

STATEMENT OF THE CASE

Appellant Frank W. Jackson, III, appeals his conviction for burglary as a class B felony.¹ We affirm.

ISSUE

Jackson raises one issue for review, which we restate as whether the evidence is sufficient to sustain Jackson's conviction.

FACTS

Over the Labor Day weekend in 2007, Charles and Tarsha Ricks ("the Ricks") took their family on a trip to Atlanta, Georgia. The Ricks had asked Inesha Baker, Charles' cousin, to stay at their house in East Chicago, Indiana, while they were gone. The Ricks gave Baker a key to their house. Ricardo Chavarria, who lived across the street from the Ricks, also knew that the Ricks were going out of town because he had seen Charles pack the Ricks' vehicle. Chavarria was a lieutenant with the East Chicago Police Department.

Jackson is Tarsha's cousin. The Ricks had not authorized Jackson to be at their house over the Labor Day weekend in 2007.

During that weekend, at some point during the day on Sunday, September 7, 2007, Chavarria was cleaning the windows and screens on his house when he saw a man and a woman walking in front of the Ricks' house. Chavarria later identified the man as Jackson, and the woman as Molly Horn. He saw them walk past the house, then turn around and walk by it again. Later that day, Chavarria saw Jackson, Horn, and a second

¹ Ind. Code § 35-43-2-1.

woman walk up the Ricks' driveway. Chavarria moved towards the Ricks' driveway to get a better view, and he saw them come back down the driveway and leave. After Jackson and the two women left, Chavarria checked the side door on the Ricks' house and saw that it was closed. Later, Chavarria saw Jackson and Horn walk past the front of the Ricks' house a second time, then turn around and walk past it again.

On that same day, at around three in the afternoon, Baker was in the Ricks' house when she heard the doorbell ring. Baker came to the door and saw three people there, a man and two women. Baker recognized one of the women as Keylaura Jackson ("Keylaura"), Tarsha's cousin, and she later identified the man as Jackson. Jackson told Baker that he had seen her car and wanted to know who was at the house because he knew that the Ricks were supposed to be out of town. During their conversation, Jackson stated several times that he knew that the Ricks were supposed to be out of town. Baker did not share any information with Jackson because she did not know him. After talking with Baker for ten minutes, Jackson, Horn and Keylaura left. Baker left the house at around four or four-thirty to attend a party.

Later that evening, between 10:00 and 10:30, Chavarria was watching television when his dogs began barking, which caused him to believe that someone could be outside. When Chavarria looked out of a front window, he saw Horn standing on the Ricks' property between two of their trees. A streetlight illuminated Horn clearly, but the rest of the Ricks' property was in darkness due to the trees. After watching Horn for a few minutes, Chavarria came out of his house, walked up to Horn, and asked her what she was doing there. As Chavarria was talking with Horn, he saw Jackson walk out of

the darkness from somewhere on the Ricks' property. Jackson was carrying a bulky, rolled-up object in his arms, and Chavarria thought the object might be a sleeping bag. Chavarria told Jackson to come closer and asked Jackson what he was carrying, but Jackson turned around and walked away quickly without answering Chavarria. Next, Chavarria told Horn to leave the Ricks' property, and, after he watched her leave, he checked the doors on the sides of the Ricks' house. He determined that those doors were locked and went back to his house.

Baker returned to the Ricks' home at midnight. When she arrived, she saw that all of the lights inside the house were off, but she usually left one light on. Baker came inside and heard a television on downstairs. When she went downstairs, she saw that the room was in disarray and that a window facing the backyard had been broken. Baker left the house, went to a relative's home, and contacted the police. Later in the evening, after the police had arrived and Baker had returned to the Ricks' house, she noticed that the back door was unlocked, and it was her habit to keep that door locked at all times.

When Charles Ricks returned home, he determined that a 42-inch flat-screen television, an electronic gaming console, several video games, an air mattress, and a plastic jug containing some coins were missing. None of those items were recovered.

The State charged Jackson with burglary as a class B felony. A jury found him guilty as charged.

DISCUSSION AND DECISION

Our standard of review for sufficiency of the evidence is well settled. We neither reweigh the evidence nor judge the credibility of witnesses. *Whitlow v. State*, 901 N.E.2d

659, 660 (Ind. Ct. App. 2007). Rather, we consider the evidence most favorable to the verdict and draw all reasonable inferences that support the ruling below. *Id.* at 660-661. We affirm the conviction if there is probative evidence from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. *Id.* at 661. It is not necessary that the evidence “overcome every reasonable hypothesis of innocence.” *Drane v. State*, 867 N.E.2d 144, 147 (Ind. 2007) (quoting *Moore v. State*, 652 N.E.2d 53, 55 (Ind. 1995), *reh’g denied*). A burglary or theft conviction may be sustained by circumstantial evidence alone. *Hill v. State*, 531 N.E.2d 1382, 1383 (Ind. 1989), *reh’g denied*.

In order to convict Jackson of burglary as a class B felony, the State was required to prove: (1) Jackson (2) broke into and entered (3) the Ricks’ house (4) with intent to commit a felony, in this case theft of the Ricks’ property, in the Ricks’ house. I.C. 35-43-2-1. Jackson contends that there is insufficient evidence to prove that he was the person who burglarized the Ricks’ home.

In the context of burglary cases, our Supreme Court has identified three kinds of circumstantial evidence as probative of identity, when considered together: “first, knowledge of opportunity to commit the crime; second, presence on the premises contemporaneous with the crime; and third, lack of legitimate access to the premises.” *See Rains v. State*, 519 N.E.2d 523, 524 (Ind. 1988).

Here, Jackson demonstrated knowledge of the opportunity to commit the burglary. On September 7, 2007, the day of the burglary, he came to the Ricks’ house and told

Baker several times that he knew that the Ricks were supposed to be out of town that weekend.

Furthermore, Jackson was present on the premises contemporaneous with the crime. During the day on September 7, 2007, Chavarria saw Jackson walk back and forth in front of the Ricks' home twice. Furthermore, at around 10:00 or 10:30 that night, Chavarria encountered Jackson on the Ricks' property. Jackson was carrying a bulky, rolled-up object that was consistent with an air mattress. Charles Ricks later noticed that an air mattress had been stolen. When Chavarria asked Jackson to come closer, Jackson turned around and walked away quickly. Baker came back and discovered the burglary around midnight.

Finally, Jackson did not have legitimate access to the premises. The Ricks did not authorize Jackson to come to their house during the Labor Day weekend, and Baker did not let Jackson into the house when he stopped by on September 7, 2007.

When viewed as a whole, there is probative evidence from which a reasonable trier of fact could find Jackson guilty beyond a reasonable doubt. *See Rains*, 519 N.E.2d at 524 (determining that the evidence was sufficient to prove identity where the appellant knew that the victims would be out of town, the appellant's screwdriver was found inside the victims' house near a pried-open window and had not been there when the victims left, and a witness saw the appellant outside the house's front door during the period when the crime was committed).

CONCLUSION

For the reasons stated above, we affirm Jackson's conviction.

Affirmed.

RILEY, J., and VAIDIK, J., concur.