



Darry Hayes (“Hayes”) was convicted in Marion Superior Court of Class C felony burglary and was found to be a habitual offender. Hayes appeals and argues that the evidence was insufficient to support his conviction. We affirm.

### **Facts and Procedural History**

On July 15, 2007, at approximately 11:00 p.m., Brian Robertson (“Robertson”) observed Hayes break a glass panel on a garage door of a Jiffy Lube store located across the street from Robertson’s own business. He saw Hayes crawl through the broken panel and into the building. Robertson observed Hayes move toward the office located in the Jiffy Lube building.

Shortly thereafter, an officer arrived at Jiffy Lube in response to Robertson’s report of a breaking and entering. The officer observed Hayes walking across the garage bays inside the Jiffy Lube. Hayes then exited the building through the broken glass panel, and the officer placed him under arrest.

On July 17, 2007, Hayes was charged with Class C felony burglary, and approximately two months later, the State filed a habitual offender enhancement. A jury trial commenced on May 8, 2008, and Hayes was found guilty as charged. Hayes was sentenced to eight years for the burglary conviction, and his sentence was enhanced by four years for the habitual offender adjudication. Hayes now appeals.

### **Discussion & Decision**

Hayes argues that the evidence was insufficient to support his burglary conviction. When we review the sufficiency of the evidence to support a conviction, we consider only the probative evidence and reasonable inferences supporting the verdict. Drane v.

State, 867 N.E.2d 144, 146 (Ind. 2007). It is the fact-finder's role, not ours, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. Id. When confronted with conflicting evidence, we must consider it in a light most favorable to the conviction. Id. We will affirm the conviction unless no reasonable fact-finder could have found the elements of the crime proven beyond a reasonable doubt. Id.

To convict Hayes of Class C felony burglary, the State was required to prove that he broke and entered the building or structure of another person, with intent to commit a felony in it. See Ind. Code § 35-43-2-1 (2004). The State alleged that Hayes intended to commit theft. Appellant's App. p. 26. Hayes does not deny that there is sufficient evidence that he broke and entered Jiffy Lube's premises. On appeal, he claims that there is insufficient evidence of his intent to commit theft therein.

Our supreme court has clarified the quantum of proof necessary to establish intent to commit a felony as an element of burglary. "[I]n order to sustain a burglary charge, the State must prove a specific fact that provides a solid basis to support a reasonable inference that the defendant had the specific intent to commit a felony." Freshwater v. State, 853 N.E.2d 941, 944 (Ind. 2006). The court explicitly labeled as "incorrect" cases from our court suggesting that "[t]he intent to commit a felony can be inferred from the time, force, and manner of entry if there is no evidence that the entry was made with some lawful intent." Id. (quoting with disapproval Gray v. State, 797 N.E.2d 333, 336 (Ind. Ct. App. 2003) and Gentry v. State, 835 N.E.2d 569, 573 (Ind. Ct. App. 2005)). Thus, the mere fact that Hayes broke a glass door panel and entered the Jiffy Lube late at

night for no apparent lawful reason is not sufficient evidence by itself to prove that Hayes committed burglary.

At trial, Carlos Delarosa, the Jiffy Lube's assistant manager testified that the store's safes were broken prior to the date of this offense, but the doors of both safes were closed when he locked up the store. However, when he arrived at the store the morning after Hayes broke into the Jiffy Lube, the door to one of the safes was open. Also, the money holder that Delarosa left in the cash drawer was not in the position he left it in, but was sitting atop the cash drawer in an angled position. Delarosa later discovered that the loose change that was left in the drawer was missing.<sup>1</sup> Finally, papers had been moved on Delarosa's desk and his desk drawers had been opened. Tr. pp. 46-49; Ex. Vol., State's Exs. 7 & 8. From this evidence, it is reasonable to infer that Hayes was searching the Jiffy Lube for money or other items worthy of theft. Cf. Freshwater, 853 N.E.3d at 942-44 (The evidence was insufficient to establish the defendant's intent to commit a theft where the owner of the business testified that nothing was missing and the office did not appear to have been disturbed.)

Affirmed.

BAILEY, J., and BARNES, J., concur.

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<sup>1</sup> Loose change was found on Hayes' person after his arrest. Tr. p. 114.