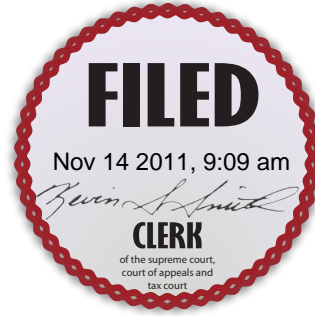


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

ELLEN F. HURLEY
Indianapolis, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

MICHELLE BUMGARNER
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

A.H.,)
)
Appellant-Defendant,)
)
vs.) No. 49A05-1104-JV-210
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Gary K. Chavers, Judge Pro Tempore
The Honorable Geoffrey Gaither, Magistrate
Cause No. 49D09-1010-JD-2718

November 14, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

A.H. appeals his adjudication as a delinquent for what would be a Class C felony burglary¹ and a Class D felony theft² if committed by an adult. We affirm.

FACTS AND PROCEDURAL HISTORY

In the early morning hours of September 30, 2010, police received a report that two individuals were breaking into a car. Officer Chad Dailey and Officer Jonathan Layton stopped A.H. and another minor in the vicinity. A.H. was carrying a white plastic shopping bag and a soft cooler bag. A car stereo was inside the cooler bag.

After noticing a person looking into a nearby car with a missing stereo, Officer Dailey asked the man, Randall Danz, if the car stereo in the cooler bag belonged to him. Danz indicated it did not, but the cooler bag did belong to him. Danz told Officer Dailey the cooler bag had been inside his yard, which was surrounded by a privacy fence, and the last time he saw it was three days before.

On October 1, the State alleged A.H. was a delinquent for committing acts that would be a Class C felony burglary and a Class D felony theft. On March 9, 2011, after a hearing, the juvenile court found the allegations to be true, and adjudicated A.H. a delinquent. On March 25, the juvenile court awarded guardianship of A.H. to the Indiana Department of Correction and recommended commitment for a period of six months.

¹ Ind. Code § 35-43-4-2.

² Ind. Code § 35-43-2-1.

DISCUSSION AND DECISION

On review of a juvenile adjudication, we apply the same sufficiency standard used in criminal cases. *A.E.B. v. State*, 756 N.E.2d 536, 540 (Ind. Ct. App. 2001). We do not reweigh evidence or judge credibility of witnesses. *D.R. v. State*, 729 N.E.2d 597, 599 (Ind. Ct. App. 2000). Instead we look only to the evidence and reasonable inferences therefrom that support the determination. *Id.*

Indiana Code § 35-43-4-2(a) provides “[a] person who knowingly or intentionally exerts unauthorized control over property of another person, with the intent to deprive the other person of any part of its value or use, commits theft.” Indiana Code § 35-43-2-1 provides, “[a] person who breaks and enters the building or structure of another person, with the intent to commit a felony in it, commits burglary.”

Danz testified A.H. was in possession of Danz’s cooler, which had been in his yard surrounded by a privacy fence. A.H. notes there were no fingerprints on the cooler bag and the State did not definitively prove its ownership. He further asserts the cooler bag could be purchased at a mass retailer and had no identifying marks. Finally, A.H. notes no one saw him enter Danz’s yard and take the cooler.

A.H.’s arguments are an invitation for us to reweigh the evidence and judge Danz’s credibility, which we cannot do. *See D.R.*, 729 N.E.2d at 599 (appellate court does not reweigh evidence or judge credibility of witnesses).

Theft and burglary can be proven by circumstantial evidence. *See Hughs v. State*, 439 N.E.2d 156, 159 (Ind. 1982) (“It is possible for a theft conviction to be supported solely by circumstantial evidence.”), *reh ’g denied*; *see also Jacobs v. State*, 454 N.E.2d 894, 899 (Ind. Ct. App. 1983) (“illegal entry may be proven by circumstantial evidence”); *Allen v. State*, 743 N.E.2d 1222, 1230 (Ind. Ct. App. 2001) (“unexplained possession of recently stolen property will support a burglary conviction”), *reh ’g denied*. Accordingly, we affirm the true findings of theft and burglary and affirm A.H.’s adjudication of juvenile delinquency.

Affirmed.

NAJAM, J., concurs.

RILEY, J., concurs in result.