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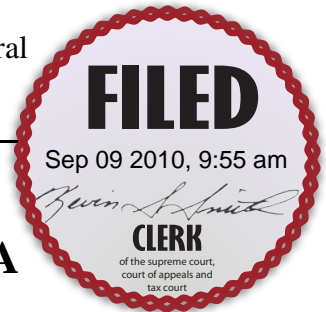
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**IN THE
COURT OF APPEALS OF INDIANA**

COURTNEY TERHUNE,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 49A02-1003-CR-228

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark D. Stoner, Judge
The Honorable Jeffrey L. Marchal, Master Commissioner
Cause No. 49G06-0907-FB-67744

September 9, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Following a bench trial, Courtney Terhune (“Terhune”) was convicted of burglary¹ as a Class B felony and theft² as a Class D felony. The trial court sentenced her to six years executed for the burglary and two years executed for the theft, to run concurrently. Terhune appeals her convictions arguing that the State’s theory of accomplice liability³ was insufficient to establish that she committed burglary and theft.

We affirm.

FACTS AND PROCEDURAL HISTORY

On the evening of July 27, 2009, Lori Keys (“Keys”) was on the front porch of her Terrace Avenue house in Indianapolis, Indiana when she noticed a woman, later identified as Terhune, pacing back and forth on the sidewalk across the street. Keys then noticed a neighbor, Gary Smith (“Smith”), come from behind one of the houses and go to a window on the side of 371 Terrace Avenue (“371 Terrace”). After seeing the arms of a man, later identified as James Corder (“Corder”), reach out of a window at 371 Terrace, Keys went back inside her house.

Keys continued to watch from her living room window and saw Corder’s hands again emerge from the window of 371 Terrace to give a stereo speaker to Smith. Smith carried the speaker behind 371 Terrace and returned a few minutes later empty handed; he was gone “just long enough to go probably from . . . that house there to his house and back.” *Tr.* at 40-41. Keys watched Terhune pace back and forth in front of the house

¹ See Ind. Code § 35-43-2-1.

² See Ind. Code § 35-43-4-2.

³ See Ind. Code § 35-41-2-4.

while Smith made seven trips away from the window, carrying stereo speakers, a pair of boots, and other items that Keys could not identify. *Id.* at 41. At trial, Keys described Terhune's actions as follows:

She had been pacing back from the corner of New Jersey Street back to in front of her house, and then just repeatedly back and forth, and occasionally she would stop in between the two residence [sic] right here, the house that was broken into and the one directly beside it. She would stop, look in between the two houses, then she continued to pace back towards her house, and then it was just consecutive back and forth pacing.

Id. at 34.

Keys waited about ten to fifteen minutes before calling the police because she wanted to “give a full description of everybody” that was in the house. *Id.* at 43-44. She gave the 911 operator a description of two white men and a white woman—Corder, Smith, and Terhune—who had broken into and stolen property from her neighbor's house at 371 Terrace. *State's Ex.* 17. Keys reported that she recognized the suspects as neighbors who lived at 363 Terrace Avenue (“363 Terrace”).

While on the phone with the dispatcher, Keys saw Smith and Corder leave 371 Terrace, walk behind the house, and emerge from the front door of 363 Terrace. Terhune joined the men and all three went inside the house. *Tr.* at 48. Soon thereafter, Corder, Smith, and Terhune brought a few items out of the house, including a keyboard, and placed them in the back of a black pickup truck that looked similar to one Keys had seen Smith and Terhune drive on previous occasions. Terhune entered the truck, with Smith in the passenger seat, and drove away. Keys told the dispatcher that she thought Corder remained at 363 Terrace.

Officer Joshua Reese of the Indianapolis Metropolitan Police Department (the “IMPD”) was dispatched to the scene, where he found a broken window on the side of the house at 371 Terrace, a house that was later determined to belong to Lisa (“Lisa”) and Esteban Toledo. *Id.* at 7, 58-59. Based on the information provided by Keys, Officer Reese went to 363 Terrace and knocked. Corder, who police noted matched the description given by Keys, answered the door. Looking past Corder, Officer Reese could plainly see various electronic devices on the living room floor of the residence. Suspecting that the devices had been stolen from 371 Terrace, Officer Reese arrested Corder and read him his *Miranda* rights. *Id.* at 61. When asked what he knew about the property inside the house, Corder stated “that everything inside the house belonged to his friends Courtney [Terhune] and Gary [Smith],” who had just left in their pickup truck. *Id.*

Detective Lloyd Walker of the IMPD, who arrived at the scene to assist with the case, noted Terhune and Smith arrive on foot. Having previously obtained a search warrant for 363 Terrace, Detective Walker entered the dwelling accompanied by Officer Reese and Lisa. Inside the home, Lisa was able to identify various items that belonged to her husband, including the boots and the speakers. Lisa also identified her husband’s government identification card and a package of new socks, both of which had been stolen from the couple’s home two days prior in another burglary. It was later discovered that a “large keyboard” was also stolen from the couple’s home. *Appellant’s App.* at 16. At the scene, Terhune and Smith were placed under arrest and read their *Miranda* rights.

After Terhune heard her rights, she stated that she and Smith had been at Smith's mother's house and had not been at 363 Terrace all day. *Tr.* at 77.

Following a bench trial, the trial court found:

[T]he State has met its burden of proof in this case. I do find the actions of Ms. Terhune to be that of a lookout. Added to that, we have the testimony regarding the keyboard, and that it was a keyboard that was brought out of Ms. Terhune's house and in her presence placed in that truck which does belong to her. And then to top it all off, we have the statement by Ms. Terhune to the detective that she denies being at the Toledo's [sic] house, or at her house all day and that she had been at Gary Smith's mother's house during that period of time. Obviously, that statement was demonstrably false given the testimony of Ms. Keys, which the court does find credible. As I look at all the evidence I think it supports a reasonable conclusion that Ms. Terhune participated in this burglary as a lookout, and as she aided or assisted Mr. Smith and Mr. Corder she under the law can be found guilty of both Counts One and Two, and the Court will find the defendant guilty of Count One, Burglary, a Class B Felony, and Count Two, Theft as a Class D Felony.

Id. at 85-86. The trial court sentenced Terhune to six years executed for the burglary and two years executed for the theft, to run concurrently. She now appeals.

DISCUSSION AND DECISION

Terhune argues that the State failed to provide sufficient evidence to support her convictions for burglary and theft. She contends that there was no allegation that she actively participated in breaking into 371 Terrace or that she participated in removing items from that house. Additionally, she asserts that, although she was present, had a relationship with Smith, and took no steps to oppose the crimes, the facts do not allow a conclusion that she was guilty as an accomplice to burglary and theft. *Appellant's Br.* at 3. We disagree.

In reviewing a challenge to the sufficiency of the evidence, we neither reweigh the evidence nor judge witness credibility. *Munford v. State*, 923 N.E.2d 11, 17 (Ind. Ct. App. 2010); *Klaff v. State*, 884 N.E.2d 272, 274 (Ind. Ct. App. 2008). We instead consider only the evidence that supports the conviction, along with any reasonable inferences to be drawn therefrom. *Munford*, 923 N.E.2d at 17-18; *Klaff*, 884 N.E.2d at 274. If there is substantial evidence of probative value to support the conviction, it will not be set aside. *Howell v. State*, 921 N.E.2d 503, 506 (Ind. Ct. App. 2009), *trans. denied*. 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. *Jones v. State*, 783 N.E.2d 1132, 1139 (Ind. 2003).

Under Indiana Code section 35-43-2-1, 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. Ind. Code § 35-43-2-1(B)(i). Pursuant to Indiana Code section 35-43-4-2, 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. Additionally, pursuant to Indiana Code 35-41-2-4, a person who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense.

To convict Terhune, the State had to prove that she knowingly or intentionally aided Smith and Corder in: (1) breaking into the Toledos' dwelling at 371 Terrace with the intent to commit theft therein; and (2) exerting unauthorized control over the Toledos'

property with the intent to deprive them of its value or use. The evidence before the court revealed that Keys witnessed Corder, who was inside the Toledos' house, repeatedly handing items outside the window to Smith, her neighbor, and that Smith took the property away. When police found Corder at 363 Terrace, they also found property that Corder stated belonged to Terhune and Smith, but Lisa identified as having been taken from the couple's home. The police found a window broken at 371 Terrace, and Lisa testified that no one had permission to go into the residence. *Tr.* at 21.

Under accomplice liability, there is no distinction between the principal and the accomplice regarding culpability. *Wise v. State*, 719 N.E.2d 1192, 1198 (Ind. 1999). However, to sustain a conviction using accomplice liability, the State must show affirmative conduct, either words or deeds, which could reasonably infer a common design or purpose. *Boyd v. State*, 766 N.E.2d 396, 399 (Ind. Ct. App. 2002). Keys testified that Terhune, who had a relationship with Smith, was walking back and forth in front of the property as it was being burglarized, that she periodically looked between the houses toward the location where Smith was standing, that she remained on the street until she saw Corder and Smith had finished and were at the front door of 363 Terrace, and that she and the men entered 363 Terrace together. *Tr.* at 41-42, 48, 49-50. Keys also testified that, in the presence of Smith and Terhune, Corder carried the stolen keyboard from the house to the truck and then Terhune drove away with Smith as her passenger. *Id.* at 50-51. Terhune told the police that she had not been at 363 Terrace all day. The trial court stated that it found Keys's testimony to be credible and discounted Terhune's statement that she had not been at 363 Terrace all day. *Id.* at 86.

Based on this evidence, we hold that the trial court could have reasonably found that Terhune knowingly or intentionally aided Corder and Smith in committing theft and burglary at 371 Terrace.

Affirmed.

RILEY, J., and BAILEY, J., concur.