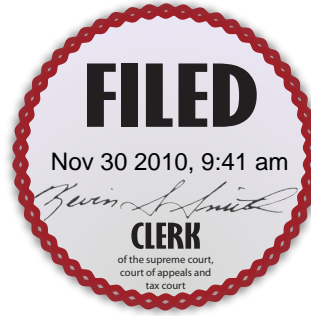


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**IN THE
COURT OF APPEALS OF INDIANA**

D.S.,)
)
Appellant-Respondent,)
)
vs.) No. 49A02-1004-JV-484
)
STATE OF INDIANA,)
)
Appellee-Petitioner.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Scott Stowers, Judge
Cause No. 49D09-1001-JD-75

November 30, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

D.S. appeals the trial court's true finding for what have been Class B felony burglary and Class D felony theft if committed by an adult. D.S. also challenges the disposition imposed by the trial court. We affirm.

Issues

D.S. raises two issues, which we restate as:

- I. whether there is sufficient evidence to support the trial court's true findings as to the burglary and theft allegations; and
- II. whether the trial court's disposition was appropriate.

Facts

On December 22, 2009, Freddie Orr spent the night at his mother's house. While he was away, someone threw a brick through the window in the back door of Orr's house, unlocked the door from the inside, entered the house, and stole various items, including a stuffed animal that was on Orr's bed. The stolen stuffed animal was an orange dog with one eye missing.

Indianapolis Metropolitan Police Officers identified seventeen-year-old D.S.'s fingerprints on the outside of two windows in the back of Orr's house. During a January 8, 2010 search of D.S.'s house police found an orange dog stuffed animal with one eye missing. Police also discovered marijuana at D.S.'s house. When questioned by police, D.S. stated that in October 2009, he had been in Orr's house with another man who had a

key to the house. D.S. said that, while at Orr's house, the other man told D.S. he could have the stuffed dog and D.S. took it home with him.

On January 11, 2010, the State alleged that D.S. was a delinquent child. The State claimed that D.S. committed what would have been Class B felony burglary if committed by an adult, what would have been Class D felony theft if committed by an adult, and what would have been Class A misdemeanor possession of marijuana. Following a hearing, the trial court found the State's allegations to be true and placed D.S. in the custody of the Department of Correction ("DOC"). The trial court, however, suspended D.S.'s commitment to the DOC and placed him on probation. D.S. now appeals.

Analysis

I. Sufficiency of the Evidence

D.S. argues there is not sufficient evidence to sustain his adjudications for burglary and theft.¹ In juvenile delinquency adjudication proceedings, the State must prove every element of the offense beyond a reasonable doubt. A.B. v. State, 885 N.E.2d 1223, 1226 (Ind. 2008). On appeal, we do not reweigh the evidence or judge the credibility of witnesses. Id. "Reviewing solely the evidence and the reasonable inferences from that evidence that support the fact finder's conclusion, we decide whether there is substantial evidence of probative value from which a reasonable fact finder could find beyond a reasonable doubt that the defendant committed the crime." Id.

To establish the burglary allegation, the State was required to prove that D.S. broke and entered the dwelling of another person with the intent to commit a felony in it.

¹ D.S. does not challenge the marijuana-related adjudication.

See Ind. Code § 35-43-2-1(1). To establish the theft allegation, the State was required to prove that D.S. knowingly or intentionally exerted unauthorized control over the property of another person with the intent to deprive the other person of any part of its value or use. See I.C. § 35-43-4-2. D.S. claims that his possession of the stuffed animal and the fingerprint evidence were not sufficient to support the burglary and theft adjudications.

Our supreme court has recently observed:

the mere unexplained possession of recently stolen property standing alone does not automatically support a conviction for theft. Rather, such possession is to be considered along with the other evidence in a case, such as how recent or distant in time was the possession from the moment the item was stolen, and what are the circumstances of the possession (say, possessing right next door as opposed to many miles away). In essence, the fact of possession and all the surrounding evidence about the possession must be assessed to determine whether any rational juror could find the defendant guilty beyond a reasonable doubt.

Fortson v. State, 919 N.E.2d 1136, 1143 (Ind. 2010).

Based on Forston, we believe D.S.'s possession of the stuffed animal is to be considered in light of the other evidence in the case. Here, two weeks had passed from the burglary until when the stuffed animal was found in D.S.'s bedroom. Even if this possession is not considered "recent," as D.S. argues, D.S. told police that he went into Orr's house in October with another man and that man told D.S. he could have the stuffed animal. D.S. admitted that he took it home. According to his own statement, D.S. does not dispute that he had exclusive control over the stuffed animal when he took it from Orr's house.

As for D.S.'s statement about the man giving him the stuffed animal in October, this statement directly contradicts Orr's testimony that he was certain the stuffed animal was on his bed when he left the house on December 22, 2009. Further, in his statement to police, it is clear that D.S. was familiar with the interior and exterior of Orr's house. D.S. did not dispute that he was inside it at some point. He claimed that he was there with a man, not Orr, who had a key to the house. D.S. also told police that the man he was with was "iffy" about the house and that the man put a knife on the side of the kitchen door so it would not open. Exhibit 25. D.S. stated that he did not think it was his house. It was the trial court's job, not ours, to assess D.S.'s credibility and determine which portions, if any, of his statement were credible.

Finally, D.S.'s fingerprints were found on the exterior of two windows. Even if, as D.S. argues, his fingerprints were not found on the door that was forced open, the fingerprint evidence is circumstantial evidence that supports the true findings. The investigating police officer testified that his attention was drawn to one of the windows with the fingerprints because he visibly saw "streaks going up the window as it appeared somebody was trying to push up and I could see fingerprints on it." Tr. p. 50. Apparently, entry to the house was finally gained by throwing a brick through the window in the back door, shattering the window, and unlocking the door from the inside. In his statement to police, D.S. could not explain his fingerprints on the windows and denied touching any of the windows when he was at the house. Again, the trial court was free to weigh the evidence and assess D.S.'s credibility accordingly. Given the totality of

the evidence, we conclude there is sufficient evidence to support the burglary and theft adjudications.

II. Disposition

D.S. also argues that, because there is insufficient evidence to support the adjudications, the trial court's disposition was improper. D.S. seems to suggest that the suspended commitment to the DOC is inappropriate for the marijuana-related-adjudication alone and requests to be placed on informal probation. Because there is sufficient evidence to support the adjudications, this argument fails. In the absence of a specific argument that the trial court's disposition was improper even if there was sufficient evidence to support the adjudications, we affirm the trial court's disposition.

Conclusion

There is sufficient evidence to support the adjudications. D.S. has not established that the disposition was inappropriate. We affirm.

Affirmed.

FRIEDLANDER, J., and CRONE, J., concur.