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IN THE
COURT OF APPEALS OF INDIANA

TROY T. HARDESTY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A04-1012-CR-819
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Jane Woodward Miller, Judge
Cause No. 71D01-1008-FC-192

August 24, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Troy T. Hardesty ("Hardesty") appeals his conviction for burglary, as a Class C felony,[1] raising the single issue of whether sufficient evidence supports his conviction. We affirm.

Facts and Procedural History

On the morning of August 19, 2010, Hardesty, his wife Heather ("Heather"), and friend Tommy Heflin ("Heflin") went to a scrap yard to turn in scrap metal for money. While they were in line waiting for their scrap to be weighed, Dan Griggs ("Griggs") approached their truck. Griggs told them that he had a washer, dryer, and water heater that he needed moved, and that if they helped, he would give them half the proceeds from the sale. Hardesty, Heather, and Heflin agreed, and picked up Griggs after they were done weighing and selling their scrap.

Griggs led the group to a duplex at the corner of Broadway and Fellows Street in South Bend. The duplex has two apartments with different addresses: 501 Broadway and 1322 Fellows. Upon arrival, Hardesty and Heflin followed Griggs into the 1322 Fellows apartment while Heather backed the truck up to the front door of 501 Broadway. While inside 1322 Fellows, Griggs showed Hardesty what he said was a lease. Hardesty looked at the paper and mentioned that he did not see Griggs's name on it. The document was later identified to be a late rent notice addressed to Johnisha Howard at 1322 Fellows.

Regardless, the three men then left 1322 Fellows and went into 501 Broadway.

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[1] Ind. Code 35-43-2-1.

Griggs opened the door without a key. The apartment had no furniture and was completely vacant. The men went down to the basement to obtain the washer and dryer, and Hardesty and Heflin subsequently brought both up to the porch. As Heflin and Heather loaded the washer and dryer into the truck, Griggs and Hardesty were downstairs kicking and pushing at the water heater to remove it from the wall and ripping off the ducting.

While the three men were carrying the water heater up the stairs, Corporal Greg Early ("Corporal Early") of the South Bend Police Department arrived. He asked the men what they were doing, and Hardesty pointed at Griggs and told him that Griggs lived there. After confirming through his dispatch that the men did not have permission to be in the apartment, Corporal Early placed them all under arrest.

On August 21, 2010, the State charged Hardesty with burglary and on October 19, 2010, the State filed an information alleging that Hardesty was a habitual offender. A jury trial was held on November 3, 2010, after which the jury found Hardesty guilty of burglary. Hardesty then admitted to being a habitual offender. On December 2, 2010, the trial court sentenced Hardesty to four years for his burglary conviction, and enhanced his sentence by four years for being a habitual offender for a total sentence of eight years to be served in the Department of Correction. He now appeals his burglary conviction.

Discussion and Decision

Standard of Review

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 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)).

Burglary

Hardesty was charged with burglary as a Class C felony, the elements of which are (1) breaking and entering (2) a building or structure of another person (3) with the intent to commit a felony in it. I.C. § 35-43-2-1. Thus, the State must prove beyond a reasonable doubt that a defendant intended to commit a specific felony when he broke and entered. McBride v. State, 597 N.E.2d 992, 994 (Ind. Ct. App. 1992). Proof of the breaking alone is insufficient to establish intent, Richards v. State, 681 N.E.2d 208, 212 (Ind. 1997), but intent at the time of entry may be inferred from the subsequent commission of a felony. Mull v. State, 770 N.E.2d 308, 313 (Ind. 2002). Here, the alleged intended felony was theft, which is knowingly[2] or intentionally[3] exerting unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use. I.C. § 35-43-4-2. Hardesty challenges the sufficiency of the evidence supporting his conviction by arguing that

[2] A person engages in conduct "knowingly" if, when he engages in the conduct, he is aware of a high probability that he is doing so. I.C. § 35-41-2-2(b).
[3] A person engages is conduct "intentionally" if, when he engages in the conduct, it is his conscious objective to do so. I.C. § 35-41-2-2(a).

the State failed to show that he had the intent to commit theft when he entered the apartment at 501 Broadway.

We observe, however, that the jury was instructed as to accomplice liability, both at the beginning and end of trial. "A person who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense" regardless of whether the other person has been prosecuted, convicted, or acquitted of the offense. I.C. § 35-41-2-4. Therefore, an individual who aids another person in committing a crime is as guilty as the actual perpetrator. Sanquenetti v. State, 727 N.E.2d 437, 441 (Ind. 2000). "'[T]here is no distinction between the responsibility of a principal and an accomplice. Thus, one may be charged as a principal yet convicted as an accomplice.'" Id. (quoting Whittle v. State, 542 N.E.2d 981, 991 (Ind. 1989), overruled on other grounds by Scisney v. State, 701 N.E.2d 847 848 (Ind. 1998)).

To be convicted as an accomplice, it is not necessary that the evidence show that the defendant personally participated in the commission of each element of the offense. Porter v. State, 715 N.E.2d 868, 870 (Ind. 1999). In determining whether a person aided another in the commission of a crime, we consider the following factors: (1) presence at the scene of the crime; (2) companionship with another engaged in criminal activity; (3) failure to oppose the crime; and (4) a defendant's conduct before, during, and after the occurrence of the crime. Vandivier v. State, 822 N.E.2d 1047, 1054 (Ind. Ct. App. 2005), trans. denied. While a defendant's presence during the commission of the crime or his failure to oppose it are alone insufficient to establish accomplice liability, the jury may consider these factors along with

other facts and circumstances tending to show participation. Id. In order to sustain a conviction as an accomplice, there must be evidence of the defendant's affirmative conduct, either in the form of acts or words, from which an inference of common design or purpose to effect the commission of a crime may reasonably be drawn. Id.

Here, upon arriving at the duplex and entering 1322 Fellows, Griggs showed Hardesty a piece of paper that he claimed was a lease. Hardesty reviewed the paper and noticed that Griggs's name was not on it. Despite this information, Hardesty proceeded with Griggs and Heflin to the apartment at 501 Broadway, where Griggs opened the door without using a key. The house was vacant, completely empty, and no one was living there. Heflin testified that they knew they did not have permission to be there, and that they entered the house knowing that they were committing a burglary.[4]

Once inside, Hardesty did not protest or leave the scene, but instead helped carry out the washer and dryer. He also assisted in removing the water heater from the wall, and in carrying it up the stairs. At some point during the removal of all of these items, Hardesty said that he was "paranoid," and that "It didn't feel right." Tr. 188. He also said that he wanted to "get the hell up [sic] out of [here]." Tr. 188. When Corporal Early confronted the men, Hardesty attempted to cover up their actions by pointing to Griggs and telling the officer that Griggs lived there, even though he had not seen Griggs's name on a lease and the apartment was empty. While all of these events were occurring, Hardesty's truck remained outside as transportation.

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[4] Heflin pled guilty to the burglary of 501 Broadway and testified against Hardesty at trial.

This evidence was sufficient for the jury to conclude that Hardesty was at least aware of a high probability that he was aiding in a burglary. Thus, having knowingly aided in the burglary, he was an accomplice. As an accomplice to burglary, he is guilty of burglary. I.C. § 35-41-2-4; Sanquenetti, 727 N.E.2d at 441.

Affirmed.

MATHIAS, J., and CRONE, J., concur.