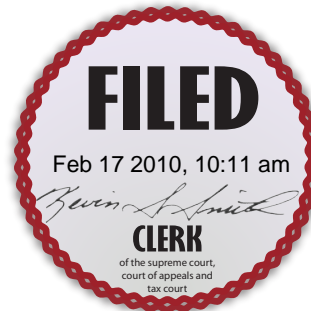


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ROBERT J. BRATCH
Marion, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ANGELA N. SANCHEZ
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

KYLE SMITH,)

Appellant-Defendant,)

vs.)

No. 27A05-0907-CR-430

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE GRANT SUPERIOR COURT III
The Honorable Warren Haas, Judge
Cause No. 27D03-0711-CM-916

February 17, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Kyle Smith appeals his conviction for Deception,¹ a class A misdemeanor, arguing that there is insufficient evidence to support the conviction. Finding sufficient evidence, we affirm.

FACTS

On August 3, 2007, Smith purchased a Suzuki motorcycle. He financed the entire purchase price and granted a lien to G.E. Money Bank. Three weeks later, Smith was arrested. He directed his wife, Echo Smith, to sell the motorcycle to raise money for his bond. He recommended that she contact Brian Watson, who bought and resold motorcycles professionally, and with whom the Smiths had previously done business.

At some point thereafter, Echo contacted Watson and offered the motorcycle for sale. She told Watson that there were no existing liens but that they had not yet received the title because they had purchased it recently. Watson offered to purchase the motorcycle for \$4,000. Echo relayed the offer to Smith, who told her to accept.

After purchasing the motorcycle, Watson made numerous attempts to contact the Smiths to obtain the title. During the ensuing weeks, Smith repeatedly assured Watson that there were no liens on the motorcycle and that he would soon supply the title to Watson. In October, Watson brought a police officer with him to confront Smith, and Smith offered to refund Watson's money. In November, Smith told a Grant County Sheriff's Deputy that no liens existed at the time he sold the motorcycle, claiming that he had purchased the motorcycle with a credit card issued to his father.

¹ Ind. Code § 35-43-5-3(a)(6).

On November 27, 2007, the State charged Smith with class A misdemeanor deception. On June 4, 2009, Smith failed to appear for his bench trial, which proceeded in his absence. The trial court found Smith guilty as charged, and on June 10, 2009, sentenced him to nine months imprisonment. Smith now appeals.

DISCUSSION AND DECISION

Smith's sole argument on appeal is that there is insufficient evidence supporting the conviction. In evaluating the sufficiency of the evidence, we will neither reweigh the evidence nor assess witness credibility, looking instead to the evidence and reasonable inferences therefrom that support the verdict. O'Connell v. State, 742 N.E.2d 943, 949 (Ind. 2001). A conviction may be based on circumstantial evidence alone. Perez v. State, 872 N.E.2d 208, 212-13 (Ind. Ct. App. 2007), trans. denied. To convict Smith, the State was required to prove beyond a reasonable doubt that he misrepresented the identity or quality of property with the intent to defraud. I.C. § 35-43-5-3(a)(6).

The record reveals that when Smith purchased the motorcycle, he financed the entire purchase price and granted a lien against the motorcycle to a bank. He signed three separate documents acknowledging and granting the lien, including the sales slip, which states that “[b]y signing I certify that the Purchase Plan and Amount to be Financed are correct and I grant G.E. Money Bank a purchase money security interest in the collateral financed.” State's Ex. 2.

Three weeks later, Smith was incarcerated and attempting to raise money for the bond for his release. He directed Echo to contact Watson, whom he knew to be in the

business of buying and reselling used motorcycles. Smith knew that he had no equity in the motorcycle and that he had granted a lien thereon to a bank. It would have been reasonable for the trial court to infer that Smith knew that as a professional motorcycle reseller, Watson would not have purchased the motorcycle if he was aware that there was a lien on it for the full purchase price. Thus, it was reasonable to conclude that Smith intended to defraud Watson when he directed Echo to arrange and complete the sale.

Furthermore, when Echo offered to sell the motorcycle to Watson, she told him that there were no liens on the motorcycle. After the Smiths accepted Watson's \$4,000 offer, Smith repeatedly told Watson that there were no liens on the motorcycle. He eventually stopped answering or returning calls from Watson. Upon being confronted by the police, Smith offered to return Watson's money and also stated that he had purchased the motorcycle with a credit card that was issued to his father. Smith's repeated efforts to continue to misrepresent his interest in the motorcycle to Watson and the police further support the trial court's conclusion that Smith intended to defraud Watson. There was ample evidence supporting the trial court's inference that Smith "knew exactly what was going on" and merely used Echo to perform the acts that he could not because of his incarceration. Tr. p. 40-41. Thus, we find sufficient evidence supporting the conviction.

The judgment of the trial court is affirmed.

DARDEN, J., and MAY, J., concur.