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IN THE
COURT OF APPEALS OF INDIANA

MARQUISE MILLER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0903-CR-203
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Sheila Carlisle, Judge
The Honorable Stanley Kroh, Commissioner
Cause No. 49G03-0810-FA-232619

August 27, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Marquise Miller appeals his conviction for Burglary,[1] a class A felony, challenging the sufficiency of the evidence. Specifically, Miller argues that the conviction must be set aside because the State failed to demonstrate that he was the individual who broke into the victim's residence. Finding the evidence sufficient, we affirm the trial court's judgment.

FACTS

On October 10, 2008, Alejandro Rodriguez was asleep in his Indianapolis apartment. At approximately 3:00 a.m., Rodriguez woke up to the sound of someone opening his front door. Rodriguez had closed the door before he went to bed earlier that evening.

As Rodriguez walked toward his living room, he noticed a woman standing in the hallway. Seconds later, he saw Miller in the apartment armed with a pistol. Miller pointed the handgun at Rodriguez and pushed him into the bedroom. Thereafter, Rodriguez's nephew, Hugo, woke up during the disturbance. Miller and the woman then demanded money from Rodriguez and Hugo.

Miller's female accomplice took Rodriguez's wallet and telephones. After the woman left the apartment, Miller pointed the pistol at Hugo and Rodriguez and demanded the chain that Rodriguez was wearing. Although Miller was able to grab the chain from Rodriguez's neck, the two men became involved in an altercation as Miller was attempting to remove Rodriguez's bracelet. Miller then fired a shot to "scare" Rodriguez into releasing the

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[1] Ind. Code § 35-43-2-1.

bracelet. Tr. p. 21. When Miller was attempting to remove the bracelet from Rodriguez's wrist, Miller shot Rodriguez in the hand.

Thereafter, Miller demanded additional cash from both Rodriguez and Hugo. When Miller tried to grab Hugo's wallet, Rodriguez struck Miller in the head and on the hand with a wooden bat. Miller dropped the gun and Rodriguez and Hugo were eventually able to tie Miller up with some antenna cable until the police arrived.

As a result of the incident, the State charged Miller with burglary, a class A felony, robbery, a class B felony, battery, a class C felony, and carrying a handgun without a license, a class A misdemeanor. Following a bench trial on January 16, 2009, Miller was found guilty as charged. The trial court subsequently vacated the battery conviction and sentenced Miller to thirty years at the Department of Correction for burglary, ten years for robbery, and to one year on the handgun charge. The trial court ordered the sentences to run concurrently, which resulted in an aggregate term of thirty years. Miller now appeals.[2]

DISCUSSION AND DECISION

In addressing Miller's challenge to the sufficiency of the evidence, we do not reweigh the evidence or assess the credibility of witnesses. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). We consider only the evidence favorable to the verdict and all reasonable inferences therefrom. Id. We will affirm the conviction unless "no rational fact-finder" could have found the defendant guilty beyond a reasonable doubt. Clark v. State, 728 N.E.2d

[2] Miller only challenges the propriety of the burglary conviction.

880, 887 (Ind. Ct. App. 2000). Moreover, we will consider only the evidence supporting the verdict. Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007). Finally, it is not necessary that the evidence overcome every reasonable hypothesis of innocence. Id.

Burglary, as a class A felony, is defined as "break[ing] and enter[ing] the building or structure of another person with the intent to commit a felony in it" resulting in the "bodily injury . . . [of] any person other than the defendant." I.C. § 35-43-2-1. Under the theory of accomplice liability, the State was required to prove that Miller knowingly or intentionally aided, induced, or caused the woman with him to commit burglary before he could be convicted of the same offense. Ind. Code § 35-41-2-4.

We note that there is no distinction between the responsibility of a principal and that of an accomplice. Wise v. State, 719 N.E.2d 1192, 1198 (Ind. 1999). In other words, accomplice liability is not established as a separate crime, but merely a separate basis of liability for the crime charged. Hampton v. State, 719 N.E.2d 803, 807 (Ind. 1999); I. C. § 35-41-2-4. Moreover, the accomplice need not participate in each and every element of the crime in order to be convicted of it. McGee v. State, 699 N.E.2d 264, 265 (Ind. 1998).

In determining whether there is sufficient evidence of complicity, the court considers the following factors: (1) presence at the scene of the crime; (2) companionship with another at the scene of the crime; (3) failure to oppose commission of the crime; and (4) course of conduct before, during, and after the occurrence of the crime. Vandivier v. State, 822 N.E.2d 1047, 1054 (Ind. Ct. App. 2005).

The evidence presented at trial established that Rodriguez had closed the door to his

apartment before going to bed. Tr. p. 16. Rodriguez awoke when he heard the door being opened and noticed a woman walking in the hallway. Id. Rodriguez then saw Miller in the apartment armed with a handgun. Miller pointed the pistol at Rodriguez while the woman took Rodriguez's wallet and cell phone. Id. at 19. After the woman left the apartment, Miller took Rodriguez's necklace and shot him while trying to steal a bracelet. Id. at 20-21.

In light of these circumstances, it was reasonable for the trial court to infer that Miller and the woman were working together when the burglary occurred. Miller failed to oppose the burglary and actively participated in the offenses. Although Miller contends that the State failed to show that he was the individual who forced open the door, Miller did not have to participate in that element of the offense to be found guilty of burglary. Indeed, in Forney v. State, our Supreme Court held that the defendant was properly convicted of robbery even though the evidence did not indicate that the defendant was the actual perpetrator of the offense. 742 N.E.2d 934, 938 (Ind. 2001). The Forney court observed that the defendant's conduct, which included instructing another individual to get the money, handing his accomplice a firearm, acquiescing in the crime, and directing the driver where to go after the robbery was completed, was sufficient evidence to hold the defendant criminally liable for robbery under accomplice liability. Id.

As in Forney, the circumstances demonstrating Miller's substantial participation in the burglary was sufficient to convict him of burglary, and the State was not required to establish that it was Miller who applied the force necessary to break and enter Rodriguez's apartment. Thus, we decline to set aside Miller's conviction.

The judgment of the trial court is affirmed.

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