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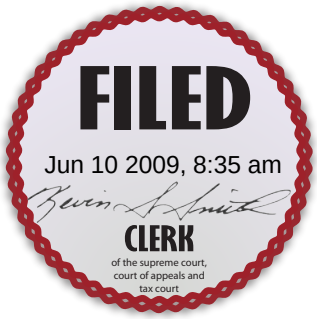

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IN THE
COURT OF APPEALS OF INDIANA

JEFFREY DARLING,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0811-CR-1050
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Sheila A. Carlisle, Judge
Cause No. 49G03-0805-FC-110343

June 10, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Jeffrey Darling appeals his convictions for Burglary,[1] a class C felony, and Attempted Theft,[2] a class D felony, arguing that there is insufficient evidence supporting the convictions. Finding sufficient evidence, we affirm.

FACTS

Late at night on May 11, 2008, Kenneth Bandy was walking toward his parking garage in Indianapolis when he heard the sound of a handsaw cutting wood. He looked at a building undergoing renovation and saw the silhouette of a man, later determined to be Darling, cutting wood. After retrieving his car, Bandy called 911 and reported the incident. Two Indianapolis Metropolitan Police officers responded. Arriving at the site, the officers discovered a small hole cut in the plywood covering a window. The officers entered the building to investigate. Once inside, they discovered Darling putting wiring from a temporary lighting system into a dumpster bin. Next to Darling was a bag, a tool kit, and a pipe saw, all of which Darling had brought into the building with him. Additionally, miscellaneous copper pieces were sitting near Darling, and it was revealed at trial that those copper pieces had been moved since the project superintendent had left the site the previous day. Darling was not authorized to be on the property.

On May 15, 2008, the State charged Darling with class C felony burglary, class D felony attempted theft, and class A misdemeanor criminal mischief. At the conclusion of the September 3, 2008, bench trial, the trial court found Darling guilty of burglary and

[1] Ind. Code § 35-43-2-1.

[2] Ind. Code § 35-41-5-1, I.C. § 35-43-4-2.

attempted theft and not guilty of criminal mischief. Following an October 30, 2008, sentencing hearing, the trial court sentenced Darling to an aggregate seven-year sentence. Darling now appeals.

DISCUSSION AND DECISION

Darling's sole argument on appeal is that there is insufficient evidence supporting his convictions. Upon a challenge to the sufficiency of the evidence, we will neither reweigh the evidence nor assess witness credibility. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). In conducting our analysis, we will consider only the probative evidence and reasonable inferences that may be drawn therefrom that support the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). We will affirm if the evidence and inferences could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. McHenry, 820 N.E.2d at 126.

To convict Darling of burglary, the State was required to prove beyond a reasonable doubt that he knowingly broke and entered into the building at issue with the intent to commit the felony of theft—exercising unauthorized control of the building owner's property with the intent to deprive the owner of any part of the property's value or use—therein. I.C. § 35-43-2-1, I.C. § 35-43-4-2. A burglary conviction may be sustained on circumstantial evidence alone. Miller v. State, 563 N.E.2d 578, 581 (Ind. 1990).

Darling argues that the State did not prove that he entered the building with the intent to commit a felony therein. At trial, Darling admitted that he broke into the

building and entered it, bringing a bag of tools with him. He further admitted that he was discovered in the act of cutting wire, with coils of it at his feet, and placing it in a wheeled dumpster bin. Moreover, various items of copper and the dumpster had been moved since the project manager had left the site the day before. Based on this evidence, a reasonable factfinder could have inferred that Darling entered the building with the intent to commit theft therein. Therefore, we find the evidence sufficient to support Darling's burglary conviction.

Darling also argues that the evidence was insufficient to support his conviction for attempted theft. To convict Darling of attempted theft, the State was required to prove beyond a reasonable doubt that he performed an act that constituted a substantial step toward the knowing or intentional exertion of unauthorized control over the property of the building owner with the intent to deprive that person of any part of the property's value or use. I.C. § 35-43-4-2. As already discussed, the evidence established that Darling broke into the building with a bag of tools and was discovered in the act of cutting wire, with coils of it at his feet and a wheeled dumpster bin and various pieces of copper nearby. This evidence supports his attempted theft conviction.

The judgment of the trial court is affirmed.

MAY, J., and BARNES, J., concur.