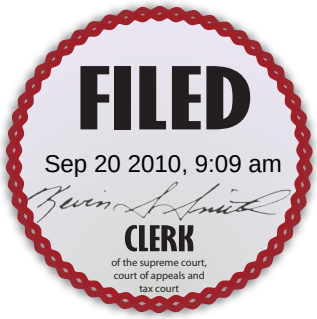

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IN THE
COURT OF APPEALS OF INDIANA

ANTIONETTE SMITH,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-1002-CR-178
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Sheila A. Carlisle, Judge
And The Honorable Stanley Kroh, Master Commissioner
Cause No. 49G03-0906-FA-57554

September 20, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Antoinette Smith appeals her conviction, after a bench trial, of burglary, as a class B felony.

We affirm.

ISSUE

Whether sufficient evidence supports Smith's conviction.

FACTS

Smith and her former boyfriend, Walter Rippy, had had a tumultuous relationship for several years. Rippy was the father of Smith's two older children. By June of 2009, there were "disputes" between Rippy and Smith as to the two children (tr. 71); Smith had recently given birth to her third child; Rippy had married Tamara Cooper, who had given birth to one child by Rippy and was expecting a second; and Rippy had a no contact order prohibiting Smith from having contact with him. In the two days before June 14, 2009, Smith had called Rippy's home several times and threatened to forcibly enter the residence "and burn the whole house down and kill" the family. (Tr. 15).

On June 14, 2009, Smith had L., her four-year-old daughter by Rippy, direct her to the house he shared with Cooper and their baby. When L.'s "soft" knock at their door was not answered, louder knocking ensued; Cooper asked who was at the door, and a "faint voice" said "L." (Tr. 46, 16). Believing that L. had been brought by Smith, and that Smith was also at the door, Rippy ran up to look out the upstairs window, and

Cooper ran upstairs with their infant. Rippy saw Smith, another woman, and L. below, and he called 911. Rippy and Cooper heard louder banging at the door, and Smith yelling "I told you what I was going to come here to do," and "I told you I was coming to your house and I was going to come kill you and your kids." (Tr. 21, 50). They heard the door being kicked in, and Rippy placed a second call to 911.

Once inside Rippy's house, Smith and her cousin, Dartina Jones, grabbed diapers, a car seat, a baby bouncer, and a diaper bag and then ran out to the car in which they had arrived. Cooper came downstairs and attempted to secure the broken door, but before she succeeded, Smith came back and "dragged" her out of the house "by the hair." (Tr. 59, 62). Smith held Cooper down and proceeded to kick, punch, and bite her, and Jones joined in. A neighbor saw them "just really literally beating her up." (Tr. 79). Rippy came out, talking to 911 for a third time. As he pulled Smith and Jones off his wife, Rippy's cellphone fell to the ground, and Smith took it. Then Smith, Jones, and their driver drove away before the police arrived.

On June 22, 2009, the State charged Smith with burglary resulting in bodily injury, as a class A felony; criminal confinement, as a class C felony; theft, as a class D felony; battery, as a class A misdemeanor; and invasion of privacy, as a class A misdemeanor. On December 23, 2009, a bench trial ensued and testimony as to the above was heard. In addition, the recordings of Rippy's three calls to 911 were admitted into evidence. Smith testified, and admitted the following: that when she went to Rippy's house she knew she had "violated the protective order, (tr. 144), but she was "upset," (tr. 132); that "out of anger," she "kicked down the door," (tr. 136); that she "took the bouncer, and . . . took

the diaper bag" because Rippy "should buy" such things for the baby she recently had, (tr. 137); and that she "hit [Cooper] first" with a punch, and then engaged in a prolonged fight with her, (tr. 140). The trial court found Smith guilty of the lesser included offense of burglary as a class B felony, as well as the offenses of criminal confinement, theft, and battery as charged. The trial court subsequently vacated the judgments entered for theft and battery, based on double jeopardy concerns.

DECISION

Smith challenges the sufficiency of the evidence to support her conviction for the class B felony offense of burglary. To convict Smith of burglary, as a class B felony, the State was required to prove beyond a reasonable doubt that Smith broke and entered Rippy's home with the intent to commit the felony of theft. Ind. Code § 35-43-2-1, and App. 27 (charging information).

> When reviewing the sufficiency of the evidence to support the conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations and citations omitted) (emphasis in original). Circumstantial evidence is sufficient for a conviction if inferences may reasonably be drawn that allow the trier of fact to find the defendant guilty beyond a

reasonable doubt. *Pelley v. State*, 901 N.E.2d 494, 500 (Ind. 2009). More specifically, a conviction for burglary may be sustained by circumstantial evidence alone. *Helton v. State*, 539 N.E.2d 956 (Ind. 1989).

Smith first argues that "the State did not prove that [she] entered the Rippy residence with the intent to commit theft, as charged in the information." Smith's Br. at 5. She reminds us that she denied such intent in her testimony, and she cites to *Freshwater v. State*, 853 N.E.2d 941 (Ind. 2006), which reversed a conviction of burglary with intent to commit theft.

In *Freshwater*, the defendant was observed running from a carwash after its alarm had sounded, and he was apprehended a short time later carrying a screwdriver that matched the pry marks on the carwash door. However, there was neither evidence that anything was missing from the carwash premises nor evidence of any disturbance therein. Our Supreme Court found that although there was "sufficient evidence . . . to conclude that Freshwater broke into the carwash," there was not sufficient evidence for the trier of fact "reasonably to infer Freshwater had specific intent to commit theft." 853 N.E.2d at 942, 943.

Here, not only did Smith admit that she had gone to Rippy's home upset, but that she had kicked in his door in anger and entered his home when he failed to answer the door, and she further admitted taking the baby items from his home. To sustain a burglary charge, "the State must provide a specific fact that provides a solid basis to support a reasonable inference that the defendant had the specific intent to commit a felony." *Id.* at 944. Smith's taking of baby items upon having kicked in the door in

anger supports a reasonable inference that she had the necessary specific intent when she entered the home.

Smith next argues that the evidence did not establish that the items she took "were in fact the property of Walter Rippy." Smith's Br. at 6. She directs us to testimony by Cooper that Smith took "my" baby items, (tr. 54), and asserts the lack of evidence "that the items were owned in common by Cooper and Rippy. *Id.* at 6.

Cooper testified that she did not work outside the home, and her husband supported their family by working as an E.M.T. Rippy testified that what Smith took was "our stuff," and "our baby's stuff," (tr. 22, 24), and that he "saw [Smith] run out the front door carrying my baby's stuff out [of] the living room." (Tr. 22). He further testified that Smith had taken "my baby's car seat . . . my baby's bouncer" from his home without his permission. (Tr. 25). In addition, on the second 911 call, Rippy reported that Smith took "our car seat." (Ex. 1, track 2). The evidence established that Rippy and Cooper were married, were living together, and were the parents of the baby. The probative evidence supports the reasonable inference that the items taken by Smith were owned in common by Cooper and Rippy, *.i.e.* were "the property of Walter Rippy," as charged. (App. 27).

Affirmed.

BRADFORD, J., and BROWN, J., concur.