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Kevin Smith
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**IN THE
COURT OF APPEALS OF INDIANA**

KYLE SMITH,)
)
Appellant-Defendant,)
)
vs.) No. 27A02-0907-CR-698
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE GRANT SUPERIOR COURT III
The Honorable Warren Haas, Judge
Cause No. 27D03-0710-FD-850

BAKER, Chief Judge

Appellant-defendant Kyle Smith appeals his conviction for Theft,¹ a class D felony, arguing that the trial court erroneously tried him in absentia. After Smith stole a semi tractor, the State charged him with three counts of class D felony theft. Smith was present at two different pretrial hearings at which it was explicitly stated that his jury trial was set for May 20, 2009. Smith failed to appear in court on May 20, 2009, and the trial court reset the trial for May 28, 2009. Smith failed to appear on May 28, 2009, but his attorney was present. The trial court proceeded with the jury trial—to which Smith’s attorney did not object—and the jury found Smith guilty of one count of theft and not guilty of the remaining two counts of theft. The trial court also issued a warrant for Smith’s arrest.

On June 10, 2009, the trial court was notified that Smith had been arrested out of state, and it held a hearing on that date. During that hearing, the trial court informed Smith that it would grant him a new trial if he could provide the court with a valid reason for his failure to appear for his jury trial. Smith, however, failed to explain his absence and did not request a new trial. On June 16, 2009, the trial court held a sentencing hearing and sentenced Smith to three years imprisonment.

Where a defendant fails to appear for his trial and fails to provide an adequate explanation for his absence, the trial court may decide to hold the trial in the defendant’s absence—a decision we review for an abuse of discretion. Brown v. State, 839 N.E.2d 225, 231 (Ind. Ct. App. 2005). A defendant may be tried in absentia if the trial court

¹ Ind. Code § 35-43-4-2.

determines that he knowingly and voluntarily waived his right to be present. Jackson v. State, 868 N.E.2d 494, 498 (Ind. 2007).

Here, Smith knew that his jury trial was set for May 20. He failed to appear. The trial was rescheduled for May 28, providing him with another chance to be present. Smith again failed to appear. The trial court gave Smith yet another chance after he was arrested, offering to grant him a new trial if he could explain his absence. He neither explained his absence—and again fails to do so on appeal—nor requested a new trial. Under these circumstances, we find that the trial court did not abuse its discretion by trying Smith in absentia.

The judgment of the trial court is affirmed.

BAILEY, J., and ROBB, J., concur.