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IN THE
COURT OF APPEALS OF INDIANA

JOSEPH A. FISHER,	)	
	)	
Appellant- Defendant,	)	
	)	
vs.	)	No. 02A05-0809-CR-553
	)	
STATE OF INDIANA,	)	
	)	
Appellee- Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable John F. Surbeck, Jr., Judge
Cause No. 02D04-0710-FB-156

June 3, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Joseph Fisher appeals his conviction, following a jury trial, for unlawful possession of a firearm by a serious violent felon, a Class B felony. For our review, Fisher raises a single issue, whether sufficient evidence supports the conviction. Concluding that the evidence of Fisher's prior felony conviction is sufficient, we affirm.

Facts and Procedural History

On the evening of October 10, 2007, Fisher got into an argument with his friend, Michael LeMaster. As Michael turned around to walk home, Fisher shot him in the leg. The State charged Fisher with battery, a Class C felony,[1] and unlawful possession of a firearm by a serious violent felon, a Class B felony. On July 15 and 16, 2008, the trial court held a bifurcated jury trial, trying the battery charge first and the unlawful possession charge second.

During the trial of the battery charge, the following exchange occurred during the State's cross-examination of Fisher.

> Q. Can you tell me sir, are you the same Joey Fisher or Joseph Fisher for felony conviction for B felony Burglary out of Wells Circuit County [sic]?
> A. I've been convicted for it --
> Q. I'm sorry?
> A. I've been convicted for that, yes. Do I have to talk about that? It shouldn't apply to this.
> Q. I'm sorry?
> A. That case shouldn't apply to this should it? It's been closed and I served my time for it.
> Q. Well, let me ask the questions alright. If there's an objection that needs to be made, I'm sure your attorney can handle that for you.
> A. Okay.

[1] Battery is a Class C felony if it results in serious bodily injury to any other person or is committed by means of a deadly weapon. Ind. Code § 35-42-2-1(a)(3)

> Q. Would you argue with me that that cause number is 90C01-0103-CF-25, if that's what the information shows?
> A. Maybe, I don't know the case number.
> Q. Okay. And that conviction, you were convicted of that on July 9th of 2001, is that correct?
> A. Yes.

Transcript at 287-88. Fisher's attorney did not object to this line of questioning.

During the subsequent trial on the unlawful possession charge, the State moved to incorporate the testimony and evidence from the battery trial. Fisher's attorney did not object, and the trial court granted the motion. The State also presented a certified copy of an information from Wells County, Indiana, dated March 13, 2001, charging Fisher with burglary, a Class B felony. Fisher's attorney did not object, and the trial court admitted the document as evidence. The jury found Fisher guilty as charged on both counts, and the trial court sentenced him to an aggregate sentence of ten years executed with the Department of Correction. Fisher now appeals.

Discussion and Decision

I. Standard of Review

In reviewing sufficiency of the evidence claims:

> [we] must consider only the probative evidence and reasonable inferences supporting the verdict. 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. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. [T]he evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (citations and quotations omitted) (emphasis in original).

II. Unlawful Possession of a Firearm

To sustain a conviction for unlawful possession of a firearm by a serious violent felon, the State must prove beyond a reasonable doubt that Fisher knowingly or intentionally possessed a firearm[2] and that he is a serious violent felon. Ind. Code § 35-47-4-5. The State alleged Fisher was a serious violent felon on the basis of a July 9, 2001, conviction for burglary, a Class B felony. The definition of a "serious violent felon" includes a person who has been convicted of committing burglary as a Class B felony. Ind. Code § 35-47-4-5(a)(1) and (b)(15).

The evidence of Fisher's prior burglary conviction comes in the form of the certified copy of the charging information and his admission to the conviction during the battery trial. Initially, we point out that the certified copy of the charging information is insufficient by itself to establish the prior conviction. See Abdullah v. State, 847 N.E.2d 1031, 1033 (Ind. Ct. App. 2006) (where State submitted certified copies of an abstract of judgment, charging documents, probable cause affidavits, and arrest records, the abstract of judgment was "the only document submitted that suggest[ed] conviction – as opposed to mere arrest and charging – for the crime") (emphasis omitted). Therefore, the State's case hinges on the sufficiency of Fisher's admission.

[2] On appeal, Fisher does not challenge the sufficiency of the evidence with regard to the possession element of the crime.

On cross-examination, Fisher admitted that he was convicted of B felony burglary on July 9, 2001.[3] The charging information, while not sufficient by itself, provides circumstantial evidence supporting Fisher's admission. Therefore, Fisher's admission is sufficient to sustain the judgment. See Harmon v. State, 849 N.E.2d 726, 735 (Ind. Ct. App. 2006) (defendant's admission to being a serious violent felon and knowingly or intentionally possessing a firearm is sufficient to sustain a conviction for unlawful possession of a firearm by a serious violent felon); see also Robinson v. State, 543 N.E.2d 1119, 1120 (Ind. 1989) (finding of habitual offender status supported by testimony of defendant during trial conceding prior convictions).

However, Fisher argues that his admission to a prior bad act can only be considered for impeachment purposes and not as substantive evidence. Initially we note that Fisher did not object to the line of questioning or to the incorporation of his battery trial testimony at his unlawful possession trial. Fisher also did not request any limiting or clarifying instructions regarding his admission to the burglary conviction. Failure to object to the admission of evidence results in waiver of the issue on appeal. Brabandt v. State, 797 N.E.2d 855, 861 (Ind. Ct. App. 2003). Therefore, Fisher has waived review of the admissibility and limited purpose of his admissions.[4] Similarly, Fisher has waived consideration of his argument that the evidence does not support a finding that he was not tried as a juvenile for the burglary charge because he failed to make that argument before the trial court. See King v. State, 799 N.E.2d 42, 47 (Ind. Ct. App. 2003).

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[3] Although questioned about the cause number of his prior conviction, Fisher responded that he did not know whether or not the cause number read by the prosecutor was correct.

[4] Waiver notwithstanding, Fisher's admission would be admissible under Indiana Evidence Rule 404(b) because it constitutes substantive evidence of an element of the crime of unlawful possession of a firearm by a serious violent felon.

Conclusion

Based on the discussion above, the evidence is sufficient to support Fisher's conviction for unlawful possession of a firearm by a serious violent felon.

Affirmed.

DARDEN, J., and BAILEY, J., concur.