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IN THE COURT OF APPEALS OF INDIANA

DANIEL R. WALLACE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 82A01-1009-CR-465
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Robert J. Pigman, Judge
Cause No. 82D02-0907-FB-671

May 31, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Daniel Ray Wallace was convicted after a jury trial of attempted arson.[1] As there was sufficient evidence to support the conviction, we affirm.

FACTS AND PROCEDURAL HISTORY

Wallace and his girlfriend lived together in Evansville. She kicked Wallace out of the house and began dating someone else. In July 2009, Wallace went to her house expecting the two would reconcile, but she was not home. Wallace began throwing bricks through the windows and a neighbor called police. Before police arrived Wallace entered the house and poured gasoline on a bed. When police arrived, Wallace emerged from behind the house holding a piece of concrete. He ran but was caught by a police dog. Wallace had a lighter in his pocket.

DISCUSSION AND DECISION

A court reviewing sufficiency of evidence to support a conviction considers only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146-47 (Ind. 2007). It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. *Id*. To preserve this structure, when appellate courts are confronted with conflicting evidence, they consider it most favorably to the trial court's ruling, and affirm the conviction unless no reasonable fact-finder could find the elements of the crime

[1] Ind. Code § 35-41-5-1 (attempt); Ind. Code § 35-43-1-1 (arson).

proven beyond a reasonable doubt. *Id*. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence; the evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. *Id*. at 147.

A jury found Wallace guilty of attempted arson. A person attempts to commit a crime when, acting with the culpability required for commission of the crime, he engages in conduct that constitutes a substantial step toward commission of the crime. Ind. Code § 35-41-5-1. A person who, by means of fire, knowingly or intentionally damages a dwelling of another person without the other person's consent commits arson, a Class B felony. Ind. Code § 35-43-1-1.

Wallace asserts the evidence demonstrated only that he "threw concrete and the gasoline can through the window and the gasoline can spilled." (Appellant's Br. at 3.) He believes therefore the State did not prove he acted with intent to burn the house. There was more evidence than Wallace acknowledges.

A fire investigator testified the pattern of gasoline on the bed was "consistent with pouring." (Tr. at 110.) The gasoline soaked through two box springs and the floor. Wallace was carrying a lighter. He ran from police when they arrived. Flight and related conduct may be considered by the trier of fact as evidence of consciousness of guilt. *Johnson v. State*, 258 Ind. 683, 686, 284 N.E.2d 517, 519 (1972), *on reh'g*, 258 Ind. 683, 288 N.E.2d 553 (1972). Wallace's former girlfriend testified the speakers on her entertainment center

had been moved, which suggests someone had been in the house.[2]

The State provided evidence from which the jury reasonably could have inferred Wallace attempted to commit arson. We accordingly affirm.

Affirmed.

BAKER, J., and BRADFORD, J., concur.

[2] The State asserts Wallace "lied in his statement to the police," (Br. of Appellee at 6), but the page of the transcript to which it directs us does not support that assertion, or even mention Wallace. It also asserts, with no citation to the record, Wallace "intentionally lied to police to cover his tracks" and "wanted to hurt [his girlfriend' just as [she] had hurt him." (*Id*. at 4.)

We admonish the State to refrain from so misrepresenting the record and we remind the State that a party's arguments must indicate those parts of the record that support his contentions and provide a clear showing how the issues and the contentions supporting them relate to the particular facts of the case. *Hebel v. Conrail, Inc.*, 475 N.E.2d 652, 661 (Ind. 1985).