

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jeremy D. Brandon,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 8, 2023

Court of Appeals Case No.
22A-CR-1509

Appeal from the
Marion Superior Court

The Honorable
Jennifer P. Harrison, Judge

Trial Court Case No.
49D20-2011-F4-34455

Memorandum Decision by Senior Judge Shepard
Judges May and Mathias concur.

Shepard, Senior Judge.

- [1] A jury convicted Jeremy D. Brandon of one count of Level 4 felony burglary¹ and the trial court found that he was an habitual offender. On appeal, Brandon argues that there was insufficient evidence to support his burglary conviction. Concluding that the evidence is sufficient, we affirm.

Facts and Procedural History

- [2] On October 6, 2020, sometime after David Bryant finished his shift at Buffalo Wild Wings, he went home. As he arrived at his apartment complex, he observed two people walking toward his building. He exited his vehicle and walked toward his apartment.
- [3] He saw people moving around the hallway of his apartment building “carrying [his] items.” Tr. Vol. II, pp. 161-62. One man was carrying Bryant’s video projector on his shoulder, and a woman was carrying Bryant’s clothes and shoes. Bryant called 911, and during that call, saw two more people exiting his apartment. One of those men was Brandon, whom Bryant recognized as his neighbor. Brandon was standing in the doorway of Bryant’s apartment holding Bryant’s Nintendo Switch. As he left Bryant’s apartment, Brandon “follow[ed] the same path as the other two individuals before him.” *Id.* at 171. Brandon

¹ Ind. Code §35-41-2-4 (1977) (aiding, inducing, causing offense); Ind. Code §35-43-2-1(1) (2014) (burglary).

“looked panicked” when he made eye contact with Bryant. *Id.* at 172.

Brandon went into the basement of the apartment building, and Bryant did not see him again.

[4] When officers arrived at the apartment complex, they observed that a basement window was open and the blinds were dislodged. The officers thought that “whoever broke into the apartment . . . possibly went out that window.” *Id.* at 200.

[5] Brandon called his son’s mother to pick him up from the complex. Though Brandon lived on the right side of the complex, she picked him up from the left side and saw “a whole bunch” of police cars. *Id.* at 224. Brandon told her to “get him out of there and take him to his mother’s,” and that he was a suspect in a burglary. *Id.* at 225. He said that “one of his neighbor’s houses had been robbed and he needed to get out of there.” *Id.* at 228.

[6] Bryant testified that Brandon did not have a key to his apartment, nor was he invited or permitted to be there. The door to Bryant’s apartment was locked when he left for work that day, but when he returned home, the locks had been “dug out” and were “completely missing.” *Id.* at 169. Two Xboxes, a Nintendo Switch, a television, a video projector, guns, ammunition, clothes, and shoes were taken from Bryant’s apartment.

[7] Police later arrested Brandon. While confined in the Marion County Jail, Brandon made a phone call during which he stated, “You know that burglary case, right, that I got on me The dude, he’s a manager at Bdubs . . . he got

curly hair, look like he mixed. He a manager Go holler at him, try to get that case up off me.” State’s Ex. 19.

- [8] The State charged Brandon with Level 4 felony burglary and Level 6 felony theft, later dismissing the theft charge and adding the allegation that Brandon was an habitual offender. After a jury trial, Brandon was found guilty of Level 4 felony burglary, and the court found him to be an habitual offender. The trial court sentenced Brandon to an aggregate term of twelve years in the Department of Correction. He now appeals.

Discussion and Decision

- [9] Brandon challenges the sufficiency of the evidence supporting his burglary conviction; namely, the evidence that he was an accomplice. He maintains that the evidence shows only that: (1) at best, he was one of several people who stole things from Bryant’s apartment in the free-for-all that occurred after someone broke into the apartment; and (2) there is no evidence that he broke the locks, or acted in concert with others who broke the locks.
- [10] “In reviewing the sufficiency of the evidence, we examine only the probative evidence and reasonable inferences that support the verdict.” *Griffin v. State*, 16 N.E.3d 997, 1003 (Ind. Ct. App. 2014) (quoting *Pillow v. State*, 986 N.E.2d 343, 344 (Ind. Ct. App. 2013)). “We do not assess witness credibility, nor do we reweigh the evidence to determine if it was sufficient to support a conviction.” *Id.* “Under our appellate system, those roles are reserved for the finder of fact.” *Id.* “Instead, we consider only the evidence most favorable to the trial court

ruling and affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.” *Id.*

[11] To prove burglary as a Level 4 felony, the State was required to show that Brandon broke and entered the building or structure of another person that is a dwelling, with the intent to commit a felony or theft in it. Ind. Code §35-43-2-1. A person who knowingly or intentionally, aids, induces, or causes another person to commit an offense commits the offense. Ind. Code §35-41-2-4. The evidence need not show that an accomplice personally participated in the commission of each element of the offense, as the acts of one accomplice are imputed to all. *Griffin*, 16 N.E.3d 997. Our review looks to the particular facts and circumstances of each case as to whether a person participated in an offense as an accomplice. *Id.*

[12] There must be evidence of a defendant’s “affirmative conduct, either in the form of acts or words, from which an inference of a common design or purpose to effect the commission of a crime may be reasonably drawn.” *Id.* at 1003. The State need not prove that a defendant “was a party to a preconceived scheme; it must merely demonstrate concerted action or participation in an illegal act.” *Id.* (quoting *Rainey v. State*, 572 N.E.2d 517, 518 (Ind. Ct. App. 1991)). In determining whether the State met its burden, we are guided by four factors: (1) presence at the crime scene; (2) companionship with another at the crime scene; (3) failure to oppose the crime; and (4) course of conduct before, during, and after the offense. *Id.* And while mere presence at the scene of the

crime alone is insufficient to establish accomplice liability, it is a valid consideration in determining guilt. *Id.*

[13] Brandon admits that he was present at the crime scene but argues that there is no evidence that he was in companionship with anyone else who was there. The record, though, reflects that Brandon was one of several people who entered Bryant's apartment and took Bryant's property. One person stole Bryant's video projector, another stole his clothes and shoes, while Brandon stole his Nintendo Switch. When he left the apartment, Brandon "follow[ed] the same path as the other two individuals before him." Tr. Vol. II, p. 171. Each of the individuals, including Brandon, were in Bryant's apartment without his permission, stole items from him, and left together, taking the same path. To the extent that Brandon alleges deficiencies in Bryant's testimony, "[a] conviction can be sustained on only the uncorroborated testimony of a single witness, even when that witness is the victim." *See Bailey v. State*, 979 N.E.2d 133, 135 (Ind. 2012). And we will not reweigh the evidence or reassess a witness' credibility. *Griffin*, 16 N.E.3d 997.

[14] Next, Brandon appears to concede that he did not oppose the crime, but with a qualifier. *See Appellant's Br.* pp. 9, 11. He acknowledges that he did nothing to oppose the crime and, in fact, participated in the crime even after he saw Bryant. However, he concedes this factor only "[i]f Bryant's uncorroborated testimony is credited." *Id.* at 9. Because the evidence in the record supports that Brandon did not oppose the crime and because we will not reweigh

evidence or reassess witness credibility, this factor has been met. *See Griffin*, 16 N.E.3d 997.

- [15] Last, the State’s evidence of Brandon’s conduct before, during, and after the crime is sufficient to support his conviction as an accomplice. Brandon was Bryant’s neighbor and was familiar with him and his work schedule. During the crime, Brandon, who was uninvited and without permission to do so, entered Bryant’s apartment and stole his Nintendo Switch. When he exited Bryant’s apartment, he left along the same path as the others who had stolen Bryant’s property. After the crime, Brandon called his son’s mother to pick him up. Although he lived on the right side of the complex, she picked Brandon up on the left side of the complex – away from where the police were investigating the break-in at Bryant’s apartment. Brandon stated that his neighbor’s house had been robbed and that he needed to get away because he was a suspect. “Evidence of flight can be considered as circumstantial evidence of consciousness of guilt.” *Myers v. State*, 27 N.E.3d 1069, 1077 (Ind. 2015). While confined awaiting trial, he asked someone to try to get Bryant to drop the charges against him. Attempts to intimidate a witness “could reasonably be interpreted as evidence of his consciousness of guilt.” *Robinson v. State*, 720 N.E.2d, 1269, 1272 (Ind. Ct. App. 1999).
- [16] Considering each of the factors, sufficient evidence supports Brandon’s conviction based on accomplice liability.

Conclusion

[17] In light of the foregoing, we affirm the trial court's judgment.

[18] Affirmed.

May, J., and Mathias, J., concur.