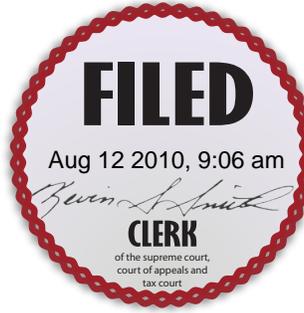


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

WILLIAM YOUNG,)
)
Appellant-Defendant,)
)
vs.) No. 49A05-1001-CR-10
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark D. Stoner, Judge
Cause No. 49G06-0811-FB-260951

August 12, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

William Young appeals his convictions for Burglary, as a Class B felony,¹ and Criminal Recklessness, as a Class D felony,² presenting the single issue of whether each conviction is supported by sufficient evidence. We affirm.

Facts and Procedural History

On November 10, 2008, Darrell Lewis (“Lewis”) returned home from work to discover that his home on Guilford Avenue in Indianapolis had been ransacked. As he stood in the kitchen, he saw Young approaching from another house. Young entered the kitchen through the pried-open door but fled upon seeing Lewis. Lewis gave chase and saw Young holding a gun. Young fired at him, and Lewis ran back through his house and into his front yard.

In the front yard, Lewis flagged down two men, Paul Gardner (“Gardner”) and Jesse Linville (“Linville”), who were driving by in a van. Lewis described Young and the two drove down Guilford to approach the entryway to the alley behind Lewis’s house. As they approached the alley, Gardner and Linville saw Young run from the alley and enter a silver Lincoln Navigator owned by Young’s fiancée. They pursued the Lincoln Navigator for a few minutes, calling 911 and providing the license plate to the dispatcher. Several days later, on November 15, 2008, police officers located the Lincoln Navigator at its registration address, a house shared by Young, his fiancée, and several children. Just after police towed the

¹ Ind. Code § 35-43-2-1(B)(i).

² Ind. Code § 35-42-2-2(b)(1) & (c)(2)(A).

vehicle and attempted to notify the residents of the house, Young attempted to flee the house from a rear window; he was quickly apprehended by the officers at the scene.

On November 19, 2008, Young was charged with Burglary (Count 1), Theft (Count 2),³ Criminal Recklessness (Count 3), Pointing a Firearm (Count 4),⁴ and Carrying a Handgun without a License (Count 5).⁵ An Amended Information on October 27, 2009, removed the Theft count. After a jury trial on October 28, 2009 and October 29, 2009, Young was convicted on all the remaining counts.

Judgment was entered on December 23, 2009. After renumbering the counts pursuant to the Amended Information, the court merged Pointing a Firearm and Carrying a Handgun without a License as lesser included offenses into Criminal Recklessness and entered judgments of conviction on Burglary and Criminal Recklessness. The court sentenced Young to eight years' imprisonment for Burglary with six years suspended and two years executed, and received a concurrent two year executed sentence for Criminal Recklessness. This appeal follows.

Discussion and Decision

When reviewing 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). We do not assess the credibility of witnesses or reweigh evidence. Id. We will affirm the conviction unless “no reasonable fact-finder could find the elements of the

³ Ind. Code § 35-43-5-2.

⁴ Ind. Code § 35-47-4-3.

⁵ Ind. Code § 35-47-2-1.

crime proven beyond a reasonable doubt.” Id. (quoting Jenkins v. State, 726 N.E.2d 268, 270 (Ind. 2000)). “The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.” Id. (quoting Pickens v. State, 751 N.E.2d 331, 334 (Ind. Ct. App. 2001)).

Young’s Identity

Young contends that there is insufficient evidence for a fact-finder to determine beyond a reasonable doubt that it was he, rather than another person, who committed the charged offenses. Testimony by Lewis, Gardner, and Linville connects Young to the burglary. During his trial testimony, Lewis identified Young as the individual who had entered his home and fired a gun at him. Lewis had just returned home with the pried-open kitchen door still ajar when he saw Young approaching and entering the very room in which Lewis then stood. Lewis saw Young “eyeball” him and run out of the house after Lewis confronted him. Lewis provided a description of Young to Gardner and Linville, characterizing him as a heavy-set black male in a red hooded sweatshirt with white stripes and a red baseball cap. Gardner and Linville in turn saw a black male wearing a red hooded sweatshirt run from the alley behind Lewis’s home and enter a silver Lincoln Navigator that was registered to Young’s fiancée at the residence they shared. When the police towed the vehicle, Young attempted to escape from the back of the house and was quickly apprehended.

Statements made by Young himself also connect him to the crime scene. When he first entered the kitchen, Lewis saw a red handled screwdriver with a bent tip in front of his

microwave that he and others described as capable of use for prying open a door. Detective Jeffrey Dunn testified that after Young was arrested and received his Miranda warnings, Young told Detective Jeffrey Dunn that just such a tool, including a red handle and bent tip as described by Lewis, had been stolen from him at about the same time that Lewis's house was burglarized. Young had not yet reported the theft, but ostensibly wanted to let Detective Dunn know about the alleged theft "just in case" it was his screwdriver. Tr. 290. Young testified at trial that he was present on the block of Guilford Avenue where Lewis lived at around 5 p.m. on the date of the break in. Given this evidence and the reasonable inferences that may be drawn from it, there is sufficient evidence to support Young's identification as the burglar.

Young's challenge to his identification as the individual who fired the handgun similarly fails. During his trial testimony, Lewis identified Young as the individual who entered his kitchen and testified that he followed Young out of the kitchen and into his backyard. He also identified Young as the shooter. Lewis testified that he saw a pistol in Young's hands, that the gun appeared to have a chrome finish, that it was a semiautomatic (as opposed to a revolver), and that "[w]hen somebody takes a shot at you you don't forget it." Tr. 92.

This evidence is sufficient for a fact-finder to determine that Young committed the burglary and fired the handgun. The State presented sufficient evidence from which the jury could identify Young as the perpetrator of the charged crimes. We decline Young's invitation to reweigh the evidence on these matters.

Intent to Commit Theft

Young also contends there is insufficient evidence of intent to commit theft⁶ to support his burglary conviction. The act of breaking and entering must coincide with the intent to commit a specific felony to sustain a conviction for burglary. Gebhart v. State, 531 N.E.2d 211, 212 (Ind. 1988). “Intent to commit a given felony may be inferred from the circumstances, but some fact in evidence must point to an intent to commit a specific felony.” Justice v. State, 530 N.E.2d 295, 297 (Ind. 1988) (citing Gilliam v. State, 508 N.E.2d 1270 (Ind. 1987)). Evidence of breaking and entering and subsequent flight are not sufficient unless other evidence “strongly corroborative” of the defendant’s intent to commit a felony is also present, though such evidence need not be “insurmountable.” Id. Requisite intent to commit a felony as an element of burglary “can be inferred from the subsequent conduct of the individual inside the premises or by the manner in which the crime was committed.” Smith v. State, 671 N.E.2d 910, 912-13 (Ind. Ct. App. 1996) (citing Weemes v. State, 637 N.E.2d 832, 835 (Ind. Ct. App. 1994)).

Here, there is sufficient evidence of intent to commit theft for a fact-finder to convict Young of burglary. Young entered the house by prying a dead-bolted security door open, damaging the door frame. When Lewis arrived home, he indicated that the entire house had been turned out—clothes were strewn from the closet, trash was scattered, couch covers were “thrown everywhere,” and “everything was everywhere.” Tr. 78. Officer Matthew Peats, the

⁶ Theft in this case requires the intent to knowingly assert control over Lewis’s property without Lewis’s authorization and with the intent to deprive Lewis of any part of the value or use of that property. Ind. Code § 35-43-4-2(a); App. 39.

crime scene technician called to Lewis's house, testified that the kitchen cabinets were hanging open when he arrived, permitting an inference that they, too, had been rifled through.

Given the nature of Young's entry and the disarray in which Lewis's possessions were left, a fact-finder could reasonably infer that Young had the intent to enter the house to commit theft. We only consider "the probative evidence and reasonable inferences supporting the verdict." Drane, 867 N.E.2d at 146 (quoting McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005)) (emphasis in original). The evidence of intent to commit theft is thus sufficient to support a conviction for burglary.

Conclusion

There is sufficient evidence to support Young's convictions for Burglary and Criminal Recklessness.

Affirmed.

RILEY, J., and KIRSCH, J., concur.