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IN THE
COURT OF APPEALS OF INDIANA

D.G.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 85A05-0903-JV-175
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE WABASH CIRCUIT COURT
The Honorable Robert R. McCallen, III, Judge
Cause No. 85C01-0808-JD-103

September 22, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

D.G. appeals his delinquency adjudications for two counts of burglary, which would have been Class C felonies if committed by an adult. We affirm.

Issue

D.G. raises two issues, which we consolidate and restate as whether there is sufficient evidence to support the delinquency findings.

Facts

At 2:55 a.m. on August 3, 2008, Wabash police officer Matthew Daughtry noticed a brown car driving without headlights on. There were at least two people in the car. Officer Daughtry turned around but could not find the car. Officer Daughtry continued to patrol the area, and at 3:15 a.m., he noticed the door to Sound Decisions, a store that sells stereo equipment, had been pried open. Officer Daughtry called for back-up, and while he waited he noticed the same brown car drive slowly into a nearby parking area and then speed off. The car ran a red light and eventually stopped in an alley. Officer Daughtry conducted a traffic stop. Justin O'Bringer was the driver, D.G. was the front seat passenger, and E.O. was the back seat passenger.

In the meantime, other police officers had arrived at Sound Decisions and confirmed a break-in had occurred. One police officer identified a fresh oil spot near the Sound Decisions' door that matched an oil spot left by O'Bringer's car during the traffic stop. Two lit flashlights were found inside Sound Decisions, and merchandise was stacked by the door. A pair of racing gloves, a flashlight, three crow bars, one pry bar, two claw hammers, a screwdriver set, and bolt cutters were recovered from O'Bringer's

car. During a search of O'Bringer's house, a variety of stolen items were found. A large safe and appliance cart from Jones & Sons U-Haul ("Jones & Sons") was found covered by a sheet in O'Bringer's backyard. It was later discovered that a window in an overhead door at Jones & Sons was broken and the metal screen covering the window was "peeled back." Tr. p. 93.

During police questioning, O'Bringer implicated himself, D.G., and E.O. in six burglaries. The State filed a delinquency petition alleging that D.G. committed six counts of what would have been Class C felony burglary if committed by an adult. Eventually, O'Bringer told police that D.G. was only involved in three of the burglaries, and the State dismissed three of the allegations. At trial, O'Bringer testified that he committed the burglaries alone and that D.G. only helped him move the safe. D.G. denied any involvement in the burglaries. The trial court found that D.G. was a delinquent child regarding allegations of the burglary of Sound Decisions and Jones & Sons. D.G. now appeals.

Analysis

D.G. claims there is not sufficient evidence to support the delinquency adjudications. "In juvenile delinquency adjudication proceedings, the State must prove every element of the offense beyond a reasonable doubt." A.B. v. State, 885 N.E.2d 1223, 1226 (Ind. 2008). On appeal, we do not reweigh the evidence or judge the credibility of witnesses. Id. Reviewing only the evidence and the reasonable inferences from that evidence that support the fact finder's conclusion, we decide whether there is substantial evidence of probative value from which a reasonable fact finder could find

beyond a reasonable doubt that the juvenile's conduct, if committed by an adult, would constitute the crime alleged. Id.

"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." Ind. Code § 35-43-2-1. The State alleged that D.G. intended to commit theft. Class D felony theft occurs when a person knowingly or intentionally exerts 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.

D.G. argues that the State failed to prove that he knowingly or intentionally broke and entered Sound Decisions or that he entered with the intent to commit theft. We disagree. The circumstantial evidence shows that tools used in burglaries were found inside O'Bringer's car, two illuminated flashlights were found in Sound Decisions, Officer Daughtry noticed O'Bringer's car in the vicinity of Sound Decisions at 2:55 a.m. and again at 3:15, O'Bringer initially fled from Officer Daughtry, and stolen property from Sound Decisions was recovered from O'Bringer's bedroom. As for D.G.'s specific involvement in the burglary, he was a passenger in O'Bringer's car when Officer Daughtry stopped the car. Further, the following exchange took place between O'Bringer and D.G.'s attorney:

> Q: Okay. Now when this first happened, you told the police you didn't have anything to do with it, right?
>
> A: That's correct.
>
> Q: And then you were interviewed by Detective Long, is that correct?

A: Yes.

Q: And at that point, you admitted to the involvement in six burglaries, is that correct?

A: Right.

Q: And you said that [D.G.] was with you for all six burglaries, is that correct?

A: Right.

Q: Then at some point your story changed, right?

A: Yes.

Q: Okay. Then [D.G.] was only with you for three of the burglaries, is that correct?

* * * * *

A: Yes. Yes.

Q: Okay. And then today in court you initially testified you did all six yourself. Right?

A: Right.

Tr. pp. 78-79. O'Bringer's testimony about his earlier statement to the police is consistent with Detective Scott Long's testimony. Detective Long testified that O'Bringer initially stated that D.G. and E.O. were "[w]ith him at these burglaries." Id. at 109.

According to O'Bringer, D.G. was involved in all six burglaries, only three of the burglaries, or none of them. It was the trial court's responsibility to determine what portion, if any, of O'Bringer's testimony was credible and to weigh it accordingly. This

is what the trial court did when it stated, "Justin O'Bringer's definitely a punk. Doesn't tell the truth very much, but does on occasion. . . . Um, I have to evaluate the credibility of witnesses. I don't believe everything that Justin O'Bringer said, but I believe a lot of what he said." Id. at 135. The inferences to be drawn from all of the evidence are that D.G. participated in the burglaries and intended to commit theft. There is sufficient evidence to support the delinquency adjudication regarding the burglary of Sound Decisions.

As for the sufficiency of the evidence of the Jones & Sons burglary allegation, D.G. concedes there is sufficient evidence to support a theft conviction based on his assisting O'Bringer in the transportation of the safe from Jones & Sons to O'Bringer's backyard. D.G. argues, however, that there is insufficient evidence that he knowingly or intentionally broke and entered Jones & Sons. The fact that D.G. helped O'Bringer transport the safe, taken with O'Bringer's initial statement that D.G. committed the six burglaries with him, is sufficient evidence that D.G. burglarized Jones & Sons.

Conclusion

There is sufficient evidence to support D.G.'s delinquency adjudications for the burglaries of Sound Decisions and Jones & Sons. We affirm.

Affirmed.

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