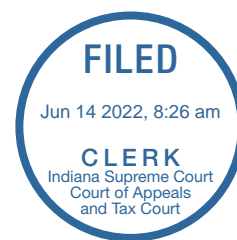


MEMORANDUM DECISION

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.



ATTORNEY FOR APPELLANT

Jane Ann Noblitt
Columbus, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Catherine E. Brizzi
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Alfred Ladell Davis,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 14, 2022

Court of Appeals Case No.
21A-CR-2732

Appeal from the Bartholomew
Superior Court

The Hon. James D. Worton,
Judge

Trial Court Cause No.
03D01-2005-F5-2308

Bradford, Chief Judge

Case Summary

- [1] In March of 2020, Alfred Davis and Edward Cummings went to a home store, forced open the door of a room that contained a safe, and stole over a thousand dollars in cash. When confronted by an employee, Davis and Cummings fled together in a vehicle, crashed into another store, and were apprehended. The State charged Davis with Level 5 felony burglary and Level 6 felony theft, a jury found him guilty as charged, and the trial court sentenced him to an aggregate term of seven years of incarceration. Davis contends that the State produced insufficient evidence to sustain his convictions. We affirm.

Facts and Procedural History

- [2] On March 14, 2020, Ernie Leonard was working at Gillman’s Home Center in Bartholomew County and noticed Davis standing by the door of an office, inside which was a locked doorway to the room where the store safe was kept. As Leonard walked past Davis to enter the office, he heard Davis say, “it’s coming, or he’s coming[.]” Tr. Vol. II p. 45. Leonard noticed that the door to the safe room was ajar and attempted to push it open. When he did, Cummings at first pushed back but then came out, saying there had been an accident. When Leonard replied that there had been no accident, Cummings yelled, and he and Davis ran out of the store and fled together in a vehicle. Approximately \$1400.00 had been stolen from the safe. Review of surveillance footage revealed that before the confrontation with Leonard, Cummings had had an object that could have been used to pry open the door to the safe room and that both Cummings and Davis had been wearing earpieces.

[3] Police, who had been given the license plate of the fleeing vehicle, located the vehicle and gave chase. Cummings eventually crashed the vehicle into the back of another building, and he and Davis fled on foot. When police located them, Cummings was in possession of between \$600.00 and \$700.00, and Davis was in possession of approximately \$1000.00, balled up and apparently shoved into his front pockets. The State charged Davis with Level 5 felony burglary and Level 6 felony theft, a jury found him guilty as charged, and the trial court sentenced him to an aggregate term of seven years of incarceration.

Discussion

[4] Davis contends that the State produced insufficient evidence to sustain his convictions for burglary and theft. When evaluating a challenge to the sufficiency of the evidence to support a conviction, we do not “reweigh the evidence or judge the credibility of the witnesses,” nor do we intrude within the factfinder’s “exclusive province to weigh conflicting evidence.” *Alkhalidi v. State*, 753 N.E.2d 625, 627 (Ind. 2001). Rather, a conviction will be affirmed unless “no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.” *Jenkins v. State*, 726 N.E.2d 268, 270 (Ind. 2000). The evidence need not exclude every reasonable hypothesis of innocence, but instead, “the evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.” *Pickens v. State*, 751 N.E.2d 331, 334 (Ind. Ct. App. 2001). When we are confronted with conflicting evidence, we must consider it “most favorably to the [factfinder’s] ruling.” *Wright v. State*, 828 N.E.2d 904, 906 (Ind. 2005).

- [5] To prove Level 5 felony burglary, the State was required to show that Davis knowingly or intentionally entered the building of another with the intent to commit a felony or theft therein. Ind. Code § 35-43-2-1. To convict Davis of Level 6 felony theft, the State had to show that Davis exerted unauthorized control over the property of another with the intent to deprive the owners of any part of the use or value of the property, said property having a value of at least \$750 and less than \$50,000. Ind. Code § 35-43-2-1. It is well-settled that a conviction for burglary may be sustained by circumstantial evidence. *Allen v. State*, 743 N.E.2d 1222, 1230 (Ind. Ct. App. 2001), *trans denied*.
- [6] Indiana law does not distinguish the responsibility of a principal and an accomplice. *Stokes v. State*, 919 N.E.2d 1240, 1245 (Ind. Ct. App. 2010), *trans. denied*. A person who “knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense[.]” Ind. Code § 35-41-2-4. The evidence does not need to show that the accomplice personally participated in each element of the offense. *Griffin v. State*, 16 N.E.3d 997, 1003 (Ind. Ct. App. 2014). A person who aids another in committing a crime is just as guilty as the actual perpetrator. *Lothamer v. State*, 44 N.E.3d 819, 822 (Ind. Ct. App. 2015), *trans. denied*. The particular facts and circumstances of each case must be considered to determine whether a person participated in the offense as an accomplice. *Castillo v. State*, 974 N.E.2d 458, 466 (Ind. 2012). While a defendant’s presence at the scene or lack of opposition to a crime, standing alone, is insufficient to establish accomplice liability, courts may consider presence in conjunction with other facts to determine whether one

acted as an accomplice to a crime. *Tuggle v. State*, 9 N.E.3d 726, 736 (Ind. Ct. App. 2014), *trans. denied*. The non-exhaustive list of factors relevant to the inquiry include presence at the scene of the crime; companionship with another engaged in a crime; failure to oppose commission of the crime; and the course of conduct before, during, and after the occurrence of the crime. *Id.*

[7] Davis contends that his convictions are based solely on his presence at the scene of Cummings's crimes. Our review of the record undercuts this claim. The jury saw surveillance video showing that both Davis and Cummings had been wearing earpieces before the theft from the safe room, supporting an inference that they had been coordinating their actions. The jury also heard evidence that Davis, apparently standing guard for Cummings, had at least attempted to alert him that he was about to be discovered by Leonard and had fled with him soon thereafter, traveling in the same vehicle. Finally, the jury heard evidence that Davis had fled from the vehicle after the police chase and had been eventually discovered with approximately \$1000.00 of cash stuffed into his pockets.

[8] In short, the evidence tends to establish that Davis had not merely been present as Cummings committed his crimes but had been an active participant. The evidence of coordination and common flight tends to establish companionship with Cummings and there is no indication that Davis opposed Cummings's crimes. Davis's conduct also tends to establish his involvement, most notably his standing guard for and attempting to alert Cummings, his flight after Cummings crashed the vehicle, and his possession of a large amount of cash stuffed into his pockets. Davis points to his testimony that he had not known

Cummings was committing any crimes and had had innocent reasons for all of his actions that day. The jury, however, was not obligated to credit any of this testimony and apparently did not. Davis's argument is nothing more than an invitation to reweigh the evidence, which we will not do. *See Alkhalidi*, 753 N.E.2d at 627.

[9] We affirm the judgment of the trial court.

Najam, J., and Bailey, J., concur.