MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Edward Lee Perry,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 3, 2022

Court of Appeals Case No. 21A-CR-1770

Appeal from the Elkhart Superior Court

The Honorable Stephen R. Bowers, Judge

Trial Court Cause No. 20D02-1907-F5-167

Weissmann, Judge.

[1] Edward Perry appeals his conviction of Level 5 felony burglary, arguing that the evidence was insufficient to support the verdict and that his sentence of five years imprisonment is inappropriate. We disagree and affirm.

Facts

[2] Just before noon on July 14, 2019, James Blessing arrived at his industrial property in Elkhart County. Blessing owned two commercial buildings on the property. His tenant in the south building, a mechanic, had been killed ten days earlier in an unrelated matter. Perry had worked for the deceased mechanic in the south building but had allegedly been fired before the mechanic's death.

[3] Blessing unlocked and entered the south building and noticed that things were amiss: a tray of keys was laying on the floor; the overhead door had been kicked in; toolboxes were out of place; drawers were askew; and there was a box full of other boxes that had not been there before. Later, Blessing found keys that belonged inside the building in a white pickup truck outside. Upon exiting the south building, Blessing noticed a "short little . . . black guy" out of the corner of his eye. Tr. Vol. II, p. 247. The man ran north and kept running as Blessing yelled after him. Blessing called 911.

[4] Several officers responded, advised by dispatch that they were looking for a heavyset black male wearing a black t-shirt. One of the officers spotted a man matching this description, later identified as Perry, walking through the woods nearby. The officer ordered Perry out of the woods, but Perry turned and ran. Eventually, police apprehended Perry, who was soaking wet, shoeless, and

smeared with mud and sand. Police discovered a USB Bluetooth adaptor in Perry's pocket.

[5] Perry told officers various things, including that: he was on Blessing's property because his girlfriend had left his keys in a truck in the parking lot; this truck belonged to his cousin's uncle, who used to work in one of the buildings Blessing owned; his girlfriend had thrown his keys in the river; he was looking for his keys, not running from the officers; and his girlfriend had taken his shoes. He also claimed that the USB adaptor belonged to him and he used it with his car stereo. Police neither saw nor heard a woman who could have been Perry's girlfriend.

[6] The State charged Perry with Level 5 felony burglary and Class A misdemeanor resisting law enforcement. Perry failed to appear at his jury trial, and he was convicted on both counts. The trial court then sentenced Perry to six years imprisonment for the felony, with one year suspended to probation, and one year for the misdemeanor. The sentences were concurrent, for an aggregate of five years imprisonment.

Discussion and Decision

[7] Perry now appeals, arguing that the evidence was insufficient to support the burglary conviction and that his sentence is inappropriate given his character and the nature of the offense. We take these arguments in turn but find that neither is grounds for reversal.

I. Sufficiency

[8] "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. The State's charging information alleges that Perry broke into Blessing's building to commit theft. App. Vol. II, p. 9. Perry argues that the evidence was insufficient to identify Perry as the person who broke into Blessing's property. And even if the State could prove that Perry broke in, Perry argues that it failed to prove that he did so with intent to commit theft.

[9] When reviewing the sufficiency of the evidence, we consider only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We construe conflicting evidence in the manner most favorable to the trial court's ruling. *Id.* We will not reverse unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Id.* (quoting *Jenkins v. State*, 726 N.E.2d 268, 270 (Ind. 2000)). If an inference may reasonably be drawn from the evidence to support the verdict, it is sufficient. *Id.*

[10] Perry argues that the evidence does not show that he was ever inside either of Blessing's buildings. He relies on evidence that he never admitted to being in either building; that Blessing disclaimed ownership of the flash drive in Perry's pocket; and that the police never dusted for fingerprints, collected DNA, or investigated a shoeprint found at the scene. But we ask whether the evidence is

sufficient to support the verdict, not whether other evidence would have been more compelling. *See id.* "Circumstantial evidence alone is sufficient to sustain a burglary conviction." *Oster v. State*, 992 N.E.2d 871, 877 (Ind. Ct. App. 2013) (citing *Baker v. State*, 968 N.E.2d 227, 229-30 (Ind. 2012)). Perry admitted to previously working in the building. The State presented evidence that the keys to the building were in a truck Perry admitted belonged to a relative. The overhead door to the building where Perry previously worked had been kicked in. Blessing observed toolboxes out of place, drawers askew; and suspicious-looking boxes. Blessing also observed someone matching Perry's description running near the building and refusing to stop. Perry fled from law enforcement and gave conflicting, implausible stories. The inferences drawn from these facts could lead a reasonable factfinder to conclude that Perry had been inside the building.

[11] Blessing's testimony that the USB adaptor was his also placed Perry inside Blessing's building. Perry challenges the reliability of this testimony, citing a moment on cross-examination in which Blessing testified variously that he recognized and owned the device, that he did not know if the device was his but assumed it was, and that the device was not his. Tr. Vol. III, pp. 10-11. Construing Blessing's testimony in the light most favorable to the verdict supports a finding that the USB adaptor was his, and the inference that Perry had been inside Blessing's building. *See Drane*, 867 N.E.2d at 146.

[12] Perry next argues that the State did not prove that he entered Blessing's building with intent to commit theft. Evidence of intent need not be "insurmountable,"

but should provide a solid basis to support a reasonable inference that Perry entered Blessing's building to commit theft. *See Oster*, 992 N.E.2d at 876 (citing *Baker*, 968 N.E.2d at 229-30). Several pieces of evidence support this inference. Blessing found that items inside the building had been rearranged, and some of these items were in boxes. *Cf. Baker*, 968 N.E.2d at 231 (finding that looking through cupboards and drawers was an act separate and distinct from breaking and entering that supported burglary's intent element). Items from inside the building were found in the truck parked outside—the same truck from which Perry claimed he was fetching keys. And an item from inside the building was in Perry's pocket. The evidence was sufficient to show intent to commit theft and, in turn, to support Perry's burglary conviction.

II. Ind. App. R. 7(B)

[13] Perry next argues that he should not have received the maximum allowable sentence for a Level 5 felony. This court may revise a sentence we find "inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). We conduct this review with substantial deference to the trial court. *Knapp v. State,* 9 N.E.3d 1274, 1292 (Ind. 2014). Our principal goal is to "leaven the outliers, and not to achieve a perceived correct sentence." *Scott v. State*, 162 N.E.3d 578, 584 (Ind. Ct. App. 2021) (citing *Knapp*, 9 N.E.3d at 1292). Perry bears the burden of showing his sentence is inappropriate. *Johnson v. State*, 986 N.E.2d 852, 856 (Ind. Ct. App. 2013).

[14] "[T]he advisory sentence is the starting point to determine the appropriateness of a sentence" in light of the nature of the offense. *Johnson*, 986 N.E.2d 856 (citing *Anglemeyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007) *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007)). The advisory sentence for Level 5 felonies is three years and the maximum is six years. Perry was sentenced to six years on his Level 5 felony conviction, with one year suspended to probation. Perry argues that he did not harm either person or property serious enough to justify this sentence. But Perry did cause property damage and he did lead police on a protracted chase. The nature of Perry's offense fails to convince us he is entitled to sentencing relief.

[15] Perry also argues his character warrants a lesser sentence because he only has a ninth-grade education, had been in special education classes, was diagnosed as a child with both Attention Deficit Hyperactivity Disorder (ADHD) and bi-polar disorder, and has substance abuse issues. Perry neglects to mention his prodigious criminal history, including five felony and five misdemeanor convictions. "Even a minor criminal history reflects poorly on a defendant's character for the purposes of sentencing." *Smoots v. State*, 172 N.E.3d 1279, 1290 (Ind. Ct. App. 2021). Perry's record cannot be deemed minor as his convictions include battery causing injury, battery on a law enforcement officer, harassment, theft, auto theft, residential entry, burglary, and carrying a handgun without a license. His criminal history does little to advance his request for a more lenient sentence. Additionally, Perry's significant child support arrearage—tens of thousands of dollars—also reflects poorly on his

character. Perry has not shown his sentence is inappropriate in light of the nature of the offense of the character of the offender.

[16] Because the evidence was sufficient to support Perry's conviction and his sentence is not inappropriate, the trial court is affirmed.

Najam, J., and Vaidik, J., concur.