

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Wayne Edward Hensel, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 10, 2023

Court of Appeals Case No.
23A-CR-357

Appeal from the
St. Joseph Superior Court

The Honorable
John M. Marnocha, Judge

Trial Court Cause No.
71D02-2111-F5-274

Memorandum Decision by Senior Judge Baker.
Judges Foley and Felix concur.

Baker, Senior Judge.

Statement of the Case

- [1] The State alleged Wayne Edward Hensel, Jr., broke into a sports memorabilia store, stole property, and committed vandalism. A security camera recording showed a person entering the store through a broken window, stealing cash and memorabilia, and then pouring bleach on other merchandise.
- [2] The jury convicted Hensel of Level 5 felony burglary and Class B misdemeanor criminal mischief. Hensel claims the State failed to prove he committed the offenses. Concluding the evidence is sufficient to support the judgment, we affirm.

Facts and Procedural History

- [3] On September 14, 2021, Hensel arrived at Augie's Locker Room, a sports memorabilia store, to sell some collectible sports cards. The store's owner and Hensel agreed on a price of around \$460. The owner paid Hensel in cash. The owner usually kept around \$800 in the store's cash register.
- [4] On the morning of September 16, several police officers were dispatched to Augie's Locker Room to investigate a possible burglary. A window had been shattered, and a large hammer lay on the ground nearby. Items had been knocked onto the ground inside the store in a manner consistent with someone entering through the broken window.

- [5] The officers entered through the front door, which was unlocked. The cash register was open and was empty aside from a few dollars. The officers also smelled bleach. They found a bottle of bleach by the front door and observed that someone had poured bleach on the floor and on some merchandise.
- [6] Later, the store's owner arrived, and he determined several items had been stolen, including unopened boxes of sports cards worth between "twenty-five and twenty-seven thousand" dollars. Tr. Vol. II, p. 83. Other valuable merchandise had been irreparably damaged by the bleach. The owner reviewed security camera recordings with one of the officers. There was a recording of Hensel in the store on September 14, and a recording of the person breaking into the store at around 4:30 a.m. on September 16, taking merchandise and cash and pouring bleach onto the floor and countertops.
- [7] The State charged Hensel with Level 5 felony burglary and Class B misdemeanor criminal mischief. A jury determined Hensel was guilty as charged. The trial court imposed a sentence, and this appeal followed.

Discussion and Decision

- [8] Hensel's sole claim is that the State did not present enough evidence to sustain his convictions. "Sufficiency-of-the-evidence arguments trigger a deferential standard of appellate review, in which we 'neither reweigh the evidence nor judge witness credibility, instead reserving those matters to the province of the jury.'" *Owen v. State*, 210 N.E.3d 256, 264 (Ind. 2023) (quoting *Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018)). We consider "only the probative evidence

and reasonable inferences supporting the verdict.” *Neal v. State*, 131 N.E.3d 654, 656 (Ind. Ct. App. 2019), *trans. denied*. “We will affirm unless no reasonable factfinder could find the elements of the crime proven beyond a reasonable doubt.” *Id.*

- [9] To obtain a conviction of Level 5 felony burglary, the State was required to prove beyond a reasonable doubt that Hensel (1) broke and entered (2) Augie’s Locker Room (3) with the intent to commit a felony or theft in it. Ind. Code section 35-43-2-1 (2014). In addition, to obtain a conviction of Class B misdemeanor criminal mischief, the State was required to prove beyond a reasonable doubt that Hensel (1) recklessly, knowingly or intentionally (2) damaged or defaced (3) the property of Augie’s Locker Room (4) without consent. Ind. Code section 35-43-1-2 (2018).
- [10] Hensel argues there is insufficient evidence to prove he was the person who broke into the shop, stole property, and destroyed other property. We disagree. Hensel was at Augie’s Locker Room on September 14, two days before the burglary, allowing him to become familiar with the store’s layout and contents. The jury saw the recording of Hensel at the store on September 14. The jury also saw a recording of the person breaking into the store on September 16. At one point, the person looked directly at a security camera. Also, the person in the recording had a tattoo on their right shoulder. The police photographed a similar tattoo on Hensel’s right shoulder after they arrested him.

[11] Hensel claims the State’s case was inadequate because none of the witnesses specifically said he was the person shown on the September 16 recording. “When the evidence of identity is not entirely conclusive, the weight to be given to the identification evidence is left to the determination of the jury, as determining identity is a question of fact.” *Harbert v. State*, 51 N.E.3d 267, 275 (Ind. Ct. App. 2016), *trans. denied*. Determining Hensel was the person shown in the September 16 recording was a matter for the jury. We reject Hensel’s request to second-guess the factfinder. *See Young v. State*, 198 N.E.3d 1172, 1179-82 (Ind. 2022) (affirming conviction for murder based in part on surveillance camera recordings; the question of whether Young was person shown in recordings was for jury to decide).

Conclusion

[12] For the reasons stated above, we affirm the judgment of the trial court.

[13] Affirmed.

Foley, J., and Felix, J., concur.