifically, on March 11, 2009, by three separate bills of information, defendant was charged with two counts of simple burglary of an inhabited dwelling in violation of La. R.S. 14:62.2, and one count of attempted second degree murder, which was later amended to aggravated burglary, in violation of La. R.S. 14:60 for the incident involving Mr. Goetz.

After waiving his right to trial by jury, defendant went to trial before the court November 3, 2010, on one count of simple burglary and one count of aggravated burglary. This writ application solely concerns the trial on the aggravated burglary charge involving the Goetz residence. After the State rested its case, defendant moved for a directed verdict arguing the State failed to prove he actually *entered* Mr. Goetz's home, a necessary element of the crime of burglary. The State countered that defendant had entered the home when his foot kicked the door open and when he pointed the gun inside the house. The trial court denied the request for a directed verdict and the defense rested. Defendant was convicted of one count of aggravated burglary. Defendant was also convicted of simple burglary of another residence, however that conviction is not subject of the instant writ application. Defendant subsequently received a substantial sentence as a habitual offender.

Defendant appealed his conviction and sentence, arguing the evidence was insufficient to prove he committed the crime because he never actually entered the residence.[1] The court of appeal set aside his conviction and sentence for aggravated

[1] Defendant also raised other assignments of error which are not at issue in the instant writ application.

burglary, as well as the habitual offender adjudication, and remanded the matter to the trial court for entry of judgment of guilty of attempted aggravated burglary and re-sentencing.[2] The court of appeal found the evidence insufficient to support defendant's conviction for aggravated burglary because Mr. Goetz never testified that any part of defendant's body entered his house, even when defendant kicked open the door, and the State introduced no evidence or expert testimony to show that defendant's foot did, or necessarily would have had to, enter the house. The court further held that defendant's habitual offender adjudication must be vacated as it was based on the aggravated burglary charge. The court found the record sufficient to support a conviction for the lesser-included offense of attempted aggravated burglary.

The State filed the instant writ application, which we granted.[3]

DISCUSSION

La. R.S. 14:60 provides, in pertinent part:

> Aggravated burglary is the unauthorized **entering** of any inhabited dwelling...where a person is present, with the intent to commit a felony or any theft therein, if the offender,
>
> (1) Is armed with a dangerous weapon; or
>
> (2) After entering arms himself with a dangerous weapon; or
>
> (3) Commits a battery upon any person while in such place, or in entering or leaving such place.

(Emphasis added). The sole issue before this Court is whether the court of appeal erred in holding that the State presented insufficient evidence of an "entry" such that there could be no conviction of aggravated burglary.

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[2] *State v. Bryant*, 46,744 (La. App. 2 Cir. 12/21/11), 80 So. 3d 754.

[3] *State v. Bryant*, 12-0233 (La. 5/18/12), 89 So. 3d 1200.

The State argues the court of appeal erroneously applied the *Jackson v. Virginia*[4] standard, holding the State to a burden of proof greater than that required by law on the question of whether an unauthorized entry was made. The State notes that while Mr. Goetz did answer "no" when questioned if defendant entered his home, it is clear Mr. Goetz approached this question as a layperson would, addressing only whether defendant actually stepped inside his home. According to the State, the only legal requirement is that any part of defendant's body cross the plane of the door. The defendant's actions in kicking in the door while standing on the step, then fully extending his arm while firing his gun constituted evidence that some unauthorized entry was made. The trial judge was aware of the appropriate standard for an entry, and was able to observe Mr. Goetz demonstrate how defendant kicked in the door and held the gun. The trial judge's determination of the fact of entry must be given deference and must be viewed in the light most favorable to the prosecution under *Jackson*.

By contrast, defendant argues the evidence at trial failed to establish beyond a reasonable doubt that he entered Mr. Goetz's home. Defendant agrees that the State need only prove any portion of his body passed the line of the door's threshold, but argues this burden was not met. Mr. Goetz specifically testified defendant never entered his house, and stated that defendant fired the shots from the step. Mr. Goetz never testified that he saw any part of defendant's body cross the plane into his dwelling. The State introduced no evidence on this issue other than the testimony of Mr. Goetz. Thus, defendant argues the court of appeal correctly reversed the aggravated burglary conviction.

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[4] 443 U.S. 307 (1979) (holding that a reviewing court must determine whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found proof beyond a reasonable doubt of each of the essential elements of the crime charged.)

In reviewing the sufficiency of the evidence to support a conviction, this Court has recognized that an appellate court in Louisiana is controlled by the standard enunciated by the United States Supreme Court in *Jackson v. Virginia*, *supra*. *State v. Tate*, 01-1658 (La. 5/20/03), 851 So. 2d 921, 928 (citing *State v. Captville*, 448 So. 2d 676, 678 (La.1984)). Under this standard, an appellate court "must determine that the evidence, viewed in the light most favorable to the prosecution, was sufficient to convince a rational trier of fact that all of the elements of the crime had been proved beyond a reasonable doubt." *Tate*, 851 So. 2d at 928.

"Entry" is not statutorily defined in Louisiana. While this Court has never directly addressed the issue, our appellate courts have found "entry" for purposes of the crime of burglary whenever any part of the defendant's body passes the line of the threshold. *See, State v. Abrams,* 527 So. 2d 1057, 1059 (La. App. 1st Cir. 1988) ("it is sufficient if any part of the actor's person intrudes, even momentarily, into the structure"); *State v. Hogan*, 33,077 (La. App. 2 Cir. 3/1/00), 753 So. 2d 965, 967; *State v. Jefferson*, 33,333 (La. App. 2 Cir. 5/10/00), 759 So. 2d 1016, 1019. The term has also been uniformly defined in criminal law treatises. *Wharton's* provides:

> There is entry when any part of the defendant's person passes the line of the threshold. Thus, there is an entry when the defendant, after opening a closed door, steps across the threshold; when, after breaking the glass of a door or window, he reaches inside to unlock the door or window or to steal property; when in the course of breaking the glass of a door or window, his finger, hand, or foot happens to pass through the opening; or when, in the course of pushing open a closed door or raising a closed window, his finger or hand happens to pass the line of the threshold or to pass through the opening.

3 Wharton's Criminal Law, § 322, pp. 247-48 (15th ed. 1995, Charles E. Torcia, ed.); *see also* W.R. Lafave, A.W. Scott, 2 Substantive Criminal Law § 8.13, p. 467 (1986) ("It is sufficient if any part of the actor's person intrudes, even momentarily, into the

structure. Thus, the momentary intrusion of part of a foot in kicking out a window, constitutes the requisite entry.")

High courts in other jurisdictions have defined entry similarly, consistently holding that a "slight entry," consisting of any part of the actor's body crossing the plane, is sufficient. *See, People v. Beauchamp*, 944 N.E. 2d 319, 324 (Ill. 2011); *State v. Keopasaeuth*, 645 N.W. 2d 637 (Iowa 2002); *State v. Gutierrez*, 172 P. 3d 18, 23 (Kan. 2007); *State v. Crossman*, 790 A. 2d 603, 606 (Me. 2002); *Hebron v. State*, 627 A. 2d 1029 (Md. 1993); *State v. Fernandes*, 783 A. 2d 913, 917 (R.I. 2001); *Rowland v. Com*., 707 S.E. 2d 331, 333 (Va. 2011). We agree with the universal definition given to the term "entry," and hold as a matter of law that an "entry" for purposes of the crime of burglary occurs when any part of the intruder's person crosses the plane of the threshold.

In setting aside defendant's conviction for aggravated burglary, the court of appeal found insufficient evidence of an "entry" due to the lack of direct evidence that defendant's foot crossed the door's threshold. After reviewing the record, we find the court of appeal erred in reversing the trial judge's finding that an entry occurred.

Mr. Goetz's testimony was videotaped for perpetuation at defendant's preliminary examination because Mr. Goetz was on active military duty and deployed to Afghanistan prior to trial. The videotape of Mr. Goetz's testimony reflects the following colloquy:

> Q: (DA): Did [the defendant] ever get to enter your house?
>
> A: (Goetz): No, sir.
>
> Q: When the shots were fired, was [the defendant] standing outside of your house?
>
> A: Yes sir. There's a little step up from the driveway into the house. And he kicked the door and he didn't step over after he kicked the door. When he kicked the door he regained

his footing, saw I was there, was surprised. Like I said before, he already had the weapon in his hand and he reached up and fired two times and ran away.

Q: Would it be correct to say he was standing lower?

A: A little bit lower, yes sir.

Mr. Goetz was asked by defense counsel to stand up and demonstrate how defendant fired the gun. Mr. Goetz demonstrated the events, including defendant kicking in the door, defendant acting surprised to see him, and, with more specificity, demonstrated the manner in which defendant held and shot the gun. Later, on redirect testimony, Mr. Goetz again demonstrated how defendant held his arm, and stated that defendant's left arm was fully extended straight out.

This Court has held that the trier of fact may make reasonable inferences from the evidence presented. In *State v. Spears*, we stated:

> When evaluating circumstantial evidence, the trier of fact must consider the circumstantial evidence in light of the direct evidence, and vice versa, [and] the trier of fact must decide what reasonable inferences may be drawn from the circumstantial evidence, the manner in which competing inferences should be resolved, reconciled or compromised; and the weight and effect to be given to each permissible inference. From facts found from direct evidence and inferred from circumstantial evidence, the trier of fact should proceed, keeping in mind the relative strength and weakness of each inference and finding, to decide the ultimate question of whether this body of preliminary facts excludes every reasonable hypothesis of innocence.

05-0964 (La. 4/4/06), 929 So. 2d 1219, 1222 (citing *State v. Chism*, 436 So. 2d 464, 469 (La. 1983)). In *Chism,* we further held that "[t]he gist of circumstantial evidence, and the key to it, is the inference, or process of reasoning by which the conclusion is reached. This must be based on the evidence given, together with a sufficient background of human experience to justify the conclusion." 436 So. 2d at 469. In rendering judgment, the trial judge explained his reasoning as follows:

> There was a forced entry, unauthorized entry. The defendant, upon breaking the door, simply because he did not go all the way into the

> home, does not indicate to the Court that he did not make the unauthorized entry upon forcing the door open. All facts would indicate that there was some type of entry when the door was forced open. All be it [sic], he didn't step into the house, per se, within so many feet. But it would indicate to the Court that he did break the plane of the home.

Considering the facts of this case, we find the trial judge could have drawn the reasonable inference from Mr. Goetz's testimony, combined with human experience, that by kicking in the french doors with any degree of force, defendant's foot necessarily crossed the threshold, even if only minimally. Moreover, Mr. Goetz physically demonstrated the defendant kicking in the doors and, more specifically, how defendant held the gun and extended his arm in firing the shots. Based on Mr. Goetz's demonstration, it is also fully reasonable that the trial judge found defendant stood close enough to the door that his fully extended left arm crossed the threshold of the home. While Mr. Goetz testified that the defendant did not enter his home, we do not find this determinative of whether the legal definition of "entry" was met. We agree with the State that Mr. Goetz's understanding of "entry" was likely that of a layperson and may not comport with the legal definition. We note that Mr. Goetz's testimony was perpetuated by video at the preliminary hearing on January 4, 2010, ten months prior to trial. Thus, Mr. Goetz could not be further questioned at trial to delve into the entry issue in more detail. Additionally, it is apparent from the record and the video testimony that there were two primary issues of interest at the preliminary hearing, neither of which was whether an "entry" was made. Because Mr. Bryant was charged with a co-defendant, questioning focused on the identification of Mr. Bryant as the shooter. Additionally, because Mr. Bryant and the co-defendant were initially charged with attempted second-degree murder, the questioning of Mr. Goetz was focused on whether the shooter intentionally shot at Mr. Goetz such as to justify an attempted murder charge.

Thus, based on Mr. Goetz' testimony, even in the absence of direct evidence, an inference that a part of defendant's body crossed the plane of Mr. Goetz's doorway was one the trial judge could reasonably draw according to his human understanding and experience. The trial judge found there had been "some type of entry when the door was forced open," an observation broad enough to encompass both defendant's foot and his extended left arm.

Other jurisdictions have found an "entry" based on similar facts. In *Paulley v. Commonwealth of Kentucky*, 323 S.W. 3d 715, 722 (Ky. 2010), the Kentucky Supreme Court considered whether evidence was sufficient to prove entry. The Court noted the evidence showed that, at most, the front door of the residence opened slightly when it was kicked by the defendant. Thus, the court noted that the defendant's foot could have crossed the threshold when the door was ajar. The court found the evidence sufficient to support a burglary charge.

In *Hebron v. State*, 627 A. 2d 1029, 1037-39 (Ct. App. Md. 1993), the evidence established that the victim's neighbors heard a loud "bang" moments before the defendant appeared; the victim and officer observed splintered wood on a floor mat inside the house; and the door was damaged so as to make it impossible to close and latch. There was no direct evidence that the defendant entered, or may have entered, the victim's home. However, the court noted the circumstantial evidence could lead a rational trier of fact to reasonably find that defendant used his body to batter the door with such force as to defeat the lock and open the door. From that, the trier of fact could further reasonably infer that, with the application of that kind of body pressure to the door, some part of the defendant's body must necessarily have crossed the threshold when the door opened.

In *State v. Pace*, 602 N.W. 2d 764, 773 (Iowa 1999), the Iowa Supreme Court held that the jury could have found defendant committed burglary beyond a reasonable doubt when he pushed in on the door of the house after the victim retreated into the house and struggled to close the door. The Court noted that entry includes breaking of the plane of the threshold of a house.

In *People v. Roldan*, 241 N.E. 2d 591 (Ill. App. 1968), the court found entry was demonstrated by the physical act of kicking in the widows. The court noted the windows would not have given way had the defendant's foot not penetrated the premises.

CONCLUSION

Based on the evidence presented at trial, the fact of entry was a reasonable inference when defendant kicked in the door of the house and fully extended his arm in shooting the gun from the step. Thus, we find the court of appeal erred when it held that the State was required to directly prove that defendant's foot crossed the threshold of Mr. Goetz's house. Viewing the evidence in the light most favorable to the prosecution, we find the evidence was sufficient under *Jackson* for the trial judge to find an entry was made. Considering the reasons given by the trial judge, we cannot say his finding was erroneous. For the above reasons, we reverse the ruling of the court of appeal and reinstate defendant's conviction for aggravated burglary as well as the second-felony habitual offender adjudication and sentence on that count.

DECREE

REVERSED. JUDGMENT OF THE TRIAL COURT REINSTATED.

10/16/12

SUPREME COURT OF LOUISIANA

NO. 2012-K-233

STATE OF LOUISIANA

VERSUS

JEROME BRYANT, JR.

ON WRIT OF CERTORARI TO THE COURT OF APPEAL, SECOND CIRCUIT, PARISH OF CADDO

Knoll, J., dissenting.

I respectfully dissent from the majority opinion, which reverses the Court of Appeal and reinstates the Trial Court's conviction of Jerome Bryant, Jr., for aggravated burglary. In my view, the prosecution has not met its burden of proving "beyond a reasonable doubt each element of the offense." *Clark v. Arizona*, 548 U.S. 735, 766, 126 S. Ct. 2709, 2729, 165 L. Ed. 2d 842 (2006).

A necessary element of aggravated burglary is "the unauthorized entering of any inhabited dwelling." La. Rev. Stat. § 14:60. At issue in the case *sub judice* is whether the State presented sufficient evidence, proving beyond a reasonable doubt that Bryant entered Jason Goetz's home when he kicked open its French doors and fired two shots at Goetz. Our courts follow the common law "threshold rule" to determine if an "entry" has occurred. *See e.g.*, *State v. Smith*, 07-0744, pp. 4–5 (La. App. 4 Cir. 12/19/07); 974 So. 2d 79, 82–83. Under this rule, an entry is accomplished whenever any part of a defendant's body crosses, even momentarily, the line forming the threshold of a dwelling or other structure. *Id*.; 3 Wayne R. LaFave, SUBSTANTIVE CRIMINAL LAW, § 21.1(b), pp. 209–10 (2nd ed. 2003).

When an appellate court reviews a sufficiency of the evidence claim, it must determine whether, after viewing the evidence in the light most favorable to the

prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318–19, 99 S. Ct. 2781, 2789, 61 L.Ed. 2d 560 (1979); *State v. Dorsey*, 10-0216, p. 42 (La. 9/7/11); 74 So. 3d 603, 633. All evidence, both direct and circumstantial, must be sufficient under *Jackson* to convince a rational fact-finder the defendant is guilty beyond a reasonable doubt. *Doresy*, 10-0216 at 42, 74 So. 3d at 633. After reviewing the evidence in a light most favorable to the prosecution, I find no rational trier of fact could have concluded ***beyond a reasonable doubt*** any part of Bryant's person crossed the doorway's threshold.

There is no direct or circumstantial evidence that could lead a rational trier of fact to conclude beyond a reasonable doubt that Bryant's foot or arm crossed the threshold. First, there is no direct evidence proving Bryant physically entered the home. The State's only direct evidence is Goetz's videotaped testimony. In this prerecorded testimony, Goetz stated Bryant kicked open the French doors while standing on a step, which was outside, below the doorway, lost and regained his balance, and then fired two shots into the home while standing on the step. However, on both direct and cross examination, Goetz unequivocally testified Bryant never entered the home.[1]

In the absence of any direct evidence establishing an unauthorized entry, the trial judge was free to infer, based on circumstantial evidence "together with a sufficient background of human experience," that Bryant's foot, or arm, crossed

[1] I am mindful of the fact Gotez, a chemical operations specialist for the Army National Guard, was unaware of the legal definition of an "entry." Goetz's layman's understanding of "entry" does not, however, relieve the prosecution from establishing beyond a reasonable doubt Bryant crossed the threshold, thereby satisfying the legal definition of an unauthorized "entry."

I am also aware that the focus of the preliminary hearing, during which Goetz' testimony was recorded, was not whether an unauthorized "entry" had occurred. However, knowing Goetz would be deployed to Afghanistan and unavailable for trial, the prosecution should have understood this was its last chance to question Goetz. Once Goetz responded "No, sir" when asked whether Bryant entered his home, it should have become immediately apparent follow-up questions were necessary to establish an unauthorized entry. Knowing Goetz would be unavailable for trial, the need to ask these questions at the preliminary hearing should have been urgent and readily apparent.

the threshold of Goetz's doorway. *State v. Chism*, 436 So. 2d 464, 469 (La. 1983) (citing PROSSER, LAW OF TORTS, p. 212 (4th ed. 1971)). However, the circumstantial evidence presented does not establish beyond a reasonable doubt that the threshold was crossed.

Goetz's prerecorded testimony contains two demonstrations in which he reenacts how Bryant kicked open the French doors. Even when viewed in a light most favorable to the prosecution, these demonstrations are hardly definitive and do not lead to the necessary inference that some part of Bryant's body must have crossed the threshold. In both demonstrations, Goetz gives a perfunctory kick in which he does not fully extend his leg. Moreover, each kick is ineffectual and aimed at the bottom, not center, of an imaginary door. After demonstrating Bryant's kick, Goetz then extends his left arm, mimicking how Bryant held his gun pointed downward at a 45 degree angle.

Admittedly, these demonstrations were given in response to the State's and defense counsel's requests for Goetz to demonstrate how and in what direction Bryant was holding his gun. The prosecution, however, failed to ask Goetz any follow-up questions as to how and with what force Bryant kicked the doors. Alternatively, the prosecution could have simply asked Goetz if Bryant's foot crossed the threshold. *See Smith*, 07-0744 at 5, 974 So. 2d at 83 (unauthorized entry clearly established when victim testified at motion hearing defendant's "[foot] crossed the threshold" and at trial "[defendant's] foot crossed the door"). The prosecution similarly failed to ask Goetz if Bryant's arm crossed the threshold when Bryant extended it and fired two shots into the home.

Absent a definitive visual demonstration by Goetz, the trial judge was free to rely on other circumstantial evidence to infer Bryant's foot or arm crossed the doorway's threshold. And indeed this Court and the courts of appeal have often relied on circumstantial evidence to infer an unauthorized entry. *State ex rel.*

Womack v. Blackburn, 393 So. 2d 1216, 1220 (La. 1981) (entry inferred in attempted simple burglary case based on broken glass and sprung latch inside of a doorway indicating "defendant tampered with the latch"); *State v. Schnyder*, 06-29, p. 6 (La. App. 5 Cir. 6/28/06); 937 So. 2d 396, 400 ("Broken glass on the inside of a residence . . . provides circumstantial evidence indicative of unauthorized entry."); *State v. Abrams*, 527 So. 2d 1057, 1059 (La. App. 1 Cir. 1988) (entry inferred in simply burglary case based on footprint on the back of a shelf inside burglarized store).

In this case there is no such circumstantial evidence. In short, nothing in the record would allow a rational trier of fact to infer Bryant kicked the doors with such ferocity his foot would have necessarily crossed the threshold. The prosecution did not ask Goetz if the doors were locked, thereby foreclosing the possibility Bryant kicked them with enough force to break theirs locks. No evidence was introduced that Bryant's kick broke the doors' glass or damaged them in any way. Finally, no footprints were recorded on the doors or near the doorway from which the fact-finder could have inferred Bryant's foot crossed the threshold.

According to the majority, courts in other jurisdictions have inferred an unauthorized entry under similar facts. The cases cited by the majority are unavailing, and, like the jurisprudence from ***our courts***, readily distinguishable. Bryant did not force the French doors open while Goetz struggled to close them. *Contra, State v. Pace*, 602 N.W. 2d 764, 773 (Iowa 1999). Again, the State did not establish the doors were broken or damaged in any way. *Contra, Hebron v. State*, 627 A. 2d 1029, 1037–39 (Ct. App. Md. 1993). And none of the doors' windows were broken. *Contra, People v. Roland*, 241 N.E. 2d. 591, 593 (Ill. App. 1968).

While I am sympathetic to Goetz, a member of our armed forces, and find Bryant's actions abhorrent, the "constitutional necessity of proof beyond a reasonable doubt is not confined to those defendants who are morally blameless." *Jackson*, 433 U.S. at 323, 99 S. Ct. at 2791. Here, the prosecution failed to prove an essential element of aggravated burglary, an "entry," beyond a reasonable doubt. A simple question or series of questions directed at Goetz could have established that either Bryant's foot or arm definitely crossed the doorway's threshold. The prosecution, however, failed to ask these pertinent questions. Accordingly, I must dissent and would affirm the Court of Appeal's ruling, reducing Bryant's conviction for aggravated burglary to attempted aggravated burglary.