MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Darrin S. Shinkle
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 21, 2021

Court of Appeals Case No. 20A-CR-2166

Appeal from the Allen Superior Court

The Honorable David M. Zent, Judge

Trial Court Cause No. 02D06-2007-F5-273

Najam, Judge.

Statement of the Case

[1] Darrin S. Shinkle appeals his conviction for burglary, as a Level 5 felony, following a jury trial. Shinkle raises the following two issues for our review:

1. Whether the trial court abused its discretion when it instructed the jury.

2. Whether the State presented sufficient evidence to support Shinkle's conviction.

[2] We affirm.

Facts and Procedural History

[3] On July 14, 2020, Fort Wayne Police Department officers executed a search warrant at a residential address in Fort Wayne. The residence at that address was owned by Mary Shelton, but she rented the residence to Damon King, Barbara Evans, and Evans's husband.[1] After officers had completed the execution of the warrant, they contacted code enforcement officers, who then assessed the conditions of the residence and condemned it. In condemning the residence, officers "closed" all the doors, boarded up the windows, and placed a sign at the front of the residence warning passersby that entry without a permit was prohibited. Tr. Vol. II at 112-13.

[1] Evans's husband is not named in the record.

[4] The next day, a neighbor saw a blue SUV, which she had never seen before, park in front of the residence. She then saw two men, neither of whom she had seen before, exit the SUV and go to the back of the residence. Knowing the residence had been condemned, the neighbor called 9-1-1.

[5] Officers Jeremy Hoover and Justan Shutt responded to the neighbor's call and arrived at the residence in full uniform and in their fully marked police cruisers. The officers began walking around the residence in opposite directions. As Officer Hoover approached one corner of the residence, he saw a male "come around the corner," and, when that male saw Officer Hoover, the male "turned around and ran back" behind the residence. *Id.* at 140-41. Officer Hoover pursued him to the back of the residence with Officer Shutt coming to the back of the residence around the other side. When both officers were at the back of the residence, they "didn't see anyone there" but did observe "two or three backpacks full of items[] and a compound bow" near the opened back door to the residence. *Id.* at 141.

[6] The officers called inside the residence for the male to exit. Austin Williams, who owned the blue SUV, exited first, but Officer Hoover did not recognize Williams as the male who had fled from him upon his arrival at the scene. Thus, the officers called for the other male to exit. When he continued to not exit the residence, the officers informed him that there was a K-9 unit on the scene and they were prepared to send that unit into the residence. Shinkle, whom Officer Hoover recognized as the male who had fled from him, then exited the residence.

[7] The officers detained Shinkle and Williams, and Officer Shutt entered the residence. He immediately observed two TVs sitting near the back door as if they were "waiting to get taken out of the house." *Id.* at 167. The rest of the house "was a mess." *Id.*

[8] The State charged Shinkle with burglary, as a Level 5 felony. At his ensuing jury trial, Shinkle testified in his own defense. According to Shinkle, a former tenant at the residence named Jamie Taylor, who was a friend of Williams, asked Williams and Shinkle to help her move her property out of the residence. Shinkle further testified that Taylor had driven with them there and opened the back door for them, and that they were waiting there for her to return with a truck when officers arrived. Shelton, the owner of the residence, testified that Jamie Taylor was a former tenant but had moved out and taken all of her belongings with her prior to July 14, 2020.

[9] Following the close of evidence, the State sought an instruction on accomplice liability. The trial court granted the State's request over Shinkle's objection. The jury then found Shinkle guilty of burglary, as a Level 5 felony, and the trial court entered its judgment of conviction and sentence accordingly. This appeal ensued.

Discussion and Decision

Issue One: Jury Instruction

[10] On appeal, we first address Shinkle's argument that the trial court abused its discretion when it instructed the jury on accomplice liability. We generally

review a trial court's jury instruction for an abuse of discretion. *Batchelor v. State*, 119 N.E.3d 550, 554 (Ind. 2020). Under this standard, we look to whether evidence presented at trial supports the instruction and to whether its substance is covered by other instructions. *Id.* "In Indiana[,] there is no distinction between the responsibility of a principal and an accomplice." *Wise v. State*, 719 N.E.2d 1192, 1198 (Ind. 1999).

[11] Shinkle concedes that the accomplice liability instruction was a correct statement of law and was not covered by other instructions. Instead, his argument on appeal appears to be that the trial court abused its discretion in giving the instruction because the State did not include a theory of accomplice liability in the charging information. But Shinkle does not identify any authority that required the State to identify a theory of accomplice liability in the charging information, and, as such, we conclude that he has not met his burden of persuasion on this issue. *See* Ind. Appellate Rule 46(A)(8)(a). Further, the evidence before the jury was clear throughout the trial that Shinkle was not acting alone during the burglary. We therefore conclude that the instruction was supported by the evidence. We affirm the trial court's decision to instruct the jury on a theory of accomplice liability.

Issue Two: Sufficiency of the Evidence

[12] We next address Shinkle's argument that the State failed to present sufficient evidence that he committed burglary, as a Level 5 felony. The Indiana Code provides that "[a] person who breaks and enters the building or structure of another person, with intent to commit a felony or theft in it, commits burglary,

a Level 5 felony." Ind. Code § 35-43-2-1 (2020). In reviewing the sufficiency of the evidence, we neither reweigh the evidence nor judge witness credibility. *Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020). Rather, we consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. *Id.* We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt. *Id.* at 263.

[13] Shinkle first asserts that the State failed to show that he "broke" into the residence when he merely followed Taylor through the back door that Taylor had opened. In its case-in-chief, the State's evidence made clear that the back door was closed on July 14 and then observed to be open when Officer Hoover pursued Shinkle around to the back of the house on July 15. "[T]he slightest force to gain unauthorized entry satisfies the breaking element," and even "opening an unlocked door . . . constitutes a breaking." *Davis v. State*, 770 N.E.2d 319, 322 (Ind. 2002). And whether Taylor or Shinkle opened the back door is irrelevant; the record is clear that neither was authorized to enter the structure, and, again, "there is no distinction between the responsibility of a principal and an accomplice." *Wise*, 719 N.E.2d at 1198.

[14] Shinkle also asserts that the State failed to present sufficient evidence that he intended to commit theft in the residence. His precise argument here is not clear. He suggests that the State failed to negate his defense of mistake, that is, that he thought he was simply helping Taylor move her belongings out of the residence. But the record most favorable to the jury's verdict demonstrates that

Shinkle had the requisite intent. Upon seeing Officer Hoover, Shinkle fled back inside the residence. "Evidence of flight may be considered as circumstantial evidence of consciousness of guilt." *Brown v. State*, 563 N.E.2d 103, 107 (Ind. 1990). And not only did Shinkle flee from Officer Hoover, he remained inside the residence for several minutes, ignoring the officers' requests for him to exit, until the officers stated that they were going to send a K-9 unit inside the residence. Moreover, the fact-finder was free to disregard Shinkle's testimony that he was helping a friend of a friend move. Instead, the fact-finder was free to rely on the evidence that Shinkle had moved multiple items of large value, such as the two televisions which were sitting by the back door when the officer entered the residence. A reasonable fact-finder could infer from the facts before it that Shinkle was inside the residence with the intent to commit theft therein.

[15] Shinkle also argues that the State failed to prove who in fact owned the items that he was removing from the residence. It appears that Shinkle's argument is that the personal property inside the condemned structure may have been abandoned and, as such, he could not have committed theft by removing it. The burglary statute, however, does not require the State to prove that the defendant in fact committed theft; it requires the State to prove that the defendant *intended* to commit a theft. I.C. § 35-43-2-1. As explained above, the State presented sufficient evidence of Shinkle's intent. Moreover, the State's evidence made clear that the actual tenants at the residence were removed from the location on July 14, and a reasonable fact-finder could have inferred that the

personal property that remained in the residence was theirs. We therefore affirm Shinkle's conviction for burglary, as a Level 5 felony.

[16] Affirmed.

Pyle, J., and Tavitas, J., concur.