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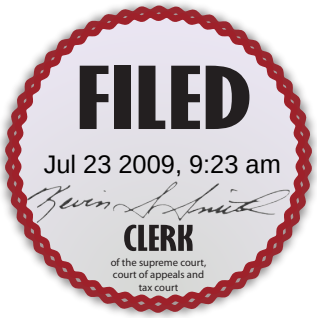

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IN THE
COURT OF APPEALS OF INDIANA

CURTIS BRANDON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0901-CR-24
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robert R. Altice, Judge
Cause No. 49G02-0802-FA-44913

July 23, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Curtis Brandon appeals his conviction for Burglary Resulting in Bodily Injury,[1] a class A felony, claiming that the evidence was insufficient to support his conviction. Specifically, Brandon argues that the conviction must be set aside because the State failed to establish the elements of breaking and entering. Brandon further alleges that the conviction cannot stand because the evidence showed that the victim sustained injury after the initial entry into the residence had occurred. Finding the evidence sufficient, we affirm the judgment of the trial court.

FACTS

Ashley Everman was living at an Indianapolis apartment with her sister and cousin. At some point, Everman became acquainted with James Bryant and James Balch.

On February 22, 2009, Everman spoke with Balch about purchasing a necklace. During that encounter, Everman told Balch and Bryant about the large amount of money she had made the previous week while working at an escort service.

After Everman had returned to her residence later that evening, she and her boyfriend, AJ Anderson, heard a knock on the door. Everman looked through the peephole and an individual identified himself as "James." Tr. p. 61. Everman initially believed that the person was Balch. When Everman unlocked the door and "cracked it," she saw three individuals standing outside. When Everman attempted to shut the door, it was "pushed back on her." Id. at 62. As a result, Everman fell backwards into the wall and onto the apartment stairs.

[1] Ind. Code § 35-43-2-1(2)(A).

Bryant, who was armed with a handgun and wearing a black hoodie, grabbed Everman by the throat and walked her through the hallway. Thereafter, Bryant, Brandon, and Johnny Horton all entered Everman's apartment. At some point, Bryant asked Everman "where [the money was]." Id. at 66. After Everman replied "what money?," Bryant hit her in the head with a pistol. Id. Everman then revealed that the money was in her purse.

Bryant picked up Everman by the throat and pushed her into the living room. Brandon searched the purse and found Everman's keys, money, and cell phone. Brandon then put those items in his pocket. Thereafter, the men escorted Everman to her cousin's room, where Horton began rifling through some dresser drawers.

Everman's sister, who had been asleep upstairs, called 911 and reported the incident. Thereafter, the men escorted Everman downstairs, and she told the group that she knew which vehicle they were driving. In response, Bryant struck Everman again with his handgun. Everman and Anderson were then taken to the living room, where Brandon and the others tied them up with AV cables. Although the group initially fled from the residence, Bryant returned and pushed Everman through the patio door. After Bryant left, Everman ran outside and screamed at a passing police car.

Indianapolis Metropolitan Police Department (IMPD) Officers Gregory Gehring and Fred Lantzner were dispatched to Everman's residence. At some point, Officer Lantzner observed Brandon carrying two purses. Brandon tossed them in some bushes and sat down on a nearby step. Officer Lantzner arrested Brandon and found the purses in the bushes. Following a search incident to arrest, Brandon was found in possession of

over $2200 in cash, jewelry, keys, and several other items that matched the description of the property that was stolen from Everman and her relatives. Bryant and Horton were also arrested in the vicinity and were in possession of other items that had been stolen from Everman's residence.

Thereafter, the State charged Brandon with a number of offenses. The charging information with regard to the class A burglary count provided in relevant part as follows:

> Curtis Brandon, on or about February 22, 2008, did, while armed with a deadly weapon, that is: handguns, break and enter the building or structure, and dwelling of Alicia Everman and/or Barbara Walls . . . with intent to commit the felony of Theft therein; that is, with intent to knowingly exert unauthorized control over the property of Alicia Everman and/or Barbara Walls, with intent to deprive Alicia Everman and/or Barbara Walls of any part of its value or use, and further said breaking and entering resulted in bodily injury, that is: pain and/or swelling to another person.

Appellant's App. p. 26.

On November 17 and 18, 2008, a jury trial took place, during which Brandon was tried with the co-defendants. Following the presentation of the evidence, Brandon was found guilty as charged.[2] Thereafter, the trial court sentenced Brandon to an aggregate term of twenty-six years of incarceration. Brandon now appeals the class A felony burglary conviction.

DISCUSSION AND DECISION

I. Standard of Review

[2] While we note that the trial court subsequently vacated two class B felony counts of confinement and reduced a class B felony robbery conviction to a class C felony, Brandon does not challenge those convictions in this appeal.

When reviewing a challenge to the sufficiency of the evidence, 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 that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. Id. We will affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." Id. It is therefore not necessary that the evidence "overcome every reasonable hypothesis of innocence." Id. at 147. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. Id.

II. Brandon's Contentions

Brandon argues that his conviction must be set aside because the State failed to show that there was a "breaking" sufficient to constitute an element of burglary. Appellant's Br. p. 6. More specifically, Brandon contends that if Everman opened the door "of her own volition, and a force other than the defendants, such as the wind, caused the door to open, . . . there was no 'breaking' sufficient to constitute an element of . . . burglary." Appellant's Br. p. 6.

In the alternative, Brandon claims that because the charging information alleged that Everman sustained "pain and/or swelling," appellant's app. p. 25, it is apparent that those injuries occurred "sometime after the alleged breaking and entering, and would more properly be charged as a class B felony robbery." Appellant's Br. p. 6. As a result, Brandon maintains that his conviction for class A felony burglary must also be set aside on this basis.

To convict Brandon of the charged offense, the State had to prove that he 1) broke into and entered; 2) the building or structure of another person; 3) with the intent to commit a felony therein; and 4) the offense resulted in bodily injury to any person other than a defendant. I.C. § 35-43-2-1. The "slightest force" used to push aside a door and gain entry represents a breaking for purposes of the burglary statute. McKinney v. State, 653 N.E.2d 115, 117 (Ind. Ct. App. 1995). Moreover, evidence that an accomplice acted in concert with those who actually committed the criminal acts is sufficient to support a conviction on an accessory theory. Wilson v. State, 455 N.E.2d 1120, 1123 (Ind. 1983).

In this case, the evidence demonstrated that Everman initially "cracked" open the door, believing that her friend was standing outside. Tr. p. 60-61. However, when Everman attempted to shut the door after realizing that Brandon and the others were present, "they pushed the door open and pushed [her] into the wall." Id. at 63. In light of this evidence, Brandon's contention that the State presented insufficient evidence to establish breaking and entering pursuant to the burglary statute fails. See Henley v. State, 519 N.E.2d 525, 526 (Ind. 1988) (observing that even though the victim opened the door when the defendant knocked, the evidence demonstrated that she did not permit him to enter; thus, evidence that the defendant pushed the door open farther than the victim intended supported his conviction for burglary).

In a related issue, Brandon also asserts that his conviction for class A felony burglary must be set aside because it was established that "any injury [that] . . . Everman suffered was well after the elements of breaking and entering had taken place." Appellant's Br. p. 10. The evidence established that Brandon intended to commit the

offense of theft when he and the others entered Everman's residence. In carrying out that offense, Bryant struck Everman with a gun after he and the others had entered her residence. Tr. p. 66. Moreover, Bryant attempted to remove rings from Everman's hand, which resulted in cuts and abrasions to her fingers. Id. at 66, 81, 95- 98, 188-89.

Even though the infliction of these injuries did not occur contemporaneously with the act of breaking and entering, the State only had to prove that the "offense" of burglary resulted in bodily injury to enhance the charge to a class A felony. In other words, there is no requirement that one specific element led to the injury. See Vaillancourt v. State, 695 N.E.2d 606, 612 (Ind. Ct. App. 1998) (concluding that the evidence was sufficient to support a class A felony burglary conviction when the evidence established that the defendant hit the victim over the head after entering the residence). As a result, Brandon's claim fails, and we conclude that the evidence was sufficient to support his conviction for burglary, a class A felony.

The judgment of the trial court is affirmed.

RILEY, J., and FRIEDLANDER, J., concur.