

# 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.



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# IN THE COURT OF APPEALS OF INDIANA

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Michael M. Fagin,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

October 4, 2022

Court of Appeals Case No.  
22A-CR-242

Appeal from the Pulaski Superior  
Court

The Honorable Crystal A. Kocher,  
Judge

Trial Court Cause No.  
66D01-2101-F5-2

**Mathias, Judge.**

[1] Michael M. Fagin appeals his Level 5 felony Burglary conviction, arguing that the State failed to present sufficient evidence to prove his guilt beyond a reasonable doubt. We affirm.

### **Facts and Procedural History**

[2] On the morning of January 22, 2021, shortly after waking, Mark Dauenhauer, observed that two doors of his pole barn were open. Tr. Vol. II p. 188. Going to investigate, Dauenhauer entered the pole barn and inspected his truck, where he found several nail guns, crossbows, and arrows in the vehicle's bed. *Id.* at 189. Dauenhauer had not placed those objects in the truck bed and suspected that someone else must have placed them there. He closed the garage doors and returned to his house to call the police. *Id.*

[3] After calling the police, Dauenhauer looked out his window and saw a man he did not recognize wearing jeans, a grey hooded sweatshirt, and a jacket. *Id.* at 190. The man went into the garage, and Dauenhauer then observed the garage door he had closed begin repeatedly opening and closing. *Id.* Dauenhauer called the police a second time to let them know that there was currently a person in his garage. *Id.* at 191. After arriving, the police began searching the property but were unable to find anyone. *Id.* at 226–27.

[4] When Dauenhauer reinspected the bed of his truck he found that the crossbow and arrows he had seen were no longer there. *Id.* at 198. After closer inspection, Dauenhauer discovered that the truck's ignition switch had been damaged and that a harness, a set of tools, and a thumb drive were all missing from the truck.

*Id.* at 198–99. Dauenhauer also discovered that a garage opener was missing from another car parked outside the barn. *Id.* at 198.

[5] Dauenhauer showed officers footage from a trail camera he had located nearby which showed two individuals on the property, one matching the description of the man Dauenhauer had seen earlier and the other wearing a dark jacket and pants. *Id.* at 194. The police then began to search the area around Dauenhauer’s property for the two men captured by the trail camera. *Id.* at 233. Eventually the police found two individuals, Michael Fagin and Shannon Watts, walking along a tree line on the property of Larry Claxton, Dauenhauer’s neighbor to the north. *Id.* Watts, who was wearing a black jacket along with a grey sweatshirt, ran away after police called out to the two of them “sheriff’s office, come here.” Tr. Vol. II p. 229. Fagin, who was wearing a light-brown Carhart jacket and dark pants, complied and walked towards the officers. Tr. Vol. II pp. 228–29. Police searched Fagan but found nothing except a small green flashlight. T. Vol. III p. 36.

[6] Fagin waived his *Miranda* rights and agreed to speak to the police. Fagin told police that he had been driving with his “good friend” Watts before Watts’ car broke down on the side of the road. Ex. Vol., State’s Ex. 35. Fagin denied being present at either Dauenhauer’s barn or house and claimed he was 100% certain that he had not been with Watts when the crossbows were taken. *Id.* The officer then showed the trail camera photographs to Fagin. At first, Fagin denied that he was in any of the photos before eventually admitting that he was the person

shown in one of the photos. But Fagin suggested that he had only walked through Dauenhauer's property. *Id.*

[7] On April 3, Larry Claxton called the police to report that he had discovered two crossbows and a single arrow lying on the ground near his property. Tr. Vol. II pp. 174–75. Claxton found the crossbows near where Fagin and Watts had been found on the day of the burglary, Tr. Vol. III p. 37, and Dauenhauer identified the crossbows as his. Tr. Vol. II p. 231.

[8] On January 25, 2021, the State charged Fagin with Level 5 felony Burglary. Appellant's App. Vol. II p. 21. Fagin's case was tried before a jury on October 14–15, 2021, and the jury found him guilty of Burglary under a theory of accomplice liability. *Id.* at 15, 173. At sentencing, the trial court found “aggravating factors to include Defendant's extensive history of criminal or delinquent behavior” and the fact that “the harm, injury, loss, or damage suffered by the victim of the offense was significant.” Appellant's App. Vol. III p. 59. No mitigating factors were found. *Id.* The trial court then imposed a five year sentence with two years suspended. Appellant's App. Vol. II pp. 59–61. Fagin now appeals.

### **Discussion and Decision**

[9] Fagin argues that the State failed to present sufficient evidence to prove that he committed burglary. In reviewing this claim, “we neither reweigh the evidence nor judge witness credibility.” *Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020) (citation omitted). Instead, we respect “the jury's exclusive province to weigh

conflicting evidence.” *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005) (citation omitted). We look to the evidence most favorable to the verdict and reasonable inferences drawn therefrom. *Shuger v. State*, 859 N.E.2d 1226, 1236 (Ind. Ct. App. 2007). We will affirm if there is probative evidence from which a reasonable jury could have found the defendant guilty beyond a reasonable doubt. *Id.*

[10] At trial, the State sought to prove Fagin’s guilt under the theory of accomplice liability. In criminal law, there is generally no distinction between an accomplice and the person who commits the offense. See *Stokes v. State*, 919 N.E.2d 1240, 1245 (Ind. Ct. App. 2010), *trans. denied*. Indeed, Indiana’s accomplice liability statute provides that “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*.

[11] To prove that Fagin committed burglary, the State needed to establish that he knowingly aided, induced, or caused Watts to enter Dauenhauer’s pole barn with the “intent to commit a felony or theft” inside. Appellant’s App. Vol. II p. 21, *I.C. § 35-43-2-1*. Factors considered by the fact-finder to determine whether a defendant aided another in the commission of a crime include: (1) presence at the scene of the crime; (2) companionship with another engaged in a crime; (3) failure to oppose the commission of the crime; and (4) the course of conduct before, during, and after the occurrence of the crime. *Whedon v. State*, 765 N.E.2d 1276, 1277 (Ind. 2002).

- [12] Fagin points to the fact that he was never seen with Watts in the pole barn on Dauenhauer's property. However, the record shows that Fagin was with Watts immediately before and after the burglary took place. Fagin also admitted in his interview with police that he was photographed by Dauenhauer's trail camera at the time of the burglary, establishing that he was on Dauenhauer's property around the time Watts was carrying out the burglary. Ex. Vol., State's Ex. 35.
- [13] After he initially suspected someone was inside his barn, Dauenhauer saw his crossbows in the bed of his truck, which was parked in his pole barn. Dauenhauer returned to his house and saw Watts enter the pole barn. Later, Dauenhauer discovered that the crossbows were missing. Following the burglary, police found Fagin and Watts together in the same area where the stolen crossbows were later found. Additionally, Fagin described Watts as a close, lifelong friend. The only evidence that Fagin opposed the crime is his own self-serving statement that he threw the crossbows to the ground when they were given to him by Watts.
- [14] From these facts and circumstances the jury could reasonably infer that Fagin participated in the burglary as Watts's accomplice. *See Whedon v. State*, 765 N.E.2d 1276, 1278 (Ind. 2002) (establishing that presence at the scene of the crime and failure to oppose the crime may be considered along with other factors to determine participation). We will not reweigh evidence that the jury has already considered. We thus conclude that the State presented sufficient evidence to prove that Fagin was an accomplice to the burglary of Dauenhauer's property.

[15] We affirm.

Robb, J., and Crone, J., concur.