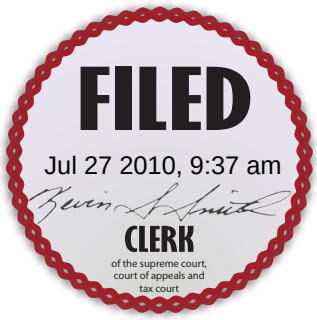

ATTORNEY FOR APPELLANT:

KURT A. YOUNG
Nashville, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

JODI KATHRYN STEIN
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

DANIEL BROWNLEE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0912-CR-1259
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Carol J. Orbison, Judge
Cause No. 49G22-0903-FC-31146

July 27, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Daniel Brownlee appeals his convictions for Burglary,[1] a class C felony, and Attempted Theft,[2] a class D felony. Specifically, Brownlee argues that the evidence was insufficient because the State failed to prove beyond a reasonable doubt that he intended to commit theft. Finding sufficient evidence, we affirm.

FACTS

At about 5:30 p.m. on March 9, 2009, Tom Prible observed Brownlee trying to open the door to his detached garage. Although the door was locked, Brownlee tried to open the door for ten to fifteen minutes before walking next door to a vacant house owned by Karen Beckman. Brownlee went to the back deck of Beckman's house and tried to open the back door, but failed. Brownlee opened a window and crawled into the house, and Prible called 911.

Indianapolis Metropolitan Police arrived within two to three minutes. Sergeant David Wisneski reached into the open window and unlocked the back door to let the other officers in. The officers announced their presence, but received no reply.

Officer Michael Martin and Robert Carver searched the upstairs. Although the entry to the bathroom was covered by heavy, cloudy plastic, Officer Martin observed a silhouette of a person, and found Brownlee standing with his hands in his pockets. Because Brownlee refused to remove his hands as ordered, Officer Martin grabbed onto Brownlee's arm. Brownlee pulled out his hands and balled them up in fists. As Officer

---

[1] Ind. Code § 35-43-2-1.

[2] Ind. Code § 35-41-5-1; I.C. § 35-43-4-2 (a).

Martin tried to handcuff Brownlee, Brownlee pulled away, twisting and turning his body. Officer Martin took Brownlee down to the ground, and Officer Carver assisted in handcuffing Brownlee.

A screwdriver and a utility knife belonging to Beckman's son, Sam Beckman, were found in Brownlee's trousers. Officer Martin also found Sam's silver briefcase containing tools outside the house near the side door to the basement. The briefcase and the screwdriver had been located in the basement. And although Beckman's house was being renovated, Brownlee was not a member of the construction crew.

On March 12, 2009, the State charged Brownlee with class C felony burglary, class D felony attempted theft, and class A misdemeanor resisting law enforcement. On April 24, 2009, the State added an allegation that Brownlee was a habitual offender.

Brownlee's jury trial commenced on November 9, 2009, and he was found guilty of burglary, attempted theft, and resisting law enforcement. Brownlee admitted to being a habitual offender.

On November 25, 2009, the trial court held a sentencing hearing. After emphasizing Brownlee's lengthy criminal history, it sentenced him to eight years on the burglary count, with an eight-year enhancement based on the habitual offender finding, for a total of sixteen years. Additionally, the trial court sentenced Brownlee to a concurrent three-year term for attempted theft and to a concurrent one-year term for resisting law enforcement, for a total executed term of sixteen years. Brownlee now appeals his convictions for burglary and attempted theft.

DISCUSSION AND DECISION

Brownlee challenges the sufficiency of evidence to support his convictions for burglary and attempted theft. When reviewing the sufficiency of evidence supporting a conviction, the appellate court will neither reweigh the evidence nor judge the credibility of witnesses. Staton v. State, 853 N.E.2d 470, 474 (Ind. 2006). We will look to the evidence most favorable to the verdict together with all reasonable inferences to be drawn from that evidence. Id. "We will affirm the jury's verdict if there is substantial evidence of probative value supporting each element of the crime from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt." Id.

In order to convict Brownlee of burglary, the State bore the burden of proving that Brownlee broke and entered into Beckman's house with the intent to commit a felony therein, in this case, theft. Ind. Code § 35-43-2-1. And to convict Brownlee of attempted theft, the State had to prove that with the intent to commit theft, Brownlee engaged in conduct that constituted a substantial step towards committing theft. Ind. Code § 35-41-5-1; I.C. § 35-43-4-2(a). Accordingly, to secure a conviction for burglary and attempted theft, the State was required to prove that Brownlee intended to commit theft.

Brownlee's sole argument is that the State failed to prove that he had the intent to commit theft when he admittedly broke and entered into Beckman's house. "[T]he intent element is satisfied so long as there is a solid basis for a reasonable inference to be made that the defendant had the intent to commit the felony of theft." Gentry v. State, 835 N.E.2d 569, 573 (Ind. Ct. App. 2005). "[P]resence at the scene in connection with other circumstances tending to show participation, such as companionship with the one

engaged in the crime, and the course of conduct of the defendant before, during, and after the offense, may raise a reasonable inference of guilt." Brink v. State, 837 N.E.2d 192, 194 (Ind. Ct. App. 2005). Although evidence of breaking and entering alone is insufficient to raise an inference of intent, surrounding circumstances may be used to prove intent. McBride v. State, 597 N.E.2d 992, 994 (Ind. Ct. App. 1992). The surrounding evidence "'may be established by a showing that a defendant touched, disturbed, or even approached valuable property,'" and possession of stolen property at the time of breaking and entering will support an inference of intent. Id. (quoting Cash v. State, 557 N.E.2d 1023, 1024 (Ind. 1990)).

Here, Brownlee tried to open the door to Prible's garage before trying to open the back door to Beckman's house and eventually crawling through a window. Additionally, when the police found Brownlee in the upstairs bathroom, Sam's screwdriver and utility knife were in Brownlee's pants. Moreover, the police found Sam's silver briefcase, which had been in the basement, outside of the house near a side entrance. Under these circumstances, the jury could reasonably infer that Brownlee intended to commit theft.

Nevertheless, Brownlee contends that he was homeless, that he only intended to stay overnight in the house, and that he picked up the screwdriver and knife for self-protection. Additionally, Brownlee points out that the State failed to produce any evidence that the contractor, who was renovating the house, did not place the briefcase outside the house. These contentions are merely a request that we reweigh the evidence, which we will not do.

The judgment of the trial court is affirmed.

DARDEN, J., and CRONE, J., concur.