

MEMORANDUM DECISION

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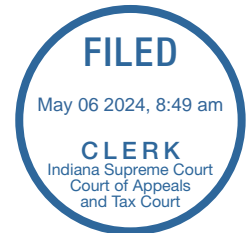


IN THE
Court of Appeals of Indiana

Joshua Cox,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



May 6, 2024

Court of Appeals Case No.
23A-CR-2413

Appeal from the Marion Superior Court

The Honorable Amy Jones, Judge

The Honorable David Hooper, Magistrate

Trial Court Cause No.
49D34-2201-F6-1015

Memorandum Decision by Judge Riley

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Joshua Cox (Cox), appeals his conviction for theft, a Class A misdemeanor, Ind. Code § 35-43-4-2(a).

[2] We affirm.

ISSUE

[3] Cox presents this court with one issue, which we restate as: Whether the State proved beyond a reasonable doubt that he committed theft.

FACTS AND PROCEDURAL HISTORY

[4] In August 2021, Terri Scott (Scott) allowed Cox to move into her home in the 1100 block of Centennial Street in Indianapolis, Indiana. Scott had known Cox and his family, who lived down the street, for approximately five years. The understanding when Cox began his stay at Scott's home was that he was not to use drugs and that he would only stay for a few days. During the time that Cox lived with Scott, there were a total of five people living in the home. Cox had his own bedroom which he did not share with anyone else.

[5] By December 2021, Cox was still living in Scott's home. Scott told Cox repeatedly that it was time that he find another place to stay, but Cox kept

delaying his departure. On December 26, 2021, Scott told Cox to leave and asked that he return the keys to her home. Around 8:30 p.m. that evening, Scott heard her dog barking outside at the corner of the house. Cox exited his bedroom, slamming and locking his bedroom door. Scott saw Cox walk through the home and out the front door. Cox drove away in an SUV. Scott subsequently discovered that Cox's bedroom had been "stripped" of everything of value, including a videogame console, videogames, two camcorders, and a camera. (Transcript p. 17). The window of Cox's bedroom was open, and a log had been placed outside which appeared to have been used as a stepping stool. Scott alerted the police of the theft.

[6] On January 11, 2022, the State filed an Information, charging Cox with Level 6 felony theft. On July 6, 2023, Cox waived his right to a jury trial, and on August 21, 2023, the trial court convened Cox's bench trial. Scott testified that Cox did not own any of the items she had reported missing on December 26, 2021, and that Cox did not appear to have been carrying anything with him when she saw him exit through the front door that evening. Prior to reporting the theft to police, Scott had checked the belongings of two of the other occupants of the home but did not find the missing items.

[7] At the conclusion of the State's evidence, the trial court partially granted Cox's motion for a directed judgment, ruling that the State had failed to prove that the value of the stolen items was \$750 or more. The State proceeded on the lesser-included offense of theft as a Class A misdemeanor. Cox testified and denied taking the missing items.

[8] The trial court found Cox guilty of Class A misdemeanor theft. On September 18, 2023, the trial court held Cox’s sentencing hearing. The trial court imposed a sentence of one year, all suspended to probation.

[9] Cox now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. Standard of Review

[10] Cox challenges the evidence supporting his conviction. Our standard of review in such matters is well-settled and has been restated recently by our supreme court as follows:

It is the fact-finder’s role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. Therefore, the reviewing court does not reweigh the evidence or judge the credibility of the witnesses, and it leaves those determinations to the fact-finder. We consider only the evidence most favorable to the trial court’s ruling and will affirm a defendant’s conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.

[11] *Teising v. State*, 226 N.E.3d 780, 783 (Ind. 2024) (internal quotes and citations omitted). In order for the State to make its case, it is “not necessary that the evidence overcome every reasonable hypothesis of innocence.” *Drane v. State*, 867 N.E.2d 144, 147 (Ind. 2007) (quotation omitted). We will affirm if inferences may reasonably be drawn from the evidence to support the fact-finder’s judgment. *Id.*

II. *Theft*

[12] A person commits Class A misdemeanor theft when he “knowingly or intentionally exerts unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use[.]” I.C. § 35-43-4-2(a); *Fonner v. State*, 955 N.E.2d 241, 246 (Ind. Ct. App. 2011), *trans. denied*. Circumstantial evidence is evidence that is not based on actual observation of the facts in controversy or on actual personal knowledge; rather, it is evidence of other facts from which deductions may be drawn. *Robertson v. State*, 860 N.E.2d 621, 623 (Ind. Ct. App. 2007), *affirmed at* 871 N.E.2d 280 (2007). “Although a theft conviction may be supported by circumstantial evidence alone, we must proceed with caution to ensure that innocent individuals are not convicted.” *Id.*

[13] On appeal, Cox does not challenge the sufficiency of the evidence establishing the individual elements of the offense. Rather, Cox contends that the State failed to prove beyond a reasonable doubt that it was he who exerted unauthorized control over the items in question on December 26, 2021. The evidence supporting the trial court’s judgment is that Scott had been pressuring Cox to leave her home prior to December 26, 2021, and that she imposed a de facto deadline to vacate that day. Later that evening, Scott heard her dog barking at the side of her home. She then saw Cox walk through the home without carrying anything, not even his own possessions such as the clothing he would have presumably had there after living in Scott’s home for several months. Shortly thereafter, Scott discovered that the video game console and

other items were missing from Cox's bedroom. Scott described the room as having been "stripped", from which it can be inferred that Cox's possessions had also been removed from the bedroom. (Tr. p. 17). Additionally, the window in Cox's bedroom was open in the winter month of December, and a log had been placed outside of Cox's window such that it could be used as a stepping stool. The reasonable inferences to be drawn from this evidence are that after Scott imposed a deadline for Cox to leave her home, he took the missing items, as well as his own possessions, out of the window, causing Scott's dog to bark. It can reasonably be inferred from the fact that Cox slammed and locked his bedroom door on his way out of Scott's home that he was attempting to delay her discovery of the theft. We conclude that this circumstantial evidence was sufficient to prove that it was Cox who took the items at issue. *See Bennett v. State*, 871 N.E.2d 316, 323 (Ind. Ct. App. 2007) (affirming Bennett's conviction for theft based on circumstantial evidence that he had exercised unauthorized control over missing tools and a knife, despite the facts that the missing items were not found in his possession and were never recovered), *opinion adopted at* 878 N.E.2d 836 (Ind. 2008).

[14] On appeal, Cox draws our attention to evidence that others lived in Scott's home who could have taken the missing items even before December 26, 2021, Scott must have suspected two of the other occupants of the home because she searched their possessions before calling the police, there were no eye witnesses to the offense, and Cox was not found in possession of the items after Scott had discovered that they were missing. However, as we have already observed, the

State is not required to rule out every theory of innocence in order to prove the offense. *See Drane*, 867 N.E.2d at 147. Rather, we must determine whether reasonable inferences may be drawn from the facts that support Cox’s guilt, and we conclude that such inferences may reasonably be drawn from the evidence before us. *See id.* Cox’s arguments are based on evidence that does not support the judgment and crediting them would entail reweighing the evidence. As such, these arguments are unpersuasive, as they are contrary to our standard of review. *See Teising*, 226 N.E.3d at 783. Finding sufficient evidence to sustain Cox’s conviction, we do not disturb the trial court’s judgment.

CONCLUSION

- [15] Based on the foregoing, we hold that the State proved beyond a reasonable doubt that Cox committed theft.
- [16] Affirmed.
- [17] Brown, J. and Foley, J. concur

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