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IN THE
COURT OF APPEALS OF INDIANA

JERAMY WHITE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0908-CR-783
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Carol J. Orbison, Judge
Cause No. 49G22-0902-FC-22286

March 10, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Jeramy White appeals his convictions for burglary as a class C felony;[1] attempted theft as a class D felony;[2] and criminal mischief as a class D felony.[3]

We affirm.

ISSUE

Whether there is sufficient evidence to support the convictions.

FACTS

At approximately 5:45 a.m. on February 2, 2009, Indianapolis Metropolitan Police Officer Daniel Ryan received a dispatch regarding the activation of a silent alarm at an Indianapolis Cash America pawn shop. The dispatch reported that the alarm's motion detector had detected movement in the store's back room. Officer Ryan arrived at the scene approximately six minutes later.

Initially, Officer Ryan did not see anything amiss. He therefore proceeded to drive around the perimeter of the building, using his spotlight to illuminate the area. After driving toward the rear of the building, he noticed "a ladder that was propped up against the business." (Tr. 13). As he exited his police vehicle in order to examine the ladder, Officer Ryan observed "two black males running through the parking lot from the east, towards the west." (Tr. 14). Officer Ryan identified himself as a police officer and

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[1] Ind. Code § 35-43-2-1.

[2] I.C. §§ 35-41-5-1; 35-43-4-2.

[3] I.C. § 35-43-1-2.

ordered the men to stop. The men, however, "continued to run toward Shortridge" Avenue. (Tr. 15).

Officer Ryan and his canine partner chased the men as they "cut back towards the east," through a field. (Tr. 17). As he ran through the field, Officer Ryan did not observe anyone else in the area. As the suspects crossed the field and ran into a residential area, one of them took off "a dark-colored hood[ed]" sweatshirt and threw it under a raised deck. (Tr. 18).

After chasing the men for approximately one minute, the canine officer apprehended White near where the sweatshirt had been discarded. At the time of his arrest, White was wearing a black skullcap and two hooded sweatshirts. The other suspect, later identified as Chadwick Dunn, "continued to run" but stopped when Officer Ryan threatened to "re-deploy[]" the canine officer. (Tr. 17; 18). Dunn, a light-skinned African-American male, was wearing only a light jacket despite the cold temperature.

After back-up officers arrived, Officer Ryan traced the route of the chase. He observed that there were only three sets of footprints in the snow. As Officer Ryan followed the footprints, he "started noticing articles of clothing," including the discarded sweatshirt, a pair of bright yellow gloves, a pair of grey gloves, a dark-colored knit hat, and a face mask, along the route. (Tr. 21). He traced the footprints back to where he observed White and Dunn running along Shortridge Avenue.

Officer Ryan then returned to the pawn shop, where he noticed footprints in the snow behind the shop; the prints were not there when he first arrived at the scene. He

also noted that "the light on the east side of the building had been knocked loose. It was not knocked loose before" but was attached when he first drove by the building. (Tr. 30). He also discovered "[s]ome sort of pry bar" lying near the building. (Tr. 30). He later determined that the perpetrators had gained access to the pawn shop through a hole made in the exterior wall, near the roof line.

Once officers gained access to the pawn shop's interior, they discovered that the telephone lines had been cut. The pawn shop's manager, Kenneth Warburton, also noticed that what once had been a "small hole, the "size of a golf ball," (tr. 68), in one of the pawn shop's exterior walls had been enlarged; the deadbolt and hinges on the door to the safe room[4] had been damaged, showing signs of "torch marks," (tr. 130); there was a hole in the plywood ceiling of the safe room; the slide bolt on the double doors separating the sales floor from the storage area was broken; the windows in the double doors were "knocked out"; and the locks on the registers' cash drawers were broken. (Tr. 79). Officers later climbed onto the roof of the pawn shop, where they discovered that the electrical and satellite wires also had been cut.

Warburton reported that a global positioning system unit and two gaming systems had been moved from the sales floor to the back room; and a plasma cutter, "a torch used for cutting metal," had been moved from the front sales floor to "the safe room, by the metal door." (Tr. 72). He also found a saw "on top of the safe room," near the hole in

[4] The safe room consists of a room built out of plywood, located in the store's back room. The room is secured with a steel door and contains the store's two safes.

the ceiling. (Tr. 82). Officers later collected "a pry bar and a small hatchet" inside the store. (Tr. 87).

Surveillance footage from the store's security system showed two males in the store at the time of the burglary. Both appeared to be wearing hooded sweatshirts and masks; the perpetrator most closely resembling White also wore a black skullcap. The other perpetrator, a light-skinned male, wore a knit hat, sweatshirt, and bright yellow gloves; these articles of clothing matched those found by Officer Ryan immediately after apprehending White and Dunn. The surveillance footage also showed the perpetrators taking items from the sales floor into the back room and opening the cash drawers.

On February 3, 2009, the State charged White with Count I, class C felony burglary; Count II, class D felony attempted theft; Count III, class D felony criminal mischief; and Count IV, class A misdemeanor resisting law enforcement.[5] On June 18, 2009, the State filed an amended information, alleging White to be an habitual offender pursuant to Indiana Code section 35-50-2-8.

On June 22, 2009, the trial court commenced a two-day joint jury trial. Adam Gorgie testified that he was employed as the pawn shop's assistant manager on February 2, 2009. He testified that he closed the store at approximately 6:00 p.m. the evening of January 31, 2009, and that the store was closed the next day, a Sunday. He testified that prior to closing, he placed all of the pawn shop's jewelry and cash in the two safes, located in the safe room. He further testified that he locked the safe room's door, locked

[5] The State filed identical charges against Dunn.

the double doors separating the back room from the sales floor, and activated the alarm system. According to Gorgie, he observed no damage to either the safe room's door or the exterior wall before closing.

Warburton testified that he observed no damage to the pawn shop's doors, locks, or walls prior to February 2, 2009. He further testified that the alarm continued to operate despite the cut telephone and electrical lines because "it automatically goes to a back-up battery system" when the primary power source "goes down[.]" (Tr. 63). He also testified that he "saw the final bill for the damage done that was paid through [the] corporate office." (Tr. 76). According to Warburton, the bill "was roughly twenty-nine hundred to three thousand dollars," and the damage had been repaired. (Tr. 72).

The jury found White guilty as charged. The jury also found White to be an habitual offender. The trial court held a sentencing hearing on July 29, 2009. The trial court sentenced White as follows: eight years, with two years suspended to probation, on Count I; three years on Count II, enhanced by two years for White's habitual offender status; three years on Count III; and one year on Count IV. The trial court ordered that the sentences be served concurrently.

DECISION

White asserts that the evidence is insufficient to support his convictions for burglary; attempted theft; and criminal mischief because the State failed to establish his identity. As to his conviction for criminal mischief, he argues that "there was insufficient evidence of damages to the pawn shop greater than $2,500." White's Br. at 6.

> When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. 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 to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations and citations omitted).

We will sustain a judgment based on circumstantial evidence alone if the circumstantial evidence supports a reasonable inference of guilt. *Pelley v. State*, 901 N.E.2d 494, 500 (Ind. 2009). A person's mere presence at the crime scene with the opportunity to commit a crime is not a sufficient basis on which to support a conviction. *Brink v. State*, 837 N.E.2d 192, 194 (Ind. Ct. App. 2005), *trans. denied*. "However, presence at the scene in connection with other circumstances tending to show participation, such as . . . the course of conduct of the defendant before, during, and after the offense, may raise a reasonable inference of guilt." *Id.*

Indiana Code section 35-43-2-1 provides that 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." A person commits attempted theft as a class D felony when he knowingly or intentionally "engages in conduct that constitutes a substantial step toward" exerting "unauthorized control over property of another person, with intent to

deprive the other person of any party of its value or use[.]" I.C. §§ 35-41-5-1; 35-43-4-2. Pursuant to Indiana Code section 35-43-1-2(a)(1)(B), a person who "recklessly, knowingly, or intentionally damages or defaces property of another person without the other person's consent," causing a pecuniary loss of "at least two thousand five hundred dollars ($2,500)," commits class D felony criminal mischief.

At trial, the State presented evidence that Officer Ryan received a dispatch regarding an activated alarm at the pawn shop. The alarm indicated that there was motion inside the pawn shop. Approximately six minutes later, Officer Ryan arrived at the pawn shop. As he investigated the perimeter of the pawn shop, he observed two males running from the otherwise deserted area. Despite Officer Ryan's order to stop, both men continued to run. One of the suspects discarded a sweatshirt as he ran.

Approximately one minute later, the canine officer apprehended both suspects. The clothing worn by White, including his black skull cap and hooded sweatshirt, matched the clothing worn by one of the perpetrators captured on the pawn shop's surveillance video. The surveillance footage also showed this perpetrator taking items from shelves located in the pawn shop's sales floor, an area which the perpetrator could access only after breaking the slide bolt on the double doors between that room and the back room; the same double doors, in addition to other areas of the pawn shop, sustained additional damage during the burglary. Finally, the items of clothing discarded during the chase, including a distinctive pair of yellow gloves, matched those worn by the other perpetrator shown on the surveillance footage.

Although White's face was not entirely visible on the surveillance footage, the State presented circumstantial evidence that he and Dunn burglarized the pawn shop, gaining entry by expanding a hole in the exterior wall. The State also presented evidence that White exerted unauthorized control over the pawn shop's property, including a plasma cutter; and attempted to exert unauthorized control over the property contained in the safe room by cutting a hole in its ceiling and attempting to cut the steel door's lock and hinges to the steel door with the plasma cutter. Moreover, White's course of conduct, namely, running away from the pawn shop and failing to stop in response to Officer White's order to do so, raises a reasonable inference of guilt. His argument otherwise is an invitation to reweigh the evidence and assess the credibility of the witnesses. We decline to do so.

White also asserts that the State failed to present sufficient evidence that the pawn shop incurred a monetary loss of at least $2,500. He therefore argues that his conviction for criminal mischief should be reduced to a class B misdemeanor, which "only requires proof of damage, not the amount of damage." *Pepper v. State*, 558 N.E.2d 899, 900 (Ind. Ct. App. 1990); *see* I.C. § 35-43-1-2(a).

The State must present some evidence at trial regarding the amount of the pecuniary loss. *See Pepper*, 558 N.E.2d at 900 n.4 (finding that the State presented no evidence of the amount of property damage where "the only mention of the amount of damage to the property was found in the Information and Probable Cause Warrant"). Again, Indiana Code section 35-43-1-2(a)(1)(B) provides that a person who "recklessly,

knowingly, or intentionally damages or defaces property of another person without the other person's consent," causing a pecuniary loss of "at least two thousand five hundred dollars ($2,500)," commits criminal mischief as a class D felony. The State need only prove that a pecuniary loss of "at least" $2,500 has been incurred. I.C. § 35-43-1-2(a)(1)(B). "[T]he exact amount is irrelevant . . . ." *Mitchell v. State*, 559 N.E.2d 313, 314 (Ind. Ct. App. 1990), *trans. denied*.

Here, Warburton testified that the pawn shop sustained extensive damage, for which it was billed approximately $3,000.00 to repair. We find this testimony supports a reasonable inference that the amount of pecuniary loss suffered by the pawn shop exceeded the threshold amount required under Indiana Code section 35-43-1-2(a)(1)(B). Accordingly, the State presented sufficient evidence to convict White of class D felony criminal mischief.

Affirmed.

MAY, J., and KIRSCH, J., concur.