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ATTORNEY FOR APPELLANT:

SEAN HILGENDORF
South Bend, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

MICHAEL GENE WORDEN
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

J.L.,)
)
Appellant-Defendant,)
)
vs.) No. 71A04-0706-JV-341
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE ST. JOSEPH PROBATE COURT
The Honorable Peter J. Nemeth, Judge
Cause No. 71J01-0612-JD-1078

October 24, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Following a fact-finding hearing, J.L. appeals his adjudication as a delinquent child for committing burglary,¹ a Class B felony if committed by an adult, arguing that the State failed to present sufficient evidence to establish that he had the requisite intent to commit theft while breaking and entering a home.

We affirm.

FACTS AND PROCEDURAL HISTORY

In April 2006, Renae Finn (“Finn”) was recovering from March 2006 knee replacement surgery; she was still using crutches and was taking pain medications as needed. On the night of April 14, she was home alone. Her husband was at work and her two teenage sons were out getting something to eat. Before lying down on the couch to rest, she placed her purse on the floor next to the coffee table, which was located near the couch. She left the front door and outside screen door unlocked so it would be open when her sons arrived home.

At approximately 11:30 p.m., Finn woke to the sound of the screen door banging open on the house and found J.L. standing inside her house near the front door, which was next to the arm of the couch where she was resting her head. Previously, J.L. had been a friend of her sons, but Finn had not seen him in several years. Upon seeing J.L., she asked him what he was doing, and he responded by inquiring whether her sons were home. Because she had been dozing on the couch, she told J.L. that she did not know whether the boys were home yet, and she gave J.L. permission to go upstairs to the bedrooms to look. He returned downstairs and advised that they were not home. He then asked Finn for permission to use

¹ See IC 35-43-2-1.

the home's bathroom. Because Finn was on pain medications that night, she was sleepy and dozed off briefly when he left to use the bathroom. However, she woke to find him standing near her, bent over, and looking in her purse on the ground by the coffee table. She asked him what he was doing, and he said he was looking for a cigarette. Finn told J.L. that she quit smoking some time ago, and, after congratulating her, J.L. left the house through the front door.

Approximately ten minutes later, Finn got up off the couch to go upstairs and noticed that her purse was gone. She called J.L. twice on the telephone asking about the purse and telling him that she would not call the police if he would simply return it. J.L. denied taking the purse. Thereafter, Finn called the Mishawaka police, who came and made a report of the incident. Finn contacted her sons by cell phone, and they immediately returned home, as did her husband from work at approximately 1:30 a.m.

A neighbor living two houses away discovered Finn's purse on his property approximately one to two weeks later. It had been discarded in a foliated area between his garage and a fence. The contents had been emptied from the purse, but some items such as checks and her social security card were scattered on the ground near the purse. All cash and gift cards were missing. Noting the name and address on the checks, the neighbor returned the purse to the Finn home.

The State filed a petition alleging J.L., who was seventeen years old at the time, to be a delinquent child and charged him with residential entry, a Class D felony if committed by an adult. The State later filed an amended petition, which added the charge of burglary, a Class B felony if committed by an adult.

At the April 10, 2007, fact-finding hearing, J.L. testified that after seeing Finn asleep on the couch through the front door windows, he proceeded to enter the house without permission at approximately 11:30 p.m. He also acknowledged that: (1) he had not been to the Finns' home in at least a year; (2) the Finn family had never given him permission to freely enter their home; (3) he no longer socialized with the Finns' sons except occasionally at school; (4) he went upstairs twice with Finn's permission; (5) no one else besides Finn was home; and (6) he asked Finn for a cigarette while in her home that night. However, J.L. denied looking in Finn's purse or even seeing a purse at all.

At the conclusion of the April 10, 2007 fact-finding hearing, J.L.'s counsel conceded that the State had proven the residential entry charge. Following argument by both parties, the trial court adjudicated J.L. as a delinquent child on both charged offenses. J.L. now appeals the trial court's determination that he committed the offense of burglary.

DISCUSSION AND DECISION

A person who breaks and enters the building or structure of another person, with intent to commit a felony therein, commits Class B felony burglary. IC 35-43-2-1. To establish the intent to commit a felony element, the State must prove beyond a reasonable doubt the defendant's intent to commit a felony specified in the charge. *Freshwater v. State*, 853 N.E.2d 941, 942 (Ind. 2006). Here, the felony specified in the charging information was theft, which required the State to prove beyond a reasonable doubt that when J.L. broke and entered the Finns' residence, he did so with the intent to exert unauthorized control over the property of another person, with intent to deprive the other person of any part of its value or use. *See* IC 35-43-4-2.

Intent may not be inferred solely from the fact of breaking and entering; however, it can be established from the circumstantial evidence of the nature of the crime and may be inferred from the defendant's subsequent conduct once inside the premises. *Gentry v. State*, 835 N.E.2d 569, 573 (Ind. Ct. App. 2005) (intent properly inferred where defendant was seen walking straight to and inspecting empty pill bottle in location where pills previously had been noticed as missing). The evidence does not need to be insurmountable, but the intent element is satisfied if there is "a solid basis to support a reasonable inference that the defendant had the specific intent to commit a felony." *Freshwater*, 853 N.E.2d at 43.

J.L. claims that the State's evidence was insufficient to support the finding that he committed burglary, a Class B felony, if committed by an adult. Specifically, J.L. contends that the evidence is insufficient to support the trial court's adjudication because the State failed to present sufficient evidence that he intended to commit theft.² When reviewing a claim of insufficient evidence regarding juvenile delinquency adjudications, we neither reweigh the evidence nor judge witness credibility, and we only consider the evidence and reasonable inferences favorable to the judgment. *R.B. v. State*, 839 N.E.2d 1282, 1283 (Ind. Ct. App. 2005). We will affirm if there is substantial evidence of probative value to support the judgment. *Id.*

Here, the evidence was that, at 11:30 p.m., J.L. entered Finn's home without permission or invitation, after first viewing her asleep on the couch. Once she awoke and saw him, he asked for her sons, and when they were not home, he asked to use her bathroom.

² J.L. admitted at the fact-finding hearing that the residential entry allegation had been proven beyond a reasonable doubt. *Tr.* at 129.

Shortly thereafter Finn awoke to find him looking through her purse; she questioned him, and he left moments later. Approximately ten minutes after J.L. left, Finn went to retrieve her purse before going upstairs, and she discovered that her purse was gone. No one except J.L. had been inside the house since Finn placed her purse by the coffee table, and no one else had been inside the house since J.L. left the residence. Finn's purse was subsequently discovered hidden in a neighbor's yard, where the purse had been rummaged through and the contents scattered in the surrounding area; gift cards and money were missing. This evidence leads to the reasonable inference that J.L. unlawfully entered Finn's home with the intent to steal Finn's purse as she slept on the couch that night. *See Slaton v. State*, 510 N.E.2d 1343, 1350 (Ind. 1987) (sufficient evidence to establish intent to commit theft where defendant had entered and rummaged through victim's car a few days prior) and *Sipes v. State*, 505 N.E.2d 796, 797 (Ind. Ct. App. 1987) (concluding intent to steal existed, even though defendant fled without taking money, where defendant entered residence late at night and was observed standing near table with money on it); *cf. Freshwater*, 853 N.E.2d at 944-45 (insufficient evidence of intent to commit theft where defendant broke and entered car wash, but fled when alarm sounded, and no evidence existed that he was near or approaching valuable property while inside car wash) and *Justice v. State*, 530 N.E.2d 295, 297 (Ind. 1998) (insufficient evidence of intent to commit theft where defendant broke and entered home with socks on his hands, but left upon recognizing resident, and there was no evidence that defendant touched or approached any valuable property while inside home). J.L. asserts that because no one saw him leave with the purse, the burglary adjudication "was based on

speculation and unreasonable inferences[.]” *Appellant’s Br.* at 3. However, that is just an invitation to reweigh evidence, which we cannot do. *See R.B.*, 839 N.E.2d at 1283.

The State presented sufficient evidence for the trial court to find that when J.L. broke and entered Finn’s home, he intended to exert unauthorized control over her purse. Accordingly the evidence was sufficient to support the adjudication for burglary.

Affirmed.

ROBB, J., and BARNES, J., concur.