

Case Summary

Michael Hunter appeals his convictions for two counts of Class B felony burglary.

We affirm.

Issue

The sole issue is whether there is sufficient evidence to support Hunter's convictions.

Facts

The evidence most favorable to the convictions reveals that on the evening of June 2, 2008, eighty-year-old Joseph Morelli, Jr. came home, opened his front door, and found someone he did not know standing inside the door. When Morelli asked this person what he was doing there, he responded that he was using the bathroom. The person then ran away. Although Morelli could not identify this person, a neighbor who was outside later positively identified the person leaving Morelli's house as Hunter. After Hunter left, Morelli noticed two items behind the front door where Hunter had been: a red pillowcase and a white plastic bag. Inside the pillowcase, which belonged to Morelli's son who also lived there, was a PlayStation 3 video game console that belonged to Morelli's son, and the plastic bag contained games for the PlayStation. The PlayStation had been attached to a television in Morelli's son's bedroom. Additionally, some jewelry and some coins Morelli had been collecting were missing from his bedroom.

On July 4, 2008, Morelli answered a knock at his door and was confronted by a man wielding a gun who said, "I need all the money you have in the house." Tr. p. 31.

When Morelli explained that there was no money in the house, the man ordered Morelli to lock himself in the bathroom. Morelli did so for about fifteen minutes before calling police. The only items missing from Morelli's house were his son's red pillowcase, PlayStation 3, and PlayStation 3 games. Morelli's son's television had been moved in order to reach behind it and unplug the PlayStation 3. On the television screen, police were able to recover a fingerprint, which was matched to Hunter. Morelli's son had cleaned and dusted the television between June 2 and July 4, 2008. Neither Morelli nor his son knew Hunter.

The State charged Hunter with two counts of Class B felony burglary, and one count each of Class B felony robbery, Class B felony criminal confinement, Class D felony attempted theft, and Class D felony pointing a firearm. After Hunter's jury trial on November 19, 2008, he was found guilty of the attempted theft and two burglary charges and not guilty of robbery, criminal confinement, and pointing a firearm. The trial court did not enter judgment on the attempted theft charge but did so on both burglary counts. Hunter now appeals.

Analysis

Hunter challenges the sufficiency of the evidence supporting both burglary convictions. When reviewing the sufficiency of the evidence to support a conviction, we consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). It is the fact-finder's role, not ours, to assess witness credibility and weigh the evidence to determine whether it is sufficient to

support a conviction. Id. To preserve this structure, we must consider conflicting evidence in a light most favorable to the conviction. Id. We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. Id.

To convict Hunter of burglary as charged in this case, the State was required to prove that Hunter broke and entered the dwelling of another person with intent to commit a felony therein. See Ind. Code § 35-43-2-1(1)(B)(i). Specifically, the State alleged that Hunter intended to commit theft on both June 2 and July 4, 2008. With respect to the June 2 incident, Hunter does not now deny that he was positively identified as the person whom Morelli on that date found standing in his home without permission. His sole claim on appeal is that there was insufficient evidence he intended to commit a felony, i.e. theft, when he entered Morelli's house.

Hunter specifically contends there was no evidence that he intended to steal the PlayStation 3 and accompanying games that were found behind Morelli's front door. We disagree. Although the testimony of Morelli's son could have been more direct, the clear and reasonable inference from the entirety of his testimony was that his PlayStation and games had been in place by his bedroom television before he went to work on June 2, 2008. He was still at work when Morelli discovered Hunter at his house. When Morelli's son came home from work, he found that his pillowcase had been removed from his pillow and his PlayStation had been unplugged from his television and placed inside the pillowcase. Moreover, the evidence that the pillowcase and the bag containing

the games was found right beside the door where Hunter was standing when Morelli opened that door leads to reasonable inferences that (1) Hunter was the person who removed the PlayStation and games from Morelli's son's bedroom and (2) Hunter would have left the house with those items if he had not unexpectedly run into Morelli on his way out the door. There is sufficient evidence that Hunter committed burglary with intent to commit theft on June 2, 2008.

With respect to the July 4, 2008 incident, Hunter argues there is a complete lack of evidence that he was the person who confronted Morelli and then removed the PlayStation and games from the house. Although neither Morelli nor anyone else could positively identify Hunter as the intruder on this date, there is other evidence identifying Hunter as the culprit. Most notably, Hunter's fingerprint was found on the front of the television in Morelli's son's bedroom, which had been moved in order to unplug the PlayStation. Morelli's son testified that he had cleaned the television, including wiping off the screen, between June 2 and July 4, 2008. Thus, any fingerprints Hunter might have left on June 2 would not have still been there on July 4. This leads to the clear and reasonable inference that Hunter was the individual who moved the television in order to unplug the PlayStation. There is sufficient evidence that Hunter was the individual who committed the July 4 incident.

Conclusion

There is sufficient evidence to support both of Hunter's burglary convictions. We affirm.

Affirmed.

NAJAM, J., and KIRSCH, J., concur.