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IN THE COURT OF APPEALS OF INDIANA

MICHAEL WALLACE,
Appellant-Defendant,
vs.
STATE OF INDIANA,
Appellee-Plaintiff.

No. 49A02-0908-CR-815

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark D. Stoner, Judge
Cause No. 49G06-0903-FB-036434

March 29, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Michael Wallace ("Wallace") was convicted in Marion Superior Court of Class B felony burglary and Class D felony attempted theft. The trial court sentenced Wallace to a term of thirty-five years. Wallace appeals and argues:

I. Whether the evidence was insufficient to support his convictions for Class B felony burglary and Class D felony attempted theft, and

II. Whether Wallace's thirty-five year sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

Facts and Procedural History

On March 30, 2009, Mark Linneman ("Linneman") left his home to go to work. He locked all of the doors, latched all of the windows, and closed and latched the fence. Linneman also left his sixty-pound dog in his house while he was gone.

A few hours later, Linneman's neighbor, Roger Cotton ("Cotton"), saw a vehicle in Linneman's driveway. Wallace was driving the vehicle and had two male passengers. Cotton observed the two passengers exit the vehicle, open Linneman's fence, and enter the front yard. Cotton knew that Linneman was not home and called 911. He told the operator that people were trying to break into his neighbor's house. The men looked through a window. As he was speaking, the men re-entered the vehicle and Wallace drove away.

About three minutes later, the same men returned in the same car. Wallace stayed in the vehicle while the other two men got out. One man forced open a window and entered the house. The second man handed the first man a pole, then climbed in after the first. One of the men spoke with Wallace as he entered the house. Meanwhile, Wallace

exited his car and began to walk back and forth outside the house. Cotton called 911 to report that the men had returned.

Indianapolis Metropolitan Police Officer Christopher Frazier ("Officer Frazier") responded and arrived at Linneman's house. He observed Wallace walking from inside the fence towards Wallace's car and placed Wallace into custody. Officer Frazier noticed that Linneman's front door was partially open, that one of the house's windows had been forced open, and that a window screen had been torn out. Wallace's car was parked directly behind the open window.

Officer Frazier entered the home and found it in disarray. Linneman's television had been forcibly unbolted from the wall and his house had been ransacked. In the house, Officer Frazier found a "dog pole," a pole with a loop of rope attached to the end used to control dogs, that did not belong to Linneman. Officer Frazier found Linneman's dog locked in a bathroom. Additional officers arrived and searched the house but did not find the other two men. The police did find bolt cutters, screwdrivers, and rope in Wallace's car. The rope in Wallace's car matched the rope on the dog pole found in Linneman's house.

On March 31, 2009, the State charged Wallace with Class B felony burglary and Class D felony attempted theft. On May 27, 2009, the State filed a charge alleging that Wallace was a habitual offender. Following a jury trial on July 15, 2009, Wallace was found guilty of Class B felony burglary and Class D felony attempted theft. Wallace waived his right to have a jury determine his status as a habitual offender. On August 6, 2009, the trial court found Wallace to be a habitual offender. The trial court sentenced

Wallace to fifteen years for the Class B felony burglary and three years for Class D felony attempted theft to be served concurrently. The trial court enhanced the Class B felony burglary by twenty years based on the habitual offender finding for an aggregate sentence of thirty-five years executed. Wallace now appeals.

I. Sufficiency of the Evidence

Wallace argues that the evidence was insufficient to support his convictions for Class B felony burglary and Class D felony attempted theft. When we review a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the verdict and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id. If inferences may be reasonably drawn that enable the trier of fact to find the defendant guilty beyond a reasonable doubt, then circumstantial evidence will be sufficient. Id.

A. Burglary

Wallace argues that the evidence is insufficient to support his conviction for Class B felony burglary. Under Indiana Code section 35-43-2-1 (2004), "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. However, the offense is . . . a Class B felony if . . . the building or structure is a . . . dwelling[.]" Under Indiana Code section 35-41-2-4

(2004), "[a] person who knowingly or intentionally aids . . . another person to commit an offense commits that offense[.]"

Wallace contends that his mere presence at the scene of the burglary is insufficient to support his conviction for Class B felony burglary. However, he was not merely present at the scene of the burglary. He actively aided his compatriots in preparing for and executing a plan to burglarize Linneman's home. Wallace drove the other two men to Linneman's house twice. The first time, the two men exited his vehicle and looked in the house. The second time, the two men exited Wallace's vehicle and forced open a window. While entering the house, one man spoke with Wallace and Wallace's compatriots entered the house with the dog pole. While the two men were in Linneman's house, Wallace exited his vehicle and walked back and forth in the driveway looking around. Wallace was arrested while walking from the inside of Linneman's fence to his car. The interior of the home had been ransacked; the television was removed from the wall, the entertainment center was knocked over, the closet doors were open, and a dog pole not owned by Linneman was found on the couch.

The evidence is sufficient to support Wallace's convictions for Class B felony burglary.

B. Attempted Theft

Wallace also argues that the evidence is insufficient to support a conviction for Class D felony attempted theft. Under Indiana Code section 35-43-4-2 (2004), "[a] person who knowingly or intentionally exerts unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use,

commits theft, a Class D felony." Indiana Code section 35-41-5-1 states that, "[a] person attempts to commit a crime when, acting with the culpability required for commission of the crime, he engages in conduct that constitutes a substantial step toward commission of the crime. An attempt to commit a crime is a felony or misdemeanor of the same class as the crime attempted."

As noted above, Wallace backed his car up to the forcibly opened window through which his companions entered Linneman's house. Wallace's car contained bolt cutters, screwdrivers, and rope which matched the rope used to make the dog pole found inside Linneman's house. Also, Linneman's television had been forcibly removed from the wall. The television had been bolted to the wall. Based on Wallace's actions, the jury could reasonably infer that Wallace was aware of his companions' intentions to exercise unauthorized control over Linneman's property when they broke into Linneman's house and that Wallace intended to commit theft. The evidence is sufficient to support Wallace's conviction for Class D felony attempted theft.

II. Inappropriate Sentence

Wallace finally argues that his sentence is inappropriate under Indiana Appellate Rule 7(B), which provides: "The Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." In Anglemyer v. State, 868 N.E.2d 482, 494 (Ind. 2007), our supreme court explained:

> It is on this basis alone that a criminal defendant may now challenge his or her sentence where the trial court has entered a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing a particular sentence that is supported by the record, and the reasons are not

> improper as a matter of law, but has imposed a sentence with which the defendant takes issue.

"[A] defendant must persuade the appellate court that his or her sentence has met the inappropriateness standard of review." Id.

As to the nature of the offenses before us, Wallace participated in a burglary and attempted theft that involved planning and forethought. With his companions, Wallace visited Linneman's house and determined the presence of a dog, and they left and returned shortly with a dog pole that the other two men used to control Linneman's dog. While the two other burglars entered the house with his knowledge, Wallace stayed outside and watched.

As to Wallace's character, he has been involved with the justice system since 1991 when he was eleven years old. Since reaching the age of majority, he has amassed seven prior felony convictions and two prior misdemeanor convictions. He has repeatedly violated his probation and has had his probation revoked three out of the four times he was placed on it. Additionally, Wallace's criminal history is rife with property offenses; in fact, six of his felony convictions were property offenses. Wallace's character easily supports the trial court's sentence.

Conclusion

The evidence is sufficient to support Wallace's convictions for Class B felony burglary and Class D felony attempted theft. Wallace's thirty-five year sentence is not inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

BARNES, J., and BROWN, J., concur.