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IN THE
COURT OF APPEALS OF INDIANA

MOSES PIERCE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0901-CR-33
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven Rubick, Judge
Cause No. 49G04-0807-FC-170494

August 20, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Moses Pierce appeals his conviction for burglary as a class C felony.[1] Pierce raises one issue, which we revise and restate as whether the evidence was sufficient to support Pierce's conviction. We affirm.

The relevant facts most favorable to the judgment follow. Dorothy Daye lives at 416 Eastern Avenue, Indianapolis, Indiana. On July 18, 2008, she was taking out the trash when she heard a hammering noise at the unoccupied house next door. When she went to investigate, she observed Pierce through a small upstairs window of 418 Eastern Avenue ("418"), which was one half of a duplex with 420 Eastern Avenue ("420"), both of which were owned by Jeffrey Todd. Upon observing Pierce, Daye yelled at him to leave the house and that she was going to call the police. Pierce then exited the house through the front door of 418. Pierce confronted Daye and asked her not to call the police, and when she refused, he ran off down an alley. Daye then called 911. When Officer Gregory Ressino arrived at 418, Daye gave him a description of the perpetrator. Officer Ressino patrolled the area and questioned a number of people matching the perpetrator's description, including Pierce.

Fifteen to twenty minutes after Officer Ressino left Daye, Pierce returned to Daye's residence. Daye called the police again and reported that the perpetrator had returned. After receiving a report that the perpetrator had returned to Daye's residence, Officer Ressino proceeded to that location. When Officer Ressino arrived, Daye immediately identified Pierce as the perpetrator of the break-in at 418. Officer Ressino

[1] Ind. Code § 35-43-2-1 (2004).

then entered 418 through the unlocked front door. He found that the bathroom was destroyed. He also went into the adjacent unit of the double, 420, and found a bag of copper pipe and wiring on the floor. Outside of 420, he found more copper pipes. Officer Ressino then contacted the owner, Todd, and after talking with him, arrested Pierce for burglary and theft.

Todd used 418 and 420 as rental properties. At the time Pierce was discovered in 418, there were no tenants in 418 or 420, and no one had permission to be inside either building. After Pierce was arrested, Todd discovered a small doorway between 418 and 420 that was previously sealed but had been kicked in. Todd also found pry marks on the kitchen window of 418. Officer Ressino also saw some damage to the window. The last time Todd had visited 418 or 420 was three or four weeks prior to July 18, 2008. When Todd last visited, the bathroom, window, and passageway were not damaged. Todd locked and secured both units when he last left them. Daye testified that the doors and windows of 418 and 420 are always closed, although she did not check them every day.

On July 21, 2008, the State charged Pierce with Count I, burglary of 418 as a class C felony; Count II, theft of copper pipes from 418 as a class D felony; Count III, burglary of 420 as a class C felony; and Count IV, theft of copper pipes from 420 as a class D felony. On December 4, 2008, the day of the trial, the State also charged Pierce with being a habitual offender. At trial, the jury returned a verdict of guilty on Count I and not guilty on Counts II, III, and IV. Pierce waived his right to a jury trial on the habitual offender enhancement, and the trial court found Pierce to be an habitual offender. On

December 16, 2008, the trial court sentenced Pierce to four years for burglary and enhanced his sentence by ten years for being an habitual offender.

The sole issue is whether the evidence was sufficient to sustain Pierce's conviction for burglary as a class C felony. Specifically, Pierce claims that the evidence presented by the State was insufficient to prove the "breaking" element of burglary. 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 witness credibility or reweigh evidence. Id. We affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." Id. (quoting Jenkins v. State, 726 N.E.2d 268, 270 (Ind. 2000)). It is 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. A conviction for burglary may be sustained by circumstantial evidence alone. Cash v. State, 557 N.E.2d 1023, 1025 (Ind. 1990).

The offense of burglary is governed by Ind. Code § 35-43-2-1 which provides that "[a] person who breaks and enters the building or structure of another person, with intent to commit a felony in it, commits burglary, a Class C felony." Thus, to convict Pierce, the State had to prove that Pierce broke and entered 418, a building of another person, with intent to commit a felony in it. Pierce challenges only the sufficiency of the evidence to sustain a finding that he "broke" into 418. The Indiana Supreme Court has addressed the element of "breaking," stating: "Using even the slightest force to gain

unauthorized entry satisfies the breaking element of the crime. For example, opening an unlocked door or pushing a door that is slightly ajar constitutes a breaking." Davis v. State, 770 N.E.2d 319, 322 (Ind. 2002), reh'g denied (internal citations omitted). The breaking element may be proved using circumstantial evidence alone. Payne v. State, 777 N.E.2d 63, 66 (Ind. Ct. App. 2002); see also Jacobs v. State, 454 N.E.2d 894, 899-900 (Ind. Ct. App. 1983) ("The trial court could reasonably infer from the defendants' very presence in the victim's kitchen without her permission that they exerted some force, i.e. pushing the door open, sufficient for them to gain entry.").

The record reveals that on July 18, 2008, Pierce was seen in 418, a building owned by Todd. Todd testified that no one had permission to be in the building and that he locked the building when he last left it. Daye, who lived next door to 418, said that the doors and windows were always closed. Todd and Officer Ressino both testified that the kitchen window of 418 had been pried open using some sort of tool. Pierce also fled from the scene of the burglary when Daye told him that she called the police. This evidence is sufficient to prove the breaking element. Based on our review of the record, we conclude that evidence of probative value exists from which the jury could have found that Pierce broke into 418 and committed burglary as a class C felony. See, e.g., id. (holding that when the defendant was discovered in a dwelling where he had no right to be, the door to the dwelling was broken in, and the defendant fled from the police, evidence was sufficient to sustain the breaking element of burglary).

For the foregoing reasons, we affirm Pierce's conviction for burglary as a class C felony.

Affirmed.

CRONE, J., and MAY, J., concur.