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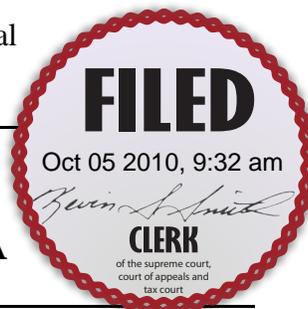
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**IN THE
COURT OF APPEALS OF INDIANA**

WILLIAM MOORE,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 49A04-1002-CR-58

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Grant W. Hawkins, Judge
Cause No. 49G05-0908-FB-076367

October 5, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

William Moore appeals his convictions for Class B felony burglary and Class D felony theft. He contends that the evidence is insufficient to prove the element of identity for both convictions. Finding the evidence sufficient to prove identity, we affirm.

Facts and Procedural History

The facts most favorable to the verdicts reveal that on the morning of August 28, 2009, Moore and juveniles Areli Becerril, John Flores, and Nick Donatone met in Port-O-Call Apartments on the west side of Indianapolis and decided to burglarize a nearby house. Areli drove her mother's red Chrysler Pacifica to 319 North Whitcomb Avenue, which was owned by Fonzie Brooks. The group made several trips to Brooks's house to see if anybody was home.

The group, however, did not know that Robert Phillips, who lived next door to Brooks, was home and witnessed these mysterious mid-morning trips. Phillips first noticed a red Chrysler Pacifica parked in front of Brooks's house. A Hispanic female, Areli, was in the driver's seat, and a white male, Nick, went to Brooks's front door. Phillips went inside his house and continued to observe the situation at Brooks's house. Phillips saw Nick kick in the front door and then hurry back to the Pacifica. The Pacifica sped off.

About ten minutes later, the Pacifica returned, and a Hispanic male, John, and a black male, Moore, exited the vehicle and proceeded to the back of the house. The Pacifica sped off again. Phillips called 911 and remained on the line with the dispatcher for approximately ten minutes and reported the events as they happened. After several

minutes, John and Moore exited the front door of Brooks's house. Moore was carrying a black duffle bag as the duo headed back toward Port-O-Call Apartments. John and Moore both passed by the front of Phillips's house, allowing Phillips to get a better look at them.

Indianapolis Metropolitan Police Department officers promptly responded to Phillips's 911 call and set up a perimeter in the neighborhood. Areli and Nick were the first to be apprehended when Officer Dennis Nike pulled them over in the Pacifica. While Officer Nike was waiting for backup to arrive, he saw John walking on New York Street and apprehended him as well.

A 911 call came in that a black male was hiding in a shed at a nearby house. IMPD Officer Christopher Brown responded to that call and saw a black male running in a yard. Officer Brown stopped his car and began chasing the male on foot. Officer Brown identified himself as "police" and told the male several times to stop running, but the male did not stop running and eventually disappeared from Officer Brown's sight. At trial, Officer Brown identified this black male as Moore.

A K-9 officer and his dog eventually located the black male hiding underneath a car which was parked in a driveway and covered with a tarp. The K-9 officer gave an announcement that he was going to deploy his dog, but there was no response. The dog then bit and extracted the black male from underneath the car. The K-9 officer identified this black male as Moore at trial. IMPD Officer Timothy Huddleston was on the scene when the K-9 unit apprehended Moore. According to Officer Huddleston, while Moore

was being apprehended, he said “ten or more times” that “he did it to feed his children.” Tr. p. 182. Officer Huddleston also identified Moore at trial.

A detective brought Phillips to the area where Moore was being arrested, and Phillips identified Moore as the black male who entered Brooks’s house and fled. Phillips also identified the three other suspects, Areli, John, and Nick, as being involved in the burglary.

The black duffle bag was later found on New York Street by police. Some of Brooks’s property, such as a gun and laptop computer, was found inside the bag.

The State charged Moore with Class B felony burglary, Ind. Code § 35-43-2-1(1)(B)(i), and Class D felony theft, Ind. Code § 35-43-4-2(a). A jury trial was held. Both Areli and John testified against Moore at trial. Moore was found guilty as charged. The trial court sentenced him to an aggregate term of ten years. Moore now appeals.

Discussion and Decision

Moore contends that the evidence is insufficient to support his convictions. When reviewing the sufficiency of the evidence, appellate courts must only consider 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 that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient. *Id.* To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it “most favorably to the trial court’s ruling.” *Id.* Appellate courts affirm the conviction unless “no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.” *Id.* at 146-47 (quotation omitted). It is

therefore not necessary that the evidence “overcome every reasonable hypothesis of innocence.” *Id.* at 147 (quotation omitted). “[T]he evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.” *Id.* (quotation omitted).

In order to convict Moore of Class B felony burglary, the State was required to prove that he broke and entered the dwelling of Brooks with intent to commit a felony in it, to wit, theft. Ind. Code § 35-43-2-1(1)(B)(i); *see also* Appellant’s App. p. 16. In order to convict Moore of Class D felony theft, the State was required to prove that he knowingly exerted unauthorized control over property of Brooks, to wit, a .38 caliber revolver and/or laptop computer, with intent to deprive Brooks of any part of its value or use. Ind. Code § 35-43-4-2(a); *see also* Appellant’s App. p. 16-17. The only element that Moore challenges on appeal is identity. *See* Appellant’s Br. p. 5.

The evidence is sufficient to establish Moore’s identity. John testified at trial that he went to Brooks’s house with Moore for the purpose of burglarizing it. Phillips testified that he observed Moore going to the back of Brooks’s house and then coming out the front door carrying a black duffle bag. The black duffle bag was later recovered on New York Street containing Brooks’s gun and laptop. Phillips later identified Moore at the scene of Moore’s arrest as one of the people involved in the burglary of Brooks’s house. Areli also identified Moore from a photo array at the police station as one of the people she was with on the day of the burglary.

In addition, Moore was hiding in the area of the burglary in a shed and then ran away when Officer Brown ordered him to stop. He was eventually apprehended by a K-9 unit. Moore said at least ten times during his apprehension that “he did it to feed his

children.” Tr. p. 182. He does not contest this admission on appeal. Although Moore makes various arguments on appeal, such as Phillips identified Moore at the scene of Moore’s arrest but not at trial, Phillips described Moore as six feet tall but he is actually 5’8”, John and Areli testified at trial that they did not know all of their accomplices’ names, and there is a discrepancy among the witnesses as to how many people entered Brooks’s house, these are merely requests to reweigh the evidence, which we will not do.¹ We therefore affirm Moore’s convictions.

Affirmed.

MAY, J., and ROBB, J., concur.

¹ To the extent that Moore challenges the sufficiency of the evidence for his theft conviction on grounds that some witnesses testified at trial that they did not see him carrying a black duffle bag, we point out that this is also a request to reweigh the evidence, as Phillips testified that he saw Moore emerge from Brooks’s house with a black duffle bag. Tr. p. 78. Because Moore discarded the black duffle bag at some point necessarily means that he did not have the bag at all times. In addition, because Moore was seen emerging from Brooks’s house with a black duffle bag which was found to contain Brooks’s property, it does not matter that Moore’s fingerprints were not recovered from Brooks’s property inside the bag. The evidence is sufficient to support Moore’s theft conviction.