

MEMORANDUM DECISION

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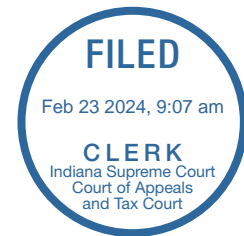


IN THE
Court of Appeals of Indiana

Richard J. Nagel,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



February 23, 2024

Court of Appeals Case No.
23A-CR-1595

Appeal from the Noble Circuit Court
The Honorable Michael J. Kramer, Judge
Trial Court Cause No.
57C01-2009-F4-13

Memorandum Decision by Judge May
Judges Vaidik and Kenworthy concur.

May, Judge.

- [1] Richard J. Nagel received an aggregate thirty-two-year sentence after being convicted of Level 4 felony burglary,¹ Level 4 felony unlawful possession of a firearm by a serious violent felon (“SVF”),² and two counts of Level 6 felony auto theft³ and being found a habitual offender.⁴ In this appeal, he challenges only his conviction of burglary, and he claims the evidence was insufficient to prove he committed that crime. Because the reasonable inferences from the evidence presented would allow a reasonable trier of fact to conclude beyond a reasonable doubt that Nagel committed burglary, we affirm.

Facts and Procedural History

- [2] After 10:00 p.m. on August 25, 2020, Nagel was in Wolcottville, Indiana, to visit a friend. As Nagel walked from his car to the friend’s house, he noticed a police car approaching. Nagel was on parole at the time, and he had been drinking alcohol and using illegal drugs in violation of his parole, so he decided to run away. He thought, “avoid going to jail and explain it tomorrow when you’re sober and when you can pass a breathalyzer and a drug screen for parole.” (Tr. Vol. 3 at 204.)

¹ Ind. Code § 35-43-2-1(1).

² Ind. Code § 35-47-4-5(c).

³ Ind. Code § 35-43-4-2(a)(1)(B)(ii).

⁴ Ind. Code § 35-50-2-8.

[3] After running a short distance, Nagel found a work van with the keys in the ignition and stole the van. Nagel pulled out onto the road and noticed a police car pull out onto the road behind him. Nagel “punch[ed] it to the floor” and “shut the headlights off” to try to evade the police. (*Id.* at 206.) The road had a ninety-degree turn, but Nagel continued straight into a cornfield. Rather than stop, Nagel drove through the cornfield, even though “the corn was like nine (9) or ten (10) foot tall” and he could not see where he was going. (*Id.* at 207.) A few moments later, Nagel drove directly into a tree while traveling at least forty-five miles per hour. The last thing Nagel remembers hearing “was uh, just a loud bang” and then he “was knocked out for I don’t know how long[.]” (*Id.* at 208.) When Nagel regained consciousness, he found himself “folded up, half on the floorboard and half up against the windshield and the dash.” (*Id.*) He used a first aid kit that he found in the van to clean the blood off his nose, chin, and legs. Nagel climbed out the van’s window because the door would not open and began walking through the field away from police sirens.

[4] Nagel walked for almost a mile and, around 1:00 a.m. on August 26, 2020, he found himself in the back yard of a home belonging to Ernie and Joan Shepard. Nagel stole the Shepards’ 2006 Chevrolet Silverado truck. A few hours later, as Joan was preparing to drive her school bus route, she noticed her cat, which normally stayed inside the house, was missing. She found the cat outside as she was leaving home about 6:45 a.m. When Joan returned home at 9:00 a.m., she asked her husband Ernie where his truck was. Ernie thought it was in the yard where he had parked it the day before. Ernie went outside and could not find

his truck, but he noticed the couple's Kia looked like someone had rummaged through the glove box and center console and dumped part of their contents out onto the floor of the car. Joan and Ernie looked in the kitchen and found the keys for their vehicles and house were missing from where the keys were kept on the counter. The Shepards never left keys in their four vehicles and never left the vehicles unlocked. Joan noticed the cat was outside again, and they discovered the screen on the bathroom window had been cut along the bottom and up both sides. Ernie called the police to report his house had been broken into and his truck had been stolen.

[5] Police came to the Shepards' house to investigate. They found a five-gallon bucket next to the house underneath the bathroom window where the screen had been cut. They found a drop of blood and other DNA material on the bathroom windowsill. The sample collected from the windowsill contained DNA from two people, and testing revealed the DNA profile was "at least one (1) trillion times more likely if it originated from Richard Nagel and one (1) unknown individual than if it originated from two (2) unknown unrelated individuals." (Tr. Vol. 3 at 193.) Police also found a handgun thirty or forty yards from the crashed van, and DNA evidence collected from the gun's handle indicated Nagel had handled that weapon.

[6] That evening, Ernie's stepson called to tell Ernie that he was following Ernie's Silverado in Rome City as it was being driven down the street. The stepson called the police to report the location. An officer on patrol in the area spotted the Silverado and recognized Nagel as the driver. The officer activated his

lights and siren, but Nagel evaded the police. A brief time later, police found the abandoned truck with the keys inside. Ernie consented to the police searching the truck. In the truck, police found keys to the Shepards' Jeeps and an airsoft pistol that had been on the Shepards' kitchen table when Ernie went to bed the night before.

- [7] The State charged Nagel with Level 4 felony burglary, Level 4 felony unlawful possession of a firearm by a SVF, and two counts of Level 6 felony auto theft. The State also filed an information alleging Nagel was a habitual offender. During trial Nagel took the stand and admitted he committed two counts of auto theft, but he claimed he had found the keys inside each of those vehicles, and he explicitly denied entering the Shepards' house to steal the keys. The jury found Nagel guilty of two counts of auto theft, burglary, and unlawful possession of a firearm. Nagel then admitted he was a SVF and a habitual offender. Following a sentencing hearing, the court imposed twelve years for the burglary conviction, which the court enhanced by twenty years based on the habitual offender adjudication, twelve years for the firearm conviction, and two-and-one-half years for each of the auto theft convictions. The court ordered the firearm and auto theft sentences served concurrent to the thirty-two-year sentence for burglary.

Discussion and Decision

- [8] Nagel argues the evidence was insufficient to prove that he committed burglary. "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)), *reh’g denied*. “In reviewing the record, we examine ‘all the evidence and reasonable inferences supporting the verdict,’ and thus ‘will affirm the conviction if probative evidence supports each element of the crime beyond a reasonable doubt.’” *Carmack v. State*, 200 N.E.3d 452, 459 (Ind. 2023) (quoting *Brantley*, 91 N.E.3d at 570).

[9] Nagel challenges only his conviction of burglary. The Indiana Code defines burglary, in relevant part, as the breaking and entering of a “building or structure of another person, with intent to commit a felony or theft in it[.]”⁵ Ind. Code § 35-43-2-1. Nagel asserts there was insufficient evidence to prove beyond a reasonable doubt that he entered the Shepards’ home because “there was no evidence found in the Shepard’s [sic] house to indicate Mr. Nagel was ever inside.” (Appellant’s Br. at 10.) Nagel notes he was bleeding from injuries caused by crashing the van and he had walked through a cornfield, and yet no footprints, fingerprints, mud, or blood were found inside the Shepards’ house.⁶

⁵ This definition constitutes Level 5 felony burglary. Nagel was convicted of Level 4 felony burglary because “the building or structure [was] a dwelling[.]” Ind. Code § 35-43-2-1(1). Nagel does not challenge that the Shepards lived in the building he was alleged to have entered, so we need not consider this element further.

⁶ Nagel testified: “I was never in the Shepard’s [sic] house.” (Tr. Vol. 3 at 218.) On direct examination, Nagel claimed he found the keys hanging in the ignition of the Silverado. (*Id.* at 211.) However, the jury was not required to believe his “self-serving” testimony, *Sallee v. State*, 51 N.E.3d 130, 125 (Ind. 2016), and we “will not . . . judge the credibility of witnesses.” *Id.*

(*See id.*) We agree with Nagel that there was no direct evidence proving Nagel was inside the Shepards' house, but that is not the end of our analysis.

[10] A conviction “may be sustained on circumstantial evidence alone.” *Sallee v. State*, 51 N.E.3d 130, 134 (Ind. 2016). The circumstantial evidence simply must be sufficient to support a “reasonable inference” of guilt, *Hubbard v. State*, 749 N.E.2d 1156, 1158 (Ind. 2001) (“If a reasonable inference can be drawn from the circumstantial evidence, the verdict will not be disturbed.”) (quoting *Taylor v. State*, 676 N.E.2d 1044, 1047 (Ind. 1997), *reh’g denied*), and here there was abundant circumstantial evidence.

[11] The screen for the open bathroom window was cut on three sides, the window was large enough for an adult to pass through, and a five-gallon bucket was placed under the window as a step permitting easier access to the window. On the bathroom windowsill, police found a dried reddish stain that tested positive for blood. Police swabbed the windowsill to collect any DNA present and separately swabbed to collect the blood spot. The DNA collected did not belong to Joan or Ernie, but Nagel was a trillion times more likely to be the donor than an unidentified stranger. The Shepards did not leave their vehicles unlocked or their keys in the vehicles, yet Nagel had keys for both the Silverado and the Shepards' Jeeps. Moreover, an airsoft pistol that had been on the kitchen table on the night of August 25, 2020, was found in the Silverado on the evening of August 26, 2020. While there was no direct evidence of Nagel's DNA further into the house than the bathroom windowsill, the constellation of evidence most favorable to Nagel's conviction is sufficient to permit a

reasonable jury to infer that Nagel entered the Shepards' house and removed keys to their vehicles and an airsoft pistol. *See Sallee*, 51 N.E.3d at 135 (circumstantial evidence was sufficient to support convictions of murder, despite Sallee's "alternate theories").

Conclusion

[12] The evidence most favorable to Nagel's conviction of burglary was sufficient to support a reasonable inference that Nagel entered the Shepards' home to steal keys to their vehicles. Accordingly, we affirm the trial court's judgment.

[13] Affirmed.

Vaidik, J., and Kenworthy, J., concur.

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