

James Lee Benton appeals his conviction for Burglary,¹ a class B felony. He presents the following restated issues for our review:

1. Did the trial court abuse its discretion by admitting certain evidence based upon the knowledge exception to Indiana Rule of Evidence 404(b)?
2. Did the State present sufficient evidence to support Benton's conviction?

We affirm.

Around 9:30 a.m. on March 27, 2009, Richard Fawcett observed from his nearby-residence an older-model blue pickup truck drive slowly by Brian Fawcett's (Richard's son's) house. Given that this was a rural area in Posey County, Richard was not concerned and thought the person was likely lost. Over the next ten or fifteen minutes, however, Richard observed the truck drive by the residence three more times. Richard moved closer to the road to investigate, and he was eventually able to get a clear view of the driver. Each time the truck slowed as it passed Brian's residence. On the fourth trip, the truck stopped as a man came down Brian's driveway. The man entered the truck on the passenger side of the vehicle, and "the truck took off very quickly at that point." *Transcript* at 150.

Richard knew that his son was not at home and immediately went to the house where he observed the glass from the back door knocked out. He quickly returned home to contact the sheriff's department and then Brian. Brian and his wife returned to discover a pillow

¹ Ind. Code Ann. § 35-43-2-1 (West, Westlaw through 2010 2nd Regular Sess.). Benton was convicted on the theory of aiding another in the burglary. *See* Ind. Code Ann. § 35-41-2-4 (West, Westlaw through 2010 2nd Regular Sess.) ("[a] person who knowingly or intentionally aids...another person to commit an offense commits that offense").

case, a pair of socks, and jewelry missing from their home. Richard provided the responding officers with a description of the truck and the driver.

Shortly thereafter, officers stopped Ronny James driving a truck that fit Richard's description. Benton was a passenger in the truck. Officers brought Richard to the stop, and he positively identified the truck and Benton as the earlier driver of the truck. Behind the passenger's seat officers discovered items stolen from Brian's home. A screwdriver was also found in the truck, and Benton admitted that James had a screwdriver with him when he exited the truck and approached Brian's home. Pry marks were observed at the front and back doors to the residence.

Following an advisement of rights, Benton admitted that he drove the truck while James went to the residence in question. Benton claimed, however, that he did not know James was planning to burglarize the residence. Benton indicated that when James picked him up that morning, James told him he needed to stop by a residence to pick up money owed him. During a taped interview, Benton admitted that over the last several months James had brought gold jewelry to him to sell in exchange for a cut of the profits. Over the previous four months, according to Benton, this had occurred "at least twice a month." *State's Exhibit 35* at 11. Benton acknowledged that this activity was "suspicious", *id.* at 5, and that he had believed the jewelry was probably stolen, though he never questioned James because he just wanted the money.

On April 1, 2009, the State charged Benton with class B felony burglary and class D felony theft. During opening statements, Benton's attorney acknowledged that Benton was driving the truck during the burglary but, relying upon Benton's statement to police, denied

that Benton had knowledge of James's activities inside the residence. Counsel argued in part as follows, "The issue in [this] case is did [Benton] know what Mr. James was going to do. I think after you hear all the evidence you are going to come to the conclusion that the State has failed to meet their Burden of Proof on that issue. They can't prove knowledge." *Transcript* at 129. Further, Benton's cross-examination of the witnesses focused on the issue of knowledge.

During its case-in-chief, the State sought the admission of Benton's statements regarding his prior dealings with James. Benton objected on Rule 404(b) grounds. The State responded that this evidence was admissible as an exception because "knowledge is the issue in this case." *Transcript* at 212. The trial court agreed with the State, ruling as follows:

The Court will grant the State of Indiana relief from the Order in Limine previously entered herein. The Court does determine that those specific or kind of statements are relevant to a matter that has been put in issue. [T]hey are offered for a purpose other than to show the forbidden inference; that is, the Defendant acted in conformity with character as shown by prior bad acts and that they do go to and are relevant to really what is [sic] apparently has become the central issue in this case and that is whether or not Mr. Benton was aware of Mr. James [sic] intent to commit the Burglary and assisted him in that enterprise. The Court also finds that the probative value of that evidence outweighs any prejudicial affect...so the Court will allow it.

Id. at 214-15.

The jury found Benton guilty as charged. On February 9, 2010, the trial court entered judgment of conviction on the burglary count and sentenced Benton to six years in prison. Benton now appeals.

1.

Benton contends the trial court abused its discretion when it allowed into evidence the statements made by Benton concerning his past dealings with James. Specifically, Benton contends, as he did below, that these incidents of uncharged past misconduct should have been excluded under Indiana Rules of Evidence 404(b) and 403.

We initially observe that a trial court is afforded wide discretion in ruling on the admissibility and relevance of evidence. *Smith v. State*, 730 N.E.2d 705 (Ind. 2000). Therefore, we review a trial court’s evidentiary decision for abuse of discretion and will reverse only when the decision is clearly against the logic and effect of the facts and circumstances. *Id.*

“As a general rule, evidence of prior crimes may not be used as evidence ‘to prove the character of a person in order to show action in conformity therewith.’” *Lafayette v. State*, 917 N.E.2d 660, 662 (Ind. 2009) (quoting Evid. R. 404(b)). Such evidence “may, however, be admissible for other purposes, such as proof of motive, intent, preparation, plan, *knowledge*, identity, or absence of mistake[.]” Evid. R. 404(b) (emphasis supplied).

Recently with respect to the intent exception, our Supreme Court explained:

the intent exception is available when a defendant goes beyond merely denying the charged culpability and alleges a particular contrary intent, whether in opening statement, by cross-examination of the State’s witnesses, or by presentation in defendant’s own case-in-chief. The State can respond by offering evidence of prior crimes, wrongs, or acts to the extent genuinely relevant to prove the defendant’s intent at the time of the charged offense. The trial court must then conduct an Evid. R. 403 analysis to determine if the “probative value [of the prior sexual misconduct evidence] is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or needless presentation of cumulative evidence.”

Lafayette v. State, 917 N.E.2d at 663 (internal citations omitted).

In the instant case, Benton clearly went beyond denying the charged culpability and particularly alleged that he did not knowingly aid James in the burglary because he did not know that James intended to burglarize the Fawcett residence while he drove up and down the road waiting for James. To be sure, Benton acknowledged during his opening statement that knowledge was the only issue in this case. In light of this defense, the challenged evidence regarding Benton's prior suspicious dealings with James over the last several months was relevant to whether Benton knew that James entered the residence to commit a burglary. As set forth above, Benton informed investigators that he had sold what he believed to be stolen jewelry for James at least twice a month for each of the four months preceding the burglary.

Having determined that the challenged evidence was relevant to a matter at issue other than Benton's propensity to commit the charged act, we must balance the probative value of the evidence against its prejudicial effect pursuant to Evid. R. 403. *Embry v. State*, 923 N.E.2d 1 (Ind. Ct. App. 2010), *trans. denied*. Rule 403 provides, "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury...."

Benton's regular dealings with James in which he sold stolen jewelry in exchange for a cut of the profits created a reasonable inference that Benton knew what James was doing at the Fawcett house when James exited the truck with a screwdriver and told Benton to drive down the road and return instead of parking in the driveway to wait for him. The trial court

did not abuse its discretion in determining that the highly relevant nature of this evidence outweighed the danger of unfair prejudice. We find no error in the admission of said evidence.

2.

Benton also challenges the sufficiency of the evidence supporting his conviction. In this regard, Benton asserts that the only evidence supporting his conviction was that he drove the truck up and down a county road while James was inside the Fawcett residence. He claims there is no evidence that he knew of James's criminal intent that morning.

When considering a challenge to the sufficiency of evidence to support a conviction, we respect the fact-finder's exclusive province to weigh the evidence and therefore neither reweigh the evidence nor judge witness credibility. *McHenry v. State*, 820 N.E.2d 124 (Ind. 2005). We consider only the probative evidence and reasonable inferences supporting the conviction, and "must affirm 'if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.'" *Id.* at 126 (quoting *Tobar v. State*, 740 N.E.2d 109, 111-12 (Ind. 2000)).

In the instant case, the evidence favorable to the conviction reveals that Benton agreed to drop off James and then drive the truck while James went to the back of someone's residence holding a screwdriver. Instead of parking in the driveway, Benton followed James's directions and made several trips up and down the road while waiting for James, each time slowing as he passed the residence. When James emerged from the residence carrying a pillowcase with items inside, Benton stopped to let James in the passenger side of

the truck and then sped off very quickly. This evidence alone is sufficient to support a reasonable inference that Benton knew of James's criminal intent and aided in his commission of the burglary. Moreover, the evidence of Benton's prior dealings with James provided further indication of Benton's knowledge on the morning in question. We reject Benton's invitation to reweigh the evidence.

Judgment affirmed.

BARNES, J., and CRONE, J., concur.