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IN THE
COURT OF APPEALS OF INDIANA

BRIAN C. SMITH,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 79A02-1010-CR-1140
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE TIPPECANOE CIRCUIT COURT
The Honorable Donald L. Daniel, Judge
Cause No. 79C01-1001-FA-2

September 29, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Brian C. Smith appeals his conviction for theft, as a Class C felony, following a jury trial.[1] Smith presents a single issue for review, namely, whether the evidence is sufficient to support his conviction.

We affirm.

FACTS AND PROCEDURAL HISTORY

In 2009, Smith lived in Lafayette. He was friends with co-worker Latroy Maxwell and with Maxwell's brother Quentin Shotwell. In the fall of 2009, Smith became acquainted with Heidi Mass, who also lived in Lafayette. Mass shared an apartment with Charles Helvie. Smith visited Mass in her apartment three or four times a week after they first became acquainted.

On December 28, 2009, Smith, Maxwell, and Shotwell went to Mass' apartment to collect on a $300 debt owed to Smith. Smith used a key to enter the apartment, but no one was home. Smith sat on the couch to watch television. Maxwell and Shotwell collected two laptops, a Blu-Ray DVD player, and some DVDs and CDs from the apartment, and then all three men left the apartment for Smith's car. Maxwell and Shotwell loaded the stolen items into Smith's car and trunk, and then the three men returned to the apartment.

Ten minutes later, Mass and Helvie arrived at the apartment. Smith demanded the return of his money, but Mass did not have it. An altercation ensued in which Mass and Helvie sustained serious injuries. Smith, Maxwell, and Shotwell then left the apartment.

[1] Smith was also convicted of battery resulting in serious bodily injury, as a Class C felony. He does not appeal that conviction.

Smith drove them to Maxwell's apartment, where Maxwell and Shotwell unloaded the items they had taken.

The State charged Smith with Count 1, burglary, as a Class A felony; Count 2, battery resulting in serious bodily injury to Helvie, as a Class C felony; Count 3, battery resulting in serious bodily injury to Mass, as a Class C felony; Count 4, battery to Helvie by a deadly weapon, as a Class C felony; Count 5, battery to Mass by a deadly weapon, as a Class C felony; Count 6, theft, as a Class D felony; count 7, robbery of Helvie by a deadly weapon, as a Class B felony; Count 8, robbery of Mass by a deadly weapon, as a Class B felony; Count 9, robbery of Helvie resulting in serious bodily injury, as a Class A felony; and Count 10, robbery of Mass resulting in serious bodily injury, as a Class A felony. Smith, who was to be tried with Shotwell, filed a motion to sever, which the trial court denied.[2]

A four-day jury trial commenced August 3, 2010. At the close of the State's evidence, the trial court granted Smith's motion for judgment on the evidence as to Counts 8 and 10. The jury later returned verdicts finding Smith guilty of Count 3, battery resulting in serious bodily injury to Mass, and theft, but found him not guilty on all other charges. The trial court sentenced Smith to six years for robbery and two years for theft, to be served consecutively. Smith now appeals his theft conviction.

DISCUSSION AND DECISION

Smith contends that the evidence is insufficient to support his conviction for theft. When the sufficiency of the evidence to support a conviction is challenged, we neither

[2] Maxwell pleaded guilty to robbery of Helvie with a deadly weapon.

reweigh the evidence nor judge the credibility of the witnesses, and we affirm if there is substantial evidence of probative value supporting each element of the crime from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. Wright v. State, 828 N.E.2d 904, 905-06 (Ind. 2005). It is the job of the fact-finder to determine whether the evidence in a particular case sufficiently proves each element of an offense, and we consider conflicting evidence most favorably to the trial court's ruling. Id. at 906.

To prove theft, as a Class D felony, the State is required to show beyond a reasonable doubt that a defendant knowingly or intentionally exerted unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use. Ind. Code § 35-43-4-2. The State can also prove theft by showing accomplice liability under Indiana Code Section 35-41-2-4. A person who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense, even if the other person has not been prosecuted for the offense, has not been convicted of the offense, or has been acquitted of the offense. Ind. Code § 35-41-2-4. In determining accomplice liability, the jury may infer participation from defendant's failure to oppose the crime, companionship with the one engaged therein, and a course of conduct before, during, and after the offense that tends to show complicity. Vasquez v. State, 762 N.E.2d 92, 95 (Ind. 2001).

Smith contends that the evidence is insufficient to support his conviction for theft, as a Class D felony, because there is no evidence that he ever took unauthorized control of the laptops, Blu-Ray DVD player, or other items taken from Mass' apartment. He also

contends that there is not evidence that he acted as an accomplice. We conclude that the evidence supports Smith's conviction under the theory of accomplice liability.

The evidence shows that Smith drove himself, Maxwell, and Shotwell to Mass' apartment, that Maxwell and Shotwell gathered electronics and other items from the apartment, and that all three men then returned to Smith's car where Maxwell and Shotwell stowed the items they had taken. The three men immediately returned to Mass' apartment where they waited until she and Helvie arrived. And when Smith, Maxwell, and Shotwell eventually left Mass' apartment, Smith drove them in his car to Maxwell's apartment. There, all three men entered Maxwell's apartment, with Maxwell and Shotwell carrying the items they had taken from Mass' apartment.

Smith, Maxwell, and Shotwell went to Mass' apartment to collect a debt owed to Smith. The evidence shows that Smith saw Maxwell and Shotwell carrying the stolen items to his car from the apartment and from his car to Maxwell's apartment. And there is no evidence that Smith opposed or attempted to prevent the theft. In light of this body of evidence, the jury was free to infer Smith's participation in the theft of the items Maxwell and Shotwell took from Mass' apartment. Smith's arguments to the contrary amount to a request that we reweigh the evidence, which we cannot do. See Wright, 828 N.E.2d at 905-06. The evidence is sufficient to support Smith's conviction for theft under a theory of accomplice liability.

Affirmed.

RILEY, J., and MAY, J., concur.