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IN THE
COURT OF APPEALS OF INDIANA

BERNARD SAMUEL BATEY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A03-0906-CR-251
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable R.W. Chamblee, Jr., Judge
Cause No. 71D08-0806-FD-631

August 24, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Bernard S. Batey appeals his conviction for residential entry, a class D felony.[1] We affirm.

ISSUE

Whether the evidence was sufficient to support Batey's conviction.

FACTS

At approximately 4:15 a.m. on June 23, 2008, John O'Brien was lying in bed when he heard the floor in another room creaking. When he looked toward his bedroom door, he saw a man wearing dark clothing standing in the doorway. O'Brien only saw the silhouette of the man because it was dark. The man fled when O'Brien sat up in bed. O'Brien then locked his bedroom door and telephoned 911.

Three Mishawaka police officers arrived shortly thereafter. They had been dispatched to the same subdivision shortly after midnight the same day "in reference to a similar call." (Tr. 13). Because the officers had remained in the area, they arrived at O'Brien's residence within "a minute or two" after receiving the dispatch. (Tr. 13).

O'Brien discovered that the man had gained entry into the home through one of the sunroom windows. "[T]he window was open probably about a foot where it had just been opened a crack when [he] went to bed." (Tr. 50). Also, the screen on the window was no longer attached to the window frame. He then discovered that approximately four dollars that had previously been on the kitchen counter were missing as well as a kitchen towel. He later noticed that the towel was lying on the ground outside the sunroom

[1] Ind. Code § 35-43-2-1.5.

window. Officers subsequently collected the towel, which appeared to be covered in feces.

Around the same time and in a residence west of the O'Brien residence, Rosemary Dunlap was sleeping when a "bright light shining in [her] face" woke her. (Tr. 86). The light was shining through the bedroom window. Dunlap then saw a "dark figure" holding a flashlight. (Tr. 88). When the person saw that she was awake, he "put the flashlight down and then went around the house and disappeared." (Tr. 86). Dunlap telephoned 911.

After receiving the dispatch to Dunlap's residence, officers set up a perimeter around the subdivision and requested a canine unit from the Saint Joseph County Sheriff's Department. Saint Joseph County Police Officer Neil Hoover responded with his canine partner, Benny. Officer Hoover took Benny behind the Dunlap residence and started tracking west. As they did so, Officer Hoover observed only one set of footprints in the dew.

Because it appeared the suspect was moving west, Officer Richard Freeman positioned his police vehicle at the west end of the subdivision, near a school. (Tr. 20). Approximately three minutes later, he observed "a black male wearing . . . dark clothing running in a dead sprint . . . westbound towards" the school's main entrance. (Tr. 20). Officers then set up a perimeter around the school and apprehended the individual near the back of the school. He later was identified as Batey. At no time did the officers see anyone else in the subdivision.

Batey informed the officers that he and another man had driven to the subdivision in a white Lincoln. According to Batey, he was chasing the man because he had taken his keys. When the officers discovered a set of keys on Batey's person, he "said that [the man] threw the keys back at him." (Tr. 25). When the officers again asked why he was running, Batey responded "that's what black people do." (Tr. 82). A search near the school revealed a small flashlight. Batey admitted that the flashlight belonged to him.

Batey later directed the officers to the Lincoln, which was parked at an intersection between the Dunlap and O'Brien residences. Officer Freeman recognized the vehicle as one he had passed when investigating an earlier dispatch. Officers discovered a small amount of marijuana in the vehicle. Batey admitted to having smoked marijuana earlier. He also told the officers that he had relieved himself in some bushes.

On June 25, 2008, the State charged Batey with Count 1, residential entry, a class D felony; and Count 2, possession of marijuana as a class A misdemeanor. The trial court conducted a jury trial on November 10 and 12, 2008. O'Brien testified that he could not identify the person he saw in his home. The jury found Batey guilty on both counts. Following a sentencing hearing on January 12, 2009, the trial court sentenced Batey to eighteen months on Count 1, and twelve months on Count 2, to be served concurrently.

DECISION

Batey asserts that the evidence is insufficient to support his conviction for residential entry, where "[h]e was not identified by [O'Brien] as the person inside his house and was not linked to any items taken from the home." Batey's Br. at 16.

> When reviewing the sufficiency of the evidence to support a conviction, appellate courts 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. The 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) (quotations and citations omitted). We will sustain a judgment based on circumstantial evidence alone if the circumstantial evidence supports a reasonable inference of guilt. *Altes v. State*, 822 N.E.2d 1116, 1121 (Ind. Ct. App. 2005), *trans. denied*.

To convict Batey of residential entry, the State was required to prove that he knowingly or intentionally broke into and entered the dwelling of another person. *See* I.C. § 35-42-2-1.5. At trial, the State presented evidence that O'Brien awoke to find a man wearing dark clothes standing in his bedroom doorway. After officers arrived at the scene, they discovered that a window screen had been removed. O'Brien later noticed that a dish towel was missing from his kitchen. He discovered the dish towel lying outside on the ground; it was covered in what appeared to be feces.

Shortly after setting up a perimeter in O'Brien's subdivision, officers observed Batey, who was dressed in dark clothing, fleeing the area. Batey offered several stories to explain his presence in the area. He also admitted to having relieved himself in some

bushes. He subsequently led officers to his vehicle, which was parked near O'Brien's residence. During their investigation, officers did not observe anyone else in the area.

Although O'Brien could not identify Batey as the person who had been in his home, the State presented circumstantial evidence that it was Batey who had entered O'Brien's residence. His argument otherwise is an invitation to reweigh the evidence and assess the credibility of the witnesses. We decline to do so.

Affirmed.

ROBB, J., and MATHIAS, J., concur.