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FILED
Feb 16 2011, 10:05 am
CLERK
of the supreme court, court of appeals and tax court

IN THE
COURT OF APPEALS OF INDIANA

TONY LEE PARISH,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A05-1006-CR-398
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry C. Shewmaker, Judge
Cause No. 20C01-0909-FB-50

February 16, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Tony Lee Parish appeals from his conviction for Class B felony Burglary,[1] contending that it was supported by insufficient evidence. Parish also contends that the aggregate sentence imposed following his convictions for Burglary, Conspiracy to Commit Robbery,[2] and Robbery,[3] all Class B felonies, is inappropriately harsh. We affirm.

FACTS AND PROCEDURAL HISTORY

At some point on August 10, 2009, Christopher Tate was at home with Clarence Hawkins-James and Tommy Gary when Parish arrived armed with a handgun and told the others that "he had a lick[,]" *i.e.*, knew of a robbery prospect. As Gary drove, Parish and Hawkins-James wrapped their faces with shirts. At some point, Gary parked the car, and the other three walked up to a nearby house.

Just before midnight, Brian O'Hara was sleeping on the couch in the front room of the Elkhart house he shared with his girlfriend Tina Grant, his daughter Stephanie Grant, and his granddaughter. Stephanie was not at home at the time, and Tina and the granddaughter, who was then two years old, were asleep in one of the house's bedrooms. O'Hara was awakened when the doorbell rang three times, and, thinking that one of his children was outside, went to answer the door. According to O'Hara's testimony, "I got up, I stood up, I walked over to the door, and I unlocked the door and just twist[ed] the

[1] Ind. Code § 35-43-2-1 (2009).

[2] Ind. Code §§ 35-41-5-2 (2009); 35-42-5-1 (2009).

[3] Ind. Code § 35-42-5-1.

handle. I pulled the door open probably. Well, I didn't really get to pull the door open because I got it pushed open." Tr. p. 24.

Once inside, Parish "shoved" his handgun into O'Hara's face and Hawkins-James put a knife to his throat. Tina emerged, apparently to investigate, and when she ran to a bedroom and shut the door, Parish told Hawkins-James to kick it in. Hawkins-James and Parish took O'Hara into the bedroom where Parish asked him "where everything at[.]" Tr. p. 69. At some point, Hawkins-James threw or placed the knife on the bed in which O'Hara's granddaughter was lying. The trio made off with approximately $63.00, a handgun, and two safes, one of which contained some jewelry.

On September 1, 2009, the State charged Parish with conspiracy to commit robbery, burglary, and robbery, all class B felonies. Following a bench trial, the trial court found Parish guilty as charged and sentenced him to fifteen years of incarceration for each count, with two years of each suspended to probation and the sentences to be served concurrently.

DISCUSSION AND DECISION

I. Whether the State Produced Sufficient Evidence to Sustain Parish's Burglary Conviction

Parish contends that the State produced insufficient evidence to sustain his burglary conviction. Our standard of review for challenges to the sufficiency of the evidence supporting a criminal conviction is well-settled:

> In reviewing a sufficiency of the evidence claim, the Court neither reweighs the evidence nor assesses the credibility of the witnesses. We look to the evidence most favorable to the verdict and reasonable inferences drawn therefrom. We will affirm the conviction if there is probative

> evidence from which a reasonable jury could have found Defendant guilty beyond a reasonable doubt.

Vitek v. State, 750 N.E.2d 346, 352 (Ind. 2001) (citations omitted).

Indiana Code section 35-43-2-1 provides, in relevant part, that "[a] person who breaks and enters the building or structure of another person, with intent to commit a felony in it, commits burglary, … a Class B felony if … the building or structure is a … dwelling[.]" Parish contends only that there is insufficient evidence to establish the "breaking" element of burglary. "The element of breaking is satisfied by showing that even the slightest force was used to gain unauthorized entry." *Davis v. State*, 743 N.E.2d 751, 753 (Ind. 2001) (citing *Trice v. State*, 490 N.E.2d 757 (Ind. 1986)). "Opening an unlocked door or pushing a door that is slightly ajar constitutes a breaking." *Id*. (citing *Utley v. State*, 589 N.E.2d 232 (Ind. 1992)).

Here, the evidence most favorable to the judgment is that the trio pushed the door open as soon as O'Hara turned the doorknob. O'Hara testified, "I unlocked the door and just twist[ed] the handle. I pulled the door open probably. Well, I didn't really get to pull the door open because I got it pushed open." Tr. p. 24. This evidence is more than adequate to establish the necessary use of force. Parish draws our attention to evidence tending to show that the door may have been, at most, slightly ajar when it was pushed, which is nothing more than an invitation to reweigh the evidence, one which we decline. In any event, such evidence, even if we assumed it to be credible, would not help Parish. *See id*. The State produced sufficient evidence to sustain Parish's burglary conviction.

II. Whether Parish's Sentence is Appropriate

We "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). "Although appellate review of sentences must give due consideration to the trial court's sentence because of the special expertise of the trial bench in making sentencing decisions, Appellate Rule 7(B) is an authorization to revise sentences when certain broad conditions are satisfied." *Shouse v. State*, 849 N.E.2d 650, 660 (Ind. Ct. App. 2006), *trans. denied* (citations and quotation marks omitted).

We believe the nature of Parish's offenses to be somewhat more egregious than average for the crimes committed. Parish and his confederates forced their way into O'Hara's home and held O'Hara at gun and knifepoint, Hawkins-James kicked in another door, and then the trio robbed O'Hara, all in the presence of his approximately two-year-old granddaughter. Moreover, a knife was either thrown or placed onto the bed on which the granddaughter was lying. We believe this to be worse than the typical armed robbery because it occurred after Parish had invaded the three victims' home, a place where one should be allowed to feel safe. We believe this to be worse than a typical burglary of a dwelling because the felony committed within was armed robbery, not the more often-seen theft.

As for Parish's character, it is that of a young person who, in a short time, has progressed from relatively minor offenses to rather serious crimes. As a juvenile, beginning at the age of thirteen, Parish has had adjudications that he committed what would be, if committed by an adult, Class D felony intimidation, Class D felony

residential entry, Class A misdemeanor resisting law enforcement, Class A misdemeanor battery, Class A misdemeanor criminal mischief, Class A misdemeanor dangerous possession of a handgun, and Class A misdemeanor possession of marijuana, hashish, or hash oil. Moreover, at the time of sentencing in this case, Parish had a pending charge of Class C felony battery in adult court. Parish's juvenile and adult criminal history indicates an escalation in the seriousness of his crimes which reflects very poorly on his character. We also think it should be noted that Parish has amassed his seven juvenile adjudications and three felony convictions over the course of less than four years, three of which were spent detained in the Department of Correction Boy's School. Parish's character also justifies an enhanced sentence. Parish has failed to establish that his aggregate fifteen-year sentence with two years suspended to probation is inappropriate.

The judgment of the trial court is affirmed.

KIRSCH, J., and CRONE, J., concur.