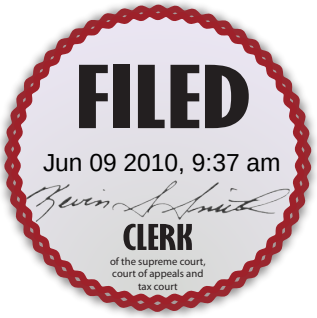

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IN THE
COURT OF APPEALS OF INDIANA

J.D.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0911-JV-1112
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
Cause No. 49D09-0908-JD-2596

June 9, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

J.D., a minor, appeals from his adjudication as a juvenile delinquent after the juvenile court found that he committed acts that would be class B felony burglary and class D felony theft if committed by an adult.

We affirm.

ISSUE

Whether sufficient evidence supports the delinquency adjudication.

FACTS

The evidence most favorable to the judgment is as follows: In the summer of 2008, Kathleen Grimes and her brother met J.D. Starting in the summer of 2009, J.D. was an occasional guest in Kathleen's house; however, in mid-June of 2009, the friendship ended, Kathleen and her brother told J.D. that he was no longer welcome in their house.

On August 22, 2009, between approximately 5:00 p.m. to 7:00 p.m., Kathleen was at home alone, asleep on the living room couch near the front door of the house. She was awakened by voices upstairs in the house. She ran towards the stairs and saw J.D. and an unidentified boy coming down the stairs. J.D.'s "hands were full of stuff." (Tr. 11). Upon seeing Kathleen, J.D. said, "Oh sh-t," shouted at his accomplice to "run," and "they ran out the back door." (Tr. 11). Kathleen observed that J.D.'s "pockets were full of medicines," which were "jiggling as he ran" and "coming out of his pockets." (Tr. 11).

She later testified that during the offense, she saw J.D. "[f]rom the front" and was "210% sure" of her identification that J.D. was the thief. (Tr. 11).

Immediately after the robbery, Kathleen telephoned her brother, J.D.'s father, and her mother, Crystal Oesch, who telephoned the police. Subsequently, Mrs. Oesch told authorities that the following items were missing from the house: power tools, a PlayStation III console, approximately fifteen video games, a diamond bracelet, diamond earrings, and more than ten bottles of prescription medications. When police responded to the scene, Kathleen positively identified J.D. as the perpetrator and provided officers with his address. The police arrested J.D. at his grandmother's residence.

On August 24, 2009, the State filed a delinquency petition alleging that J.D. had committed acts, which if committed by an adult, would be class B felony burglary and class D felony theft. At the denial hearing held on September 21, 2009, Indianapolis Metropolitan Department officer Justin Musser, Kathleen, and Mrs. Oesch testified to the foregoing facts. At the close of the evidence, the juvenile court entered true findings as to the charged offenses. J.D. now appeals.

DECISION

J.D. argues that the evidence was insufficient to support his adjudication as a juvenile delinquent. He does not challenge the State's burden of proof of the requisite elements of the offenses; rather, he argues that "[b]ecause proof of all the elements of both offenses w[as] supported only by testimony from a single, unreliable witness, [the] true finding[s] should not stand." J.D.'s Br. at 6. We cannot agree.

When the State seeks to have a juvenile adjudicated as a delinquent for committing an act that would be a crime if committed by an adult, the State must prove every element of the offense beyond a reasonable doubt. *Johnson v. State*, 719 N.E.2d 445, 448 (Ind. Ct. App. 1999).

In reviewing the sufficiency of the evidence with respect to juvenile adjudications, our standard of review is well settled. *K.D. v. State*, 754 N.E.2d 36, 38 (Ind. Ct. App. 2001). We neither reweigh the evidence nor judge the credibility of witnesses. *Id*. The State must prove beyond a reasonable doubt that the juvenile committed the charged offense. *Id*. We examine only the evidence most favorable to the judgment along with all reasonable inferences to be drawn therefrom. *Id*. at 38-39. We will affirm if there is substantive evidence of probative value to establish each material element of the offense. *Id*.

We initially note that the State presented sufficient evidence of the elements of the charged offenses to sustain the juvenile court's true findings. In order to prove that J.D. committed class B felony burglary, the State was required to prove that he knowingly or intentionally broke and entered a dwelling with intent to commit a felony therein. Ind. Code § 35-43-2-1. At the denial hearing, Kathleen testified that she had been sleeping on the couch near the front door of the house when she was awakened by voices coming from upstairs. She testified that she ran to the stairs and startled J.D., who was coming downstairs with an armload of her family's personal property. She testified further that

she confronted J.D. about what he was doing in her house because he knew that he was not welcome there. The evidence was sufficient to sustain the true finding for burglary.

Likewise, in order to prove that J.D. committed class D felony theft, the State had to prove that he knowingly or intentionally exerted unauthorized control over the property of another person, with the intent to deprive the other person of any part of its value or use. I.C. § 35-43-4-2. At the denial hearing, Kathleen testified that when she confronted J.D. on the stairs, he was carrying an armload of her family's personal property, including prescription medications in his pockets, and that he had run out the back door of the house. Mrs. Oesch testified that after the robbery, the family discovered that the following items were missing: a PlayStation III console, approximately fifteen video games, a diamond bracelet and earrings, tools, and approximately ten bottles of prescription medication. She also testified that the items were never recovered. The evidence is sufficient to sustain the true finding for theft.

As noted above, J.D.'s sufficiency challenge actually hinges upon his contention that Kathleen's testimony is "questionable." J.D.'s Br. at 8. He correctly asserts the general rule that the uncorroborated testimony of a single eyewitness is sufficient to support a conviction. *Mathis v. State,* 859 N.E.2d 1275, 1281 (Ind. Ct. App. 2007). However, he further cites *Scott v. State,* 871 N.E.2d 341, 344 (Ind. Ct. App. 2007) for the proposition that the State needed "some additional evidence of guilt beyond [Kathleen's] single, possibly untrustworthy identification." *Id.* at 7. Specifically, he cites *Scott* for the premise that "when identification evidence is the only evidence of guilt provided and is

not supported by additional circumstantial evidence, that identification must be unequivocal." *Id.* at 7.

Scott is inapposite here. Unlike the key witness in *Scott*, who was uncertain as to whether the defendant was indeed the perpetrator of the crimes, Kathleen was unequivocal in her identification of J.D. as the perpetrator of the instant offenses. She testified that she had seen J.D.'s face, and that she was "210% sure" that he was the person whom she confronted in her home with an armload of her family's personal property. (Tr. 11). She also identified J.D. as a former friend of hers and of her brother, as an occasional guest in her parents' house, and as an individual whom she had previously told that he was no longer welcome in her house. We find that Kathleen's unequivocal eyewitness testimony was sufficient to support the true findings.

J.D. attempts further to undermine Kathleen's testimony by observing that (1) she called her father and brother before she called 9-1-1; and (2) he and Kathleen previously smoked marijuana together. We regard these observations as invitations to us to assess the credibility of witnesses, which we cannot do. *K.D.*, 754 N.E.2d at 38-39. Similarly, his observation that the State presented no fingerprint evidence invites us to reweigh the evidence, which our standard of review also precludes us from doing. *Id*. Based upon the foregoing facts, we conclude that the evidence is sufficient to support the juvenile court's true findings.

Affirmed.

BAKER, C.J., and CRONE, J., concur.