ATTORNEY FOR APPELLANT:

MATTHEW D. ANGLEMEYER
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

GEORGE P. SHERMAN
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

TERRY BRYANT,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0804-CR-216
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark Stoner, Judge
Cause No. 49G06-0705-FB-81804

October 31, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Terry Bryant appeals his convictions and sentences for burglary as a class B felony[1] and for being an habitual offender.[2] Bryant raises two issues, which we revise and restate as:

I. Whether there was sufficient evidence to convict Bryant of burglary as a class B felony; and

II. Whether Bryant's sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

The relevant facts follow. On the morning of May 9, 2007, Joe Whitsett was the last member of his family to leave the house, and he locked the doors when he left. Julie Whitsett returned home that morning and saw a car in her driveway that she did not recognize. Julie went into her house, disarmed the alarm system, turned a corner, and saw a black-gloved hand shaking the door handles leading from the back screened porch into the dining room. Julie dropped everything except her phone, ran out of the house, and called 911. Julie could see her house and did not see anyone leave or enter her house.

Indianapolis Police Officer Billy Murphy received a radio call for a burglary in progress at about 9:52 a.m. Officer Murphy was approximately three blocks away. and it

[1] Ind. Code § 35-43-2-1 (2004).

[2] Ind. code § 35-50-2-8 (Supp. 2005).

took him about ninety seconds to arrive at the Whitsetts' residence. Officer Murphy talked to Julie, watched the house, and waited for backup. Indianapolis Police Officer Gerald Neumann arrived within a "minute or two" after Officer Murphy arrived, crouched behind the car in the driveway, and watched the other side of the house and a part of the back of the house. Transcript at 95. Shortly thereafter, Indianapolis Police Officer Matt Mielke arrived with his canine. Officer Mielke walked around to the back of the house and observed an elevated screened-in porch. Officer Mielke observed that there was a chair underneath the porch, one of the screens was torn, and the door leading into the house was open.

As Officer Mielke approached the front of the house, a black male walked out the front door of the house with some items in his hands, but he went back into the house when he saw the police officers. Officer Mielke ordered the man to stop, but he fled back into the house. Officer Mielke told the man that the canine would be deployed if he did not stop. Officer Mielke did not receive a response and deployed the canine. Officer Mielke went into the house with his canine, and the canine apprehended Bryant on the back deck attached to the house. Bryant fought with the dog but eventually complied, and Officer Mielke told his canine to release Bryant. At the time Bryant was apprehended, he was wearing black gloves. Officer Neumann searched Bryant and found the Whitsetts' jewelry, watches, U.S. currency, and foreign currency. Indianapolis Police Officer Michael Mack read Bryant his rights and asked him why he was there, and Bryant

said, "you know why I'm here." Id. at 159. Officer Mack asked if he knew the Whitsetts, and Bryant responded negatively and repeated, "you know why I'm here." Id. at 160.

Officer Murphy walked through the house with Julie. They found a crowbar sitting on a desk. A table that was normally on the front porch of the house was behind the screened porch. The doors that led from the screened porch to the dining room were damaged. A tire iron that did not belong to the Whitsetts was found in the house. Items were strewn about the bedroom. In the study, documents and passports that were normally in a safe were found on the floor. A coat and a recorder were found near the front door.

The State charged Bryant with Count I, burglary as a class B felony; and Count II, theft as a class D felony. The State also alleged that Bryant was an habitual offender. After a jury trial, Bryant was found guilty as charged. The trial court merged Count II into Count I and entered conviction only on Count I. The trial court found Bryant's poor health as a mitigating circumstance and Bryant's "extremely lengthy criminal history" as an aggravating circumstance. Id. at 246. The trial court found that the aggravating circumstances "well outweigh" the mitigating circumstances and sentenced Bryant to twenty years for burglary as a class B felony and enhanced the sentence by twenty-five years for his status as an habitual offender for a total sentence of forty-five years. Id. at 248.

I.

The first issue is whether there was sufficient evidence to convict Bryant of burglary as a class B felony. When reviewing the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). We do not assess witness credibility or reweigh the evidence. Id. We consider conflicting evidence most favorably to the trial court's ruling. Id. We affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." Id. (quoting Jenkins v. State, 726 N.E.2d 268, 270 (Ind. 2000)). It is not necessary that the evidence overcome every reasonable hypothesis of innocence. Id. at 147. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. Id.

The offense of burglary as a class B felony is governed by Ind. Code § 35-43-2-1, which provides that "[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." Thus, the State was required to prove beyond a reasonable doubt that Bryant broke and entered the dwelling of another person with intent to commit a felony in it. "A burglary or theft conviction may be sustained by circumstantial evidence alone." Jones v.

State, 485 N.E.2d 627, 628 (Ind. 1985). "Flight may be considered as circumstantial evidence of consciousness of guilt." Id.

Bryant argues that no one observed him break and enter the residence and that the person who came out of the front door was only identified as a black male. Bryant also argues that he was never connected to the vehicle in the driveway and that the police officers did not continually monitor the entire house.

The record reveals that Julie saw a black-gloved hand shaking the door handles to her house and when Bryant was apprehended he was wearing black gloves. Julie called 911 and observed the house. Officers quickly arrived at the residence and also monitored the house. Officer Mielke and his canine apprehended Bryant on the back deck of the house, and Bryant had the Whitsetts' jewelry, watches, and currency on his person when he was arrested. When asked why Bryant was there and whether he knew the Whitsetts, Bryant said, "you know why I'm here." Id. at 159-160. Given the facts of the case, we conclude that the State presented evidence of a probative nature from which a reasonable trier of fact could find Bryant guilty of burglary as a class B felony. See, e.g., Johnson v. State, 704 N.E.2d 159, 161-162 (Ind. Ct. App. 1999) (holding that the evidence was sufficient to sustain defendant's conviction for burglary), trans. denied; Taylor v. State, 514 N.E.2d 290, 292 (Ind. 1987) (holding that the evidence was sufficient to support the defendant's conviction for burglary).

II.

The next issue is whether Bryant's sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). Bryant argues that we should reduce his sentence because no one was hurt, Bryant cooperated with the police, and his character "prompts a more lenient sentence." Appellant's Brief at 15.

Our review of the nature of the offense reveals that fifty-four-year-old Bryant scaled the back porch of the Whitsetts' home, forced his way into their home, rummaged through their belongings, and stole cash, jewelry, and watches. Bryant fled from officers and failed to comply with their orders. At the sentencing hearing, Bryant apologized to the victims and the trial court.

Our review of the character of the offender reveals that Bryant has an extensive criminal history. In 1974, Bryant was arrested for theft and two counts of armed robbery. That same year, Bryant was arrested for two counts of first degree burglary and was convicted of these offenses in 1975. In 1976, Bryant was arrested for two counts of theft. In 1978, Bryant was convicted of burglary as a class B felony. In 1983, Bryant was arrested for a firearms violation, attempted burglary, burglary, theft, escape, and

attempted burglary. In 1988, Bryant was convicted of theft and being an habitual offender and was sentenced to thirty years. In 2002, Bryant was arrested for burglary and convicted as charged in 2003. In 2003, Bryant was arrested and convicted for burglary as a class B felony. In 2003, Bryant was arrested for robbery with a deadly weapon, burglary, and theft. Bryant was found guilty of robbery with a deadly weapon. As an adult, Bryant has accumulated twenty-two arrests. The instant offense is Bryant's tenth felony conviction. Bryant was offered probation on two occasions and violated at least one of those supervisions.

After due consideration of the trial court's decision, we cannot say that Bryant's forty-five year sentence is inappropriate in light of the nature of the offense and the character of the offender. See Fultz v. State, 849 N.E.2d 616, 625 (Ind. Ct. App. 2006) (holding that defendant's sentences were not inappropriate where the defendant had amassed an extensive criminal history), trans. denied.

For the foregoing reasons, we affirm Bryant's convictions and sentences for burglary as a class B felony and being an habitual offender.

Affirmed.

BAKER, C. J. and MATHIAS, J. concur