

Kenneth Lovelace was found guilty but mentally ill of Class B felony burglary¹ and Class D felony attempted theft.² He argues on appeal the trial court should not have rejected his insanity defense, there was insufficient evidence he committed the offenses, the trial court's sentencing statement was inadequate, and his sentence was inappropriate. We affirm.

FACTS AND PROCEDURAL HISTORY

Lovelace was hospitalized because he was suicidal and hearing voices. After examining Lovelace, a doctor determined he was not eligible for inpatient treatment and he was released. Lovelace left the hospital, walked about a mile and a half, and arrived at a residence. He knocked on the front door but the resident did not answer because it was 8:30 p.m. and she was not expecting anyone. Lovelace knocked again and the resident went upstairs to look out the window. She did not see anyone. She then heard a downstairs window being broken and she called police. The police apprehended Lovelace, who admitted he had broken into the house. Lovelace had put some garbage bags from the garage onto the dining room table, and was leaving through the broken window when police found him.

Lovelace asserted an insanity defense during his bench trial but two doctors opined Lovelace was legally sane at the time of the offenses. He was found guilty and sentenced to fourteen years with eight years executed in the Indiana Department of Correction, three years

¹ Ind. Code § 35-43-2-1.

² Ind. Code §§ 35-41-5-1 and 35-43-4-2.

executed at a Community Corrections mental health component, and three years suspended.³

DISCUSSION AND DECISION

1. Sufficiency of Evidence -- Insanity

“A person is not responsible for having engaged in prohibited conduct if, as a result of mental disease or defect, he was unable to appreciate the wrongfulness of the conduct at the time of the offense.” Ind. Code § 35-41-3-6. “Mental disease or defect” is “a severely abnormal mental condition that grossly and demonstrably impairs a person’s perception, but the term does not include an abnormality manifested only by repeated unlawful or antisocial conduct.” Ind. Code § 35-41-3-6(b).

The insanity defense is an affirmative defense for which the burden of proof is on the defendant. *Thompson v. State*, 804 N.E.2d 1146, 1148 (Ind. 2004). The State must prove the offense, including *mens rea*, beyond a reasonable doubt but need not disprove insanity. *Id.* To avoid responsibility for the crime proven by the State, the defendant must establish the defense by a preponderance of the evidence. *Id.* at 1149.

Whether a defendant can appreciate the wrongfulness of his conduct is a question for the trier of fact. *Id.* A defendant who claims his insanity defense should have prevailed at trial is appealing from a negative judgment, and we will reverse only when the evidence is without conflict and leads only to the conclusion that the defendant was insane when the crime was committed. *Id.* We will not reweigh the evidence or assess the credibility of

³ Lovelace was sentenced to eleven years for burglary, with three years suspended and 180 days probation, and two years for attempted theft, all executed. The sentences were to run concurrently.

witnesses but will consider only the evidence most favorable to the judgment and the reasonable and logical inferences to be drawn therefrom. *Id.*

We acknowledge Lovelace's assertion there was "overwhelming evidence that M. Lovelace suffers from significant and chronic mental illness" that, coupled with homelessness and other difficulties he was facing at the time, "likely caused him great distress" when he committed the offenses. (Br. of the Appellant at 12.) But the existence of that evidence does not require we overturn the trial court's conclusion Lovelace was sane at the time of the crime. Two doctors evaluated Lovelace and both testified he appreciated the wrongfulness of his actions at the time of the offenses. We may not judge the credibility of those witnesses or weigh that testimony against the evidence cited by Lovelace. *Thompson*, 804 N.E.2d at 1149. Because of the testimony provided by those two witnesses, we cannot find error in the court's determination that Lovelace failed to prove he was insane, or able to appreciate the wrongfulness of his actions, at the time of his crimes.

2. Sufficiency of Evidence – Burglary and Attempted Theft

On a challenge to the sufficiency of evidence to support a conviction, we do not reweigh the evidence or judge the credibility of the witnesses. *Washington v. State*, 902 N.E.2d 280, 287 (Ind. Ct. App. 2009). We consider only the probative evidence and reasonable inferences supporting the verdict, *id.*, and affirm if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. *Id.* Where the evidence of guilt is essentially circumstantial, the question is whether reasonable minds could reach the

inferences drawn by the trier of fact. *Id.* at 288.

Triers of fact determine not only the facts presented to them and their credibility, but any reasonable inferences from facts established either by direct or circumstantial evidence. *Thompson*, 804 N.E.2d at 1150. It is not necessary that the court find the circumstantial evidence excludes every reasonable hypothesis of innocence; it need only be demonstrated that inferences may reasonably be drawn which support the finding of guilt. *Id.* Which inferences to accept is a function of the trier of fact, not a reviewing court. *Id.* We cannot reverse the conviction merely because another plausible inference could have been drawn from the evidence. *Id.*

Intent to commit theft after entering a home may be inferred from the circumstances. *Gilliam v. State*, 508 N.E.2d 1270, 1271 (Ind. 1987). “The evidence need not be insurmountable, but only provide a solid basis to support a reasonable inference that the defendant intended to commit the underlying felony charged.” *Id.*

Lovelace argues the State did not prove he possessed the intent to commit theft. The trial court had before it evidence Lovelace broke a rear window of a home, entered the house through the window, did not have permission to enter the home, brought trash bags from the garage into the house, and was trying to leave through the window when police arrived. A reasonable inference from those facts is that Lovelace intended use the trash bags to remove property from the house. Thus, the evidence was sufficient to establish the required intent to

commit theft.⁴

3. Sentencing Statement

Trial courts are required to enter sentencing statements whenever imposing sentence for a felony offense.⁵ *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). The statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. *Id.* If the recitation includes a finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each

⁴ Lovelace also argues the trial court's statement that there was a "sufficient inference" that Lovelace committed the charged crimes, (Tr. at 101), demonstrated the court used a degree of proof lower than the "beyond a reasonable doubt" burden required by Due Process. We note Lovelace's counsel did not object to or challenge this statement during trial, and thus waived it unless any error was fundamental. *See Townsend v. State*, 632 N.E.2d 727, 730 (Ind. 1994). For an error to be fundamental, it must be "a substantial blatant violation of basic principles rendering the trial unfair to the defendant." *Id.* We disagree with Lovelace's assertion of error because the court saying it found an inference sufficient says nothing about which burden of proof the court found that inference sufficient to meet. We will not presume the trial court erroneously applied a lower burden than required by law. *See Moran v. State*, 622 N.E.2d 157, 159 (Ind. 1993) (noting appellate courts hold strong presumption that trial courts properly followed the law and applied correct burden of proof). In addition, we have held the evidence is sufficient to support Lovelace's conviction beyond a reasonable doubt. Thus, Lovelace has not demonstrated fundamental error, and this issue was waived for appellate review.

⁵ The State acknowledges Lovelace's claim the court abused its discretion because it did not make "any statement, written or oral, concerning aggravating circumstances to support the imposition of the enhanced sentence," (Br. of the Appellant at 25), and then the State says:

However, the sentencing statute specifically grants this very discretion to trial courts in making their sentencing decisions, when it states that the trial court may impose any sentence authorized by statute and the constitution *regardless of the presence or absence of aggravating or mitigating factors*. *See* I.C. § 35-38-1-7.1(d).

(Br. of Appellee at 15) (emphasis in State's brief). That statutory language does not address or control the contents of sentencing statements; rather, it eliminated the authority appellate courts in this State had previously exercised to weigh and balance aggravators and mitigators to determine whether the sentence imposed was an abuse of discretion. *See Anglemyer*, 868 N.E.2d at 491. Regardless of that language, our Indiana Supreme Court has explicitly said "Indiana trial courts are required to enter sentencing statements *whenever imposing sentence for a felony offense*," *Anglemyer* 868 N.E.2d at 490 (emphasis supplied), so that reviewing courts are able to intelligently review those portions of the defendant's sentence that we still have authority to review. *See id.* For these reasons, we reject the State's argument.

circumstance has been determined to be mitigating or aggravating. *Id.*

Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Id.* One way in which a trial court may abuse its discretion is failing completely to enter any sentencing statement. Other examples of abuse of discretion include: (1) entering a sentencing statement that explains reasons for imposing a sentence--including a finding of aggravating and mitigating factors, if any--when the record does not support those reasons; (2) entering a sentencing statement that omits reasons clearly supported by the record and advanced for consideration; or (3) including reasons that are improper as a matter of law. *Id.* at 490-91. Under those circumstances, remand for resentencing is an appropriate remedy if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons supported by the record. *Id.* at 491. However, we need not remand if we can exercise our authority to review the sentence under Ind. App. Rule 7(B) and revise the sentence if needed. *Windhorst v. State*, 868 N.E.2d 504, 507 (Ind. 2007).

In the instant case, the trial court did not enter a sentencing statement, and thus has committed error. However, the error is harmless because Lovelace has presented an argument regarding the criteria under Rule 7(B), and we choose to review his sentence accordingly.

4. Appropriateness of Sentence

Even if a trial court acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution authorize independent appellate

review and revision of a sentence. *Anglemyer*, 868 N.E.2d at 491. This appellate authority is implemented through Ind. Appellate Rule 7(B), which provides a reviewing court may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, it finds the sentence inappropriate in light of the nature of the offense and the character of the offender. *Id.*

With regard to the offense, Lovelace argues his crime “did not cause or threaten serious harm to the victim or her property.” (Appellant’s Br. at 36.) However, absence of physical injury or violence during a crime does not warrant a reduction in sentence. *See White v. State*, 433 N.E.2d 761, 763 (Ind. 1982) (absence of physical injury or violence during a crime does not warrant reduction in sentence). Further, nothing in the record indicates Lovelace did not cause serious harm to the victim’s property, and we refuse to agree that the property damage was not “serious.”

With regard to Lovelace’s character, we note his history of mental illness is significant; nevertheless, we cannot ignore his criminal history. Criminal history is one relevant fact when considering an offender’s character. *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007). The significance of a criminal history in assessing a defendant’s character varies based on the gravity, nature, and number of prior offenses in relation to the current offense. *Id.* Lovelace had been released from prison only three days before the instant offense. He has a criminal history that spans almost twenty years and includes drug-related offenses, driving offenses, and crimes against persons and property. While he argues he acted “more out of self preservation than the desire to cause harm,” (Appellant’s Br. at

36), that does not make his actions any less harmful to his victim.

The burden is on the defendant to persuade us that his sentence is inappropriate, *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006), and Lovelace has failed to do so. Although the trial court failed to enter a sentencing statement as required by statute, we need not remand because Lovelace's character and offense justify his sentence.

CONCLUSION

There was sufficient evidence to support the trial court's rejection of Lovelace's insanity defense and to support Lovelace's convictions of Class B felony burglary and Class D felony attempted theft. We cannot find reversible error in the trial court's failure to enter the required sentencing statement, because Lovelace's sentence is not inappropriate based on the nature of the offense and his offender. Therefore, we affirm the decision of the trial court.

Affirmed.

ROBB, J., and VAIDIK, J., concur.