

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Donald F. Harvey,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

February 16, 2022

Court of Appeals Case No.
21A-CR-1376

Appeal from the Tippecanoe
Circuit Court

The Honorable Sean M. Persin,
Judge

Trial Court Cause No.
79C01-2005-F4-32

Robb, Judge.

Case Summary and Issue

- [1] Following a jury trial, Donald Harvey was convicted of burglary, a Level 4 felony; theft, a Level 6 felony; and resisting law enforcement, a Level 6 felony. The trial court subsequently determined that Harvey was an habitual offender and vacated the theft conviction due to double jeopardy concerns. The trial court sentenced Harvey to sixteen years. Harvey now appeals, raising one issue which we restate as whether there was sufficient evidence presented to support his burglary conviction. Concluding the evidence was sufficient, we affirm.

Facts and Procedural History

- [2] At approximately 3:00 a.m. on October 18, 2019, Deputy Mack Carter of the Tippecanoe County Sheriff's Department encountered an SUV speeding and driving left of the center line. Deputy Carter attempted to conduct a traffic stop, however, the vehicle sped away in an attempt to escape. Deputy Carter pursued the vehicle until it drove into a cornfield and he lost sight of it. Deputy Carter waited for backup before entering the cornfield and when officers finally located the vehicle it was unoccupied. Officers determined that the vehicle had been reported stolen to the Crawfordsville Police Department.
- [3] Later that day, the Tippecanoe County Sheriff's Department received multiple calls regarding a suspicious male walking around in the general area where the car chase had occurred. At approximately 10:00 a.m., Michelle Dilling Zanker encountered the man while she was sitting in her car. The man approached

Zanker's passenger window and asked if she would drive him for twenty dollars. Zanker refused and drove away. Zanker described the man as having "scratches and blood coming from his head[,]” wearing “a one piece Carhart[t] jumpsuit” and carrying “a large red duffle bag.” Transcript, Volume 2 at 192.

[4] Between 2:00 and 3:00 p.m., David Rayburn returned home to find a man in “a Carhart[t] coat” standing in his front yard. Tr., Vol. 3 at 11. The man had “dried blood running down both sides of his head” and “two [C]rown [R]oyal bags hanging around his neck.” *Id.* at 11-12. The man offered Rayburn fifty dollars to drive him to Crawfordsville. Rayburn offered to drive him to a gas station in Romney instead and the man accepted. On their way to the gas station, the man used Rayburn's cellphone to place a call to Chasity French. When Rayburn returned home, an officer was sitting in his driveway. Rayburn provided the officer with the phone number the man had called from his phone. Officers then determined the last known address associated with that phone number. *See* Tr., Vol. 2 at 136.

[5] At approximately 2:30 p.m., French got a phone call from Donald Harvey stating he needed a ride from a gas station in Romney. French's daughter, Bria, and her mother (“Grandmother”) then picked Harvey up and returned with him to Grandmother's home. When Bria picked Harvey up, she noticed blood by his eye.

[6] Around 3:10 p.m., John Poore returned home to find his back door open. Once inside, Poore discovered that the cedar chest in his living room was open and the lockbox he kept inside with his coin and money collection had been broken into. Numerous items were missing including \$1,500, old bills,¹ silver eagle and Susan B. Anthony coins, and a Crown Royal bag that contained three rings. A second Crown Royal bag that contained coins that had been in a drawer in Poore's bedroom was also missing, as well as a red leather duffle bag. Poore's kitchen has also been scavenged through, food had been eaten, and a Pepsi had been consumed. Poore reported the break-in to the Tippecanoe County Sheriff's Department. Poore's house is located approximately two miles from Rayburn's by road, but the distance is shorter if traveling through the woods between the two homes. *See Tr.*, Vol. 3 at 18.

[7] Officers Jennifer Halsem and Gavin Schrouf of the Crawfordsville Police Department went to French's home around 6:00 p.m. Harvey arrived at French's home with Grandmother shortly after the officers arrived and was detained. Officers searched Harvey and found \$321 cash, miscellaneous coins, a new LG phone with a receipt from Wal-Mart, a CoinStar receipt, a key chain with three rings, and a Crown Royal bag. John Poore later identified the three rings as the rings taken from his home.

¹ The bills included a \$100 bill printed in 1969 and a \$50 bill from 1950. Bills of the same years and amounts were found when Harvey was detained.

[8] On May 5, 2020, the State charged Harvey with burglary, a Level 4 felony; theft, a Level 6 felony; and resisting law enforcement, a Level 6 felony. Following a jury trial, Harvey was found guilty of those charges. The State also alleged that Harvey was an habitual offender. Harvey waived his right to a jury for the enhancement phase and the trial court determined that Harvey was an habitual offender. At sentencing, the trial court vacated Harvey's theft conviction due to double jeopardy concerns and sentenced Harvey to sixteen years. Harvey now appeals.

Discussion and Decision

I. Standard of Review

[9] In reviewing the sufficiency of the evidence required to support a criminal conviction, we do not reweigh the evidence or judge the credibility of the witnesses. *Bailey v. State*, 907 N.E.2d 1003, 1005 (Ind. 2009). We consider only the evidence supporting the trial court's judgment and any reasonable inferences that can be drawn therefrom. *Id.* Thus, we consider conflicting evidence "most favorably to the trial court's ruling." *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007) (citation omitted). "We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt." *Bailey*, 907 N.E.2d at 1005. Reversal is appropriate only when no reasonable factfinder could find the elements of the crime proven beyond a reasonable doubt. *Drane*,

867 N.E.2d at 146. The evidence is not required to overcome every reasonable hypothesis of innocence and is sufficient if an inference may reasonably be drawn from it to support the verdict. *Id.* at 147.

II. Sufficiency of the Evidence

[10] Harvey argues that the State did not present sufficient evidence to support his burglary conviction. Harvey was convicted of burglary as a Level 4 felony, which required the State prove beyond a reasonable doubt that Harvey did break and enter a dwelling of another person with the intent to commit a felony or theft in it. Ind. Code § 35-43-2-1(1).

[11] Harvey contends that although the State presented evidence that he possessed stolen property, “the mere unexplained possession of recently stolen property standing alone does not automatically support a conviction[.]” Brief of Appellant at 13. However, it is well established that such unexplained possession of recently stolen property will support a burglary conviction as long as there is evidence that a burglary was in fact committed.² *Allen v. State*, 743 N.E.2d 1222, 1230 (Ind. Ct. App. 2001), *trans. denied*. Here, there was evidence

² Harvey does not argue that the property was not “recently” stolen. We note that Harvey was found with the stolen items only hours after the burglary was reported. *See Allen*, 743 N.E.2d at 1230 (stating a possession is recent “[w]here the length of time between the crime and the possession is short”).

that Poore's house was burglarized, and Harvey was found to be in possession of the stolen items the same day as the burglary.

[12] Harvey also argues that there was insufficient evidence because “[n]o forensic evidence was presented to connect [Harvey] with the [burglary]” and none of the witnesses could identify Harvey or testified that they saw him on Poore's property. Br. of Appellant 11.

[13] A burglary conviction may be sustained by circumstantial evidence alone. *Showecker v. State*, 432 N.E.2d 1340, 1342 (Ind. 1982). The State provided ample circumstantial evidence to prove Harvey's guilt. Rayburn's home is located close to Poore's burglarized home. Rayburn testified that he drove a man he found standing in his yard with “two [C]rown [R]oyal bags hanging around his neck[,]” to a gas station in Romney. Tr., Vol. 3 at 11-12. Rayburn let the man use his phone to make a phone call and the man called French, Harvey's sister. French confirmed she received a phone call from Harvey and Grandmother and French's daughter picked up Harvey from a gas station in Romney. Harvey was then found in possession of items matching the items stolen from Poore's home. Further, Poore had kept some of the items that he reported stolen in Crown Royal bags.

[14] Harvey's sufficiency argument asks us to do no more than reweigh the evidence presented by the State. This we will not do. *Bailey*, 907 N.E.2d at 1005. The evidence presented by the State was such that a reasonable factfinder could

find, beyond a reasonable doubt, that Harvey committed burglary. We therefore hold there is sufficient evidence of probative value to support Harvey's conviction of burglary.³

Conclusion

[15] We conclude the State presented sufficient evidence to support Harvey's burglary conviction. Accordingly, we affirm.

[16] Affirmed.

Riley, J., and Molter, J., concur.

³ Harvey also argues that there was insufficient evidence to support his theft conviction. However, because his conviction for theft was vacated by the trial court and we conclude that sufficient evidence was presented regarding his burglary conviction, we need not address his argument.