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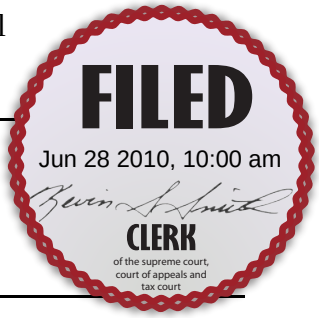

IN THE COURT OF APPEALS OF INDIANA

MAURICE HAIRSTON,	)	
	)	
Appellant- Defendant,	)	
	)	
vs.	)	No. 02A03-1003-CR-137
	)	
STATE OF INDIANA,	)	
	)	
Appellee- Plaintiff,	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable John F. Surbeck, Jr., Judge
Cause No. 02D04-0906-FB-116

June 28, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Maurice Hairston appeals his convictions by jury of burglary as a Class B felony and receiving stolen property as a Class D felony as well as his adjudication as an habitual offender. He argues that the evidence is insufficient to support his conviction of burglary because the State failed to prove he broke and entered a dwelling with intent to commit a felony therein. Hairston also argues that the evidence is insufficient to support his conviction of receiving stolen property because the State failed to prove he received, retained, or disposed of property that had been the subject of theft. Concluding the circumstantial evidence is sufficient to sustain Hairston's convictions, we affirm.

Facts and Procedural History

At approximately 11:00 p.m. on June 23, 2009, Karlene McClure was watching the video feed on the security camera attached to her garage when she noticed something suspicious. She woke her husband, Stephen, who went outside to investigate. Stephen observed a van parked in the alley behind the McClures's garage. He went back in the house and watched the security camera feed with his wife. Shortly thereafter, they observed Hairston loading a laundry basket into the van. After loading the basket, Hairston turned and walked away. He later returned with another basket and loaded it into the van as well. At this point, Stephen contacted the Fort Wayne Police Department.

When police officers arrived at the scene, Stephen went out to speak with them. The officers noticed a wicker basket and a laundry basket in the back of Hairston's van. Both baskets were filled with home décor items. As the officers looked around the nearby area, they noticed the back door to Bennie and Mildred Hinton's house had pry

marks indicating the door had been pried open from the inside. Inside the back door, the officers noticed more wicker baskets as well as stereo equipment, lamps, and a flat-screen television. The items looked as if someone had gathered them together to carry out of the house. A wicker basket was also sitting on the Hintons's back porch. The basket was filled with home décor items similar to those found in Hairston's van.

A wicker basket in the Hintons's bathroom was similar to the wicker basket in the van. Police officers also noticed pry marks on the front door to the Hintons's home indicating it had been pried open with a crow bar from the outside. The officers found a crow bar in one of the baskets in Hairston's van. Police officers questioned Hairston when he returned to the van. Hairston explained he was house sitting for a friend and had chased two men out of the house. Hairston was arrested and charged with burglary as a Class B felony, receiving stolen property as a Class D felony, and with being an habitual offender.

At trial, Mildred testified the Fort Wayne house is the family's vacation home. She further testified the items found in Hairston's van belonged to her and she did not give Hairston permission to put them in his van. The jury found Hairston guilty of both charges and determined he was an habitual offender. Hairston appeals.

Discussion and Decision

When we review the sufficiency of the evidence to support a conviction, we consider only the probative evidence and reasonable inferences supporting the judgment. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). We neither reweigh the evidence nor assess the credibility of the witnesses. Id. We will affirm the conviction if there is

probative evidence from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. Id.

Hairston first contends there is insufficient evidence to support his conviction of burglary. As a preliminary matter we note that Hairston has waived appellate review of this issue because his arguments are not supported by citations to authorities and relevant parts of the record on appeal. See Ind. Appellate Rule 46(A)(8)(a); Davis v. State, 835 N.E.2d 1102, 1113 (Ind. Ct. App. 2005) (noting that the failure to present citation to authority constitutes waiver of the issue for appellate review), trans. denied.

Waiver notwithstanding, we find no error. In order to convict Hairston of burglary, the State was required to prove he knowingly or intentionally broke and entered the Hintons's home with intent to commit theft. See Ind. Code sec. 35-43-2-1. Hairston argues there is insufficient evidence he broke and entered the Hintons's home. We have previously held circumstantial evidence can establish the breaking element of burglary. Payne v. State, 777 N.E.2d 63, 66 (Ind. Ct. App. 2002). Further, using even the slightest force to gain entry satisfies the breaking element of the crime. Davis v. State, 770 N.E.2d 319, 322 (Ind. 2002). Here, there were pry marks on the Hintons's front and back doors indicating they had both been pried open with a pry bar. The police officers found a pry bar in Hairston's van along with the Hintons's property. Hairston's explanation to the police that he was house sitting for a friend and chased two men out of the house is nothing more than an invitation for us to reweigh the evidence. This we cannot do. See Drane, 867 N.E.2d at 146. There is sufficient evidence to establish the breaking element of burglary.

Hairston further argues there is insufficient evidence to support his conviction of receiving stolen property. Specifically, his one-sentence argument is that "in view of the above and foregoing [argument that the evidence was insufficient to support his burglary conviction], the State has failed to show that Hairston received, retained or disposed of property of the Hintons' knowing it had been subject of theft." Appellant's Brief at 11. Hairston has also waived appellate review of this issue for failure to support his arguments with citations to authorities and relevant parts of the record. See Ind. App. R. 46(A)(8)(a); Davis, 835 N.E.2d at 1113.

Waiver notwithstanding, we again find no error. Before addressing the merits of Hairston's argument, we note that before 1994, the gravamen of the offense of receiving stolen property was the defendant's guilty knowledge that the property had been stolen by another. Hunt v. State, 600 N.E.2d 979, 980-81 (Ind. Ct. App. 1992) (emphasis added). In Hunt, this court stated that pursuing a receiving theory required some evidence of a third-party thief. Id. However, Hunt relied upon Saucerman v. State, 555 N.E.2d 1351, 1353 (Ind. Ct. App. 1990), which in turn cited Miller v. State, 236 N.E.2d 173, 250 Ind. 338 (Ind. 1968), for the proposition that knowing the property to have been stolen by another is an element of the offense. Gibson v. State, 622 N.E.2d 1050, 1054, n.4 (Ind. Ct. App. 1993). Miller, however, relied on a prior version of the statute, which contained the "stolen by another" language. Id. That language no longer appears in the statute. The Indiana Supreme Court granted transfer in Gibson, and reviewed the evolution of the statute proscribing theft and receiving stolen property. The supreme court agreed with this court that under the current statute, the State is not required to

prove the presence of a third-party thief in order to convict a defendant of receiving stolen property. Gibson v. State, 643 N.E.2d 885, 888 (Ind. 1994). The actual thief can be convicted of receiving stolen property so long as the State meets its burden of proof on all elements of the offense as alleged in the charging information. Id. at 892.[1]

We now turn to the merits of Hairston's claim. In order to convict Hairston of receiving stolen property, the State was required to prove he knowingly or intentionally received, retained, or disposed of the Hintons's baskets containing personal property while knowing this property was the subject of a theft. See Ind. Code sec. 35-43-4-2(b). Because Hairston did not receive the Hintons's property from another or dispose of it, the State in this case had to prove Hairston retained the Hintons's baskets when he knew they were stolen.

Similar to the breaking element of burglary as discussed above, we have previously held receiving stolen property can be proved by circumstantial evidence alone. Barnett v. State, 834 N.E.2d 169, 172 (Ind. Ct. App. 2005). In such cases, the unexplained possession of recently stolen property is to be considered along with how recent or distant in time the possession was from the moment the item was stolen as well as the circumstances of the possession. Fortson v. State, 919 N.E.2d 1136, 1143 (Ind. 2010). Here, the evidence reveals Hairston had the Hintons's property in baskets in his van. The property in the van was similar to the property in the house, and one of the baskets in the van was similar to a basket in the Hintons's bathroom. The McClures saw Hairston put the baskets in his van. Hairston's possession of the stolen property was near

[1] A person may not be convicted of both theft and receiving stolen property with regard to property appropriated in the same transaction or series of transactions. Gibson, 643 N.E.2d at 892.

in time from the moment the items were stolen from the vacant house and was in close proximity to the house. It is therefore reasonable to infer Hairston retained the Hintons's possessions while knowing they were the subject of a theft. This evidence is sufficient to support Hairston's conviction for receiving stolen property.

Conclusion

There is sufficient evidence to support Hairston's convictions of burglary and receiving stolen property.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.