ATTORNEY FOR APPELLANT:

JOHN PINNOW
Special Assistant to the State Public Defender
Greenwood, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ANN L. GOODWIN
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

DONALD L. MORRIS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 42A01-0711-CR-526
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE KNOX CIRCUIT COURT
The Honorable Sherry L. Biddinger-Gregg, Judge
Cause No. 42C01-0704-FD-25

July 15, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Donald L. Morris challenges his conviction, after a jury trial, of being an habitual felony offender.

We affirm.

ISSUE

Whether the evidence is sufficient to support the habitual offender determination.

FACTS

On April 4, 2007, Morris' ex-girlfriend, Jennifer Linenburg, was granted a restraining order barring Morris from further contact with her, her parents and her son. The restraining order was duly served upon Morris. On April 18, 2007, Morris rang the doorbell at Jennifer's parents' home. Jennifer was alone inside. When she observed Morris at the door, she refused to unlock it and threatened to call the police. Morris broke down the back door of the residence and entered. Jennifer attempted to telephone the police on her mobile phone, but Morris ripped it from her hand and threw it to the floor, shattering it. Jennifer then tried to reach the telephone in the kitchen, but Morris ripped the handset from its base and the phone base from the wall. He then threw Jennifer to the floor and pinned her down with his arms. After a struggle, Jennifer broke free and telephoned the police. By the time the police reached the scene, Morris had left the premises. He was apprehended and arrested later that day.

On April 23, 2007, the State charged Morris with the following offenses: Count 1, residential entry, as a class D felony;[1] Count 2, criminal mischief, as a class A misdemeanor;[2] Count 3, invasion of privacy, as a class A misdemeanor;[3] Count 4, interference with reporting a crime, as a class B misdemeanor;[4] and Count 5, battery, as a class B misdemeanor.[5] On June 11, 2007, the State also charged Morris with being an habitual felony offender.[6] The matter proceeded to jury trial on October 16-17 of 2007. After hearing the evidence, the jury found Morris guilty on Counts 1 through 5.

Thereafter, the trial court proceeded to the second phase of the bifurcated trial, during which the jury was asked to determine whether Morris was an habitual felony offender. The State alleged that on or about April 13, 1997, Morris had been convicted of class D felony battery in the Knox Superior Court II, under Cause No. 42D02-9610-DF-1535; and that on or about March 27, 2001, he had also been convicted of class D felony residential entry in the Knox Superior Court II, under Cause No. 42D02-0009-DF-1238. The State introduced into evidence State's Exhibit A-1, a certified copy of the charging information in Cause No. 42D02-9610-DF-1535. The matter involved a Donald L. Morris, who was charged on October 15, 1996 with class D felony battery. The State

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[1] Indiana Code § 35-43-2-1.5.

[2] I.C. § 35-43-1-2.

[3] I.C. § 35-46-1-15.1(a)(2).

[4] I.C. § 35-45-2-5(1).

[5] I.C. § 35-42-2-1(a).

[6] I.C. § 35-50-2-8.

also introduced State's Exhibit A-2, an order issued by the trial court on April 15, 1997, following a guilty plea by a Donald L. Morris to class D felony battery in Cause No. 42D02-9610-DF-1535, and wherein the trial court stated,

> The Court finds the defendant to understand all charges, his constitutional rights and penalties as read to him by the Court. The Court further finds the defendant understands the plea of guilty. The Court accepts the defendants [sic] plea of guilty. * * * The court orders a pre-sentence investigation be completed by the Knox County Probation Department. The defendant will be sentenced on May 13, 1997, at 1:30 p.m.

In addition, the State introduced State's Exhibit B-1, a certified copy of the charging information in Cause No. 42D02-0009-DF-1238, which involved a Donald L. Morris, who was charged on September 19, 2000, with three counts of class D felony residential entry. Next, the State introduced State's Exhibit B-2, a felony change of plea order in Cause No. 42D02-00-DF-1238, referencing the entry of a guilty plea by a Donald L. Morris, and wherein the trial court's accepted Morris' guilty plea and imposed a suspended three-year sentence in the Department of Correction.

Lastly, the State presented the testimony of James Rees, a 14-year veteran of the Knox County Probation Department, who assumed the position of Chief Probation Officer in approximately 2002. Rees testified that in the regular course of its business, the Knox County Probation Department maintained an official card or notation backup system to its computerized system, and that he had brought those records pertaining to Donald L. Morris to assist in his testimony. The following colloquy then ensued between Rees and Morris' counsel:

> Q: In preparation for today's hearing did I ask you to ah bring some files in relating to an individual named Donald L. Morris?

A: Yes, sir. You did.

Q: Do you personally know an individual named Donald L. Morris?

A: Yes, sir, I do.

Q: How do you know Donald L. Morris?

A: Um, I have ah monitored Mr. Morris on [a] previous felony case.

Q: Actually met with him in person, is that correct?

A: Several times.

Q: I'd like for you to look around the Court today and tell the members of the jury if that individual you know as Donald L. Morris is in the courtroom today.

A: Yes, Mr. Morris is sitting to my left next to his attorney . . . .

Q: Your Honor, let the record reflect that the witness has identified the Defendant.

[COURT]: So reflected.

Q: I'd like to begin with a case involving ah Cause Number 42-D-0-2-96-10-D-F-15-35. Did you bring some official records relating to that case?

A: Yes, sir, I did.

* * *

Q: Ah, did you retrieve a card reflecting ah the probation records of ah that Cause Number?

A: Yes, sir, I did.

Q: Now would that Cause Number be a distinctive Cause Number?

A: Yes, sir.

Q: Okay. No other Cause Number like that in Knox County?

A: No, sir.

Q: And ah, who is [sic] the name of the defendant on your probation Cause Number?

A: The name is a Donald L. Morris.

Q: And the date of birth?

A: 10-23 of 1970[.]

Q: And Social Security Number?

A: It is [XXX-XX-XXXX].

Q: Is there an address given for Mr. Morris?

A: There were several addresses at that time.

Q: Ah-

A: . . . [I]t's bearing the different addresses.

Q: Do you know which probation officer was actually supervising Mr. Morris on that case?

A: This case was myself.

Q: And do you recall supervising him on that case?

A: Yes, sir, I do.

Q: Thank you. And what was the sentencing date on that case?

A: Ah, we have the sentencing date of the 13th of 1997.

Q: 13th of?

A: 1997. Oh, I am sorry. Ah, let's see. I think it was in May.

Q: Thank you. Did I next ask you to bring a document to the court relating to another Cause Number 42-D-0-2-0-0-0-9-D-F-12-38?

A: Yes, sir.

Q: And again that is a distinct Cause Number is that correct?

A: That is correct.

Q: No other Cause Number in Knox County relating to that case?

A: Correct.

Q: And who was the defendant in that case according to Probation records?

A: The defendant was Donald L. Morris.

Q: And the date of birth?

A: 10-23 of 1970.

Q: Same as the other Donald L. Morris?

A: That is correct?

Q: Social Security Number?

A: It is the same.

Q: Description the same?

A: That is correct.

Q: And what does that . . . case involve?

A: Ah, that case was involving a Residential Entry.

Q: And was that a felony conviction?

A: That was a felony conviction.

Q: And what was the date of sentencing on that case?

A: We have the date of . . . sentencing of March 27, 2001.

Q: And do you know who the probation officer was on that case[?]

A: This probation officer was one of our female officers, which was Jamie Neal.

Q: Okay. Do you know Jamie personally?

A: Yes, sir, I do.

Q: She works with you?

A: Yes she does.

Q: And you now supervise her, is that correct?

A: That is correct.

Q: Do [your records] reflect that Mr. Morris entered your office and had meetings with Jamie Neal?

A: That is correct.

Q: How long was he on probation in that case?

A: In this case he had a three year sentence in the Indiana Department of Correction[ ] with a two year sentence to probation. So he reported to our office for approximately a two year period.

Q: Thank you.

(Tr. 389-394).

Morris' counsel raised no objections to Rees' testimony and declined to ask Rees any questions. The jury heard the parties' final arguments, deliberated, and subsequently, found Morris to be an habitual felony offender. At Morris' sentencing hearing on October 23, 2007, the trial court imposed the following sentences to be served concurrently in the Department of Correction ("DOC"): Count 1, two years plus a four-year enhancement for being an habitual felony offender, for a total sentence of six years;

Count 2, one year; Count 3, one year; Count 4, six months; and Count 5, six months. Morris now appeals.

DECISION

Morris argues that the State failed to present sufficient evidence to support the jury's habitual felony offender determination. We review challenges to the sufficiency of the evidence supporting an habitual offender determination the same as other challenges to the sufficiency of the evidence. *Ramsey v. State,* 853 N.E.2d 491, 497 (Ind. Ct. App. 2006). We neither reweigh the evidence nor assess the credibility of witnesses. *Id*. Instead, we examine the evidence and reasonable inferences therefrom and affirm if there is probative evidence from which a reasonable jury could have found the defendant guilty beyond a reasonable doubt. *Id.*

Morris contends that the evidence was insufficient to prove beyond a reasonable doubt that he is an habitual felony offender, and to justify the enhancement of his conviction under Count 1 because the State (1) failed to prove that he was convicted of and sentenced for two prior unrelated felonies, specifically the alleged 1997 battery conviction; (2) improperly relied upon Rees' testimony to prove the existence of the 1997 battery conviction; and (3) failed to assert that the official court records were unavailable.

The State, on the other hand, maintains that it presented sufficient evidence from which the jury could reasonably have concluded that Morris was sentenced on the 1997 battery. We agree. The habitual offender statute, codified at Indiana Code section 35-50-2-8, provides, in pertinent part, the following:

> (a) Except as otherwise provided in this section, the state may seek to have a person sentenced as a habitual offender for any felony by alleging, on a page separate from the rest of the charging instrument, that the person has accumulated two (2) prior unrelated felony convictions.
>
> * * *
>
> (c) A person has accumulated two (2) prior unrelated felony convictions for purposes of this section only if:
>
> (1) the second prior unrelated felony conviction was committed after sentencing for the first prior unrelated felony conviction; and
> (2) the offense for which the state seeks to have the person sentenced as a habitual offender was committed after sentencing for the second prior unrelated felony conviction.

Probation is "[a] court-imposed criminal sentence that, subject to stated conditions, releases a convicted person into the community instead of sending the criminal to jail or prison." *Harris v. State,* 836 N.E.2d 267, 283 (Ind. Ct. App. 2005). Logic dictates that a person cannot be sentenced to a term of probation unless he has first been convicted of a criminal offense.

Here, in order to prove that Morris had previously been convicted of two felony offenses, and therefore, was an habitual felony offender, the State presented the testimony of Chief Probation Officer James Rees, a fourteen-year veteran of the Knox County Probation Department. Rees personally identified Morris in front of the jury as the same Donald L. Morris of whom Rees had personal knowledge and whose probation Rees had personally supervised under cause number 42D02-9610-DF-1535. Relying upon his personal knowledge and the official probation department records, maintained in the regular course of business by Knox County probation officers, Rees testified that Morris had been sentenced for class D felony battery on May 13, 1997 under cause

number 42D02-9610-DF-1535. Rees testified further that according to official probation department records, Morris' date of birth and social security number were also identical to those of the Donald L. Morris sentenced for class D felony residential entry on March 27, 2001, under cause number 42D02-0009-DF-1238, and supervised by Rees' fellow probation officer, Jamie Neal.

In addition to Rees' testimony, the State presented State's Exhibit A-1, a certified copy of the charging information in Cause No. 42D02-9610-DF-1535, alleging that a Donald L. Morris was charged on October 15, 1995, with class D felony battery. The State also introduced State's Exhibit A-2, a trial court order issued following a guilty plea by a Donald L. Morris to class D felony battery in the same cause, and wherein the trial court accepted Morris' guilty plea and scheduled a sentencing hearing for May 13, 1997 -- notably, the very date that Rees identified as Morris' sentencing date before his placement onto probation. The State also introduced State's Exhibit B-1, a certified copy of the charging information in Cause No. 42D02-0009-DF-1238, which involved a Donald L. Morris, who was charged on September 19, 2000, with three counts of class D felony residential entry; and State's Exhibit B-2, a felony change of plea order in Cause No. 42D02-00-DF-1238, referencing the entry of a guilty plea by a Donald L. Morris, and wherein the trial court's accepted Morris' guilty plea and imposed a suspended three-year sentence in the Department of Correction.

Thus, the State's evidence indicated that Morris was convicted of class D felony battery on April 13, 1997, and sentenced thereupon on May 13, 1997. Morris was subsequently convicted of class D felony residential entry and sentenced thereupon on

March 27, 2001. Therefore, the State's evidence demonstrated that (1) Morris' second prior unrelated felony conviction and sentencing on March 27, 2001 -- for class D felony residential entry -- occurred after he was sentenced for his first prior unrelated felony conviction for class D felony battery on May 13, 1997; and (2) that the instant class D felony residential entry offense for which the State sought to have Morris sentenced as an habitual offender was committed after he was sentenced for his second prior unrelated felony conviction.

Based upon the foregoing, we find that the State's evidence was of such probative value that from it the jury could infer that Morris had, beyond a reasonable doubt, accumulated two prior unrelated felony convictions before being convicted and sentenced in the case at bar. Accordingly, we conclude that the State presented sufficient evidence to sustain Morris' conviction for being an habitual offender.

Affirmed.[7]

NAJAM, J., and BROWN, J., concur.

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[7] We have found herein that the State presented sufficient evidence from which the jury could have inferred that Morris was an habitual offender; however, we must take this opportunity to note the importance of certified records in instances such as these. On this subject, our supreme court has previously stated,

> Evidence, to be sufficient in a criminal cause, must have such probative value that from it a reasonable trier of fact could infer that which it is offered to prove, beyond a reasonable doubt. A judgment of conviction is basically a written court record of a judicial proceeding. The record's existence and content in turn is reflected in a host of other official documents. The requirement of the law that such records be kept reflects the monumental interest of society in the maintenance of accurate and reliable evidence of such matter.

Morgan v. State, 440 N.E.2d 1087, 1090-91 (Ind. 1982). We echo these sentiments and encourage the prosecutor to procure and introduce such records at future trials.