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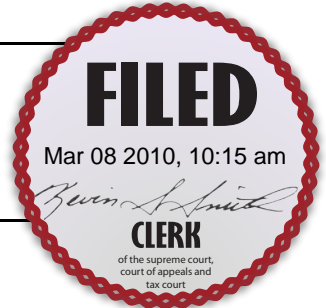
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**IN THE
COURT OF APPEALS OF INDIANA**



WILLIAM ROBINSON,
Appellant- Defendant,

vs.

STATE OF INDIANA,
Appellee- Plaintiff,

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No. 29A02-0907-CR-657

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable Wayne Sturtevant, Judge
Cause No. 29D05-0807-FD-4664

March 8, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Following a bench trial, William Robinson was convicted of theft and receiving stolen property, both Class D felonies. Robinson appeals his conviction for theft, raising the single issue of whether sufficient evidence supports his theft conviction. The State argues, and we agree, the theft conviction violates double jeopardy and should be vacated, therefore, we affirm the receiving stolen property conviction, reverse the theft conviction, and remand with instructions.

Facts and Procedural History

On July 14, 2008, someone broke into Kara Bane's car and stole her purse and cell phone. The next day, two Carmel Police Department officers observed Robinson and another person in Robinson's car acting suspiciously in the parking lot of the Five Seasons sports facility. The officers followed the car to a nearby gas station, approached, and spoke to Robinson, who was a passenger in the car. While talking to Robinson, one of the officers saw tools commonly used to break into cars. The officer asked Robinson, who owned the car, for permission to search the car. The officer found marijuana in the car and placed Robinson under arrest. The officer also found a cell phone, which he determined belonged to Bane.

The next day, Robinson gave a statement to police and indicated he had received the phone from his brother. Robinson admitted he knew the cell phone was stolen. On July 16, 2008, the State charged Robinson with theft, a Class D felony. A bench trial was set for February 5, 2009; however, on the day of the scheduled trial, Robinson indicated he wished to plead guilty to the charge of receiving stolen property, a Class D felony,

pursuant to a plea agreement. The State filed an amended information adding the second charge. The trial court conducted a change of plea hearing on February 5, 2009, but Robinson maintained his innocence. As a result, the trial court rejected the plea agreement because it could not establish a factual basis for the guilty plea and conducted the bench trial.

The trial court found Robinson guilty of both counts, stating “The same evidence [as that supporting a conviction of theft] convinces the Court beyond a reasonable doubt that the Defendant is also guilty of Count 2, Receiving Stolen Property. For purposes of sentencing, those two judgments may – may merge, but that’s – we’ll come to that on another date.” Transcript at 184-85. The trial court held a sentencing hearing on April 13, 2009. Prior to sentencing Robinson, the trial court stated, “I will find that the Theft conviction merges into the conviction for Receiving Stolen Property.” *Id.* at 206. The trial court then sentenced Robinson to three years, with two years executed and one year suspended to probation. The sentencing order clearly indicates the trial court sentenced Robinson only for count 2, receiving stolen property. Robinson now appeals.

Discussion and Decision

Robinson argues insufficient evidence supports his conviction for theft, but does not challenge his conviction for receiving stolen property. The State frames Robinson’s argument as an issue of double jeopardy because the trial court explicitly stated it used the same evidence to convict Robinson of both counts. Article 1, Section 14 of the Indiana Constitution provides, “No person shall be put in jeopardy twice for the same offense.” Two or more offenses are the same offense for double jeopardy purposes if,

“with respect to either the statutory elements of the challenged crimes or the actual evidence used to convict, the essential elements of one challenged offense also establish the essential elements of another challenged offense.” Richardson v. State, 717 N.E.2d 32, 49 (Ind. 1999). Robinson’s convictions fail the actual evidence test.

The remedy for a double jeopardy violation is to vacate one of the convictions. Id. at 54. Therefore, we reverse the theft conviction and remand this case to the trial court with instructions to vacate Robinson’s conviction for theft, a Class D felony. Robinson’s conviction for receiving stolen property is affirmed. Because the trial court sentenced Robinson only for the receiving stolen property conviction, the trial court need not resentence Robinson.

Conclusion

Robinson’s conviction for theft violates double jeopardy and should be vacated. Therefore, we affirm Robinson’s conviction for receiving stolen property, but we reverse his conviction for theft and remand this case to the trial court with instructions to vacate that conviction.

Affirmed in part, reversed in part, and remanded.

BAKER, C.J., and BAILEY, J., concur.