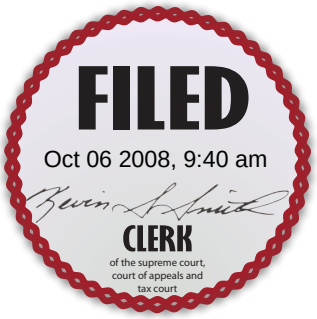

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IN THE COURT OF APPEALS OF INDIANA

CORY BAILEY,	)	
	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0802-CR-102
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark D. Stoner, Judge
The Honorable Jeffrey L. Marchal, Commissioner
Cause No. 49G06-0710-FC-206426

October 6, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Cory Bailey was convicted after a bench trial of auto theft[1] as a Class C felony and theft[2] as a Class D felony and was sentenced to eight years executed for the auto theft conviction and two years executed for the theft conviction, with the sentences to run consecutively. He appeals, raising the following two issues:

I. Whether sufficient evidence was presented to support his convictions; and

II. Whether Bailey's sentence was inappropriate.

We affirm.

FACTS AND PROCEDURAL HISTORY

On September 19, 2007, Janet Wells parked her car at the Adams Mark Hotel. *Tr.* at 11. The following morning, she discovered that her 1996 black Honda Accord was missing from the lot and noticed a car window and pieces of shattered glass in the spot where her car had been parked. *Id.* at 15-16.

On September 29, 2007, Tonya Calvert awoke to discover that her purse was missing from her kitchen table where she had placed it the night before. *Id.* at 33-34. That same day, a police officer initiated a traffic stop on a black Honda Accord driven by Bailey after Bailey failed to signal before making a turn. *Id.* at 23-24. Bailey pulled over, exited the vehicle and started walking away from the car and the officer. *Id.* at 24. The officer ordered him back in the car, but Bailey continued walking away. After the officer again demanded that Bailey return to the car, Bailey looked at the officer, fell to his knees and put his hands behind his back. *Id.* at 25. The officer ran the registration on

[1] *See* IC 35-43-4-2.5(b)(1).

[2] *See* IC 35-43-4-2.

the car and discovered that it was reported stolen on September 19. *Id*. at 26. After reading Bailey his *Miranda* rights, the officer asked Bailey why he stole the car. Bailey responded, "Just because." *Id*. at 27. The officer then asked him, "Do you understand that the car is stolen?" Bailey replied, "Yes." *Id.* The window on the passenger side of the car was broken, and the officer found a wallet on the front seat belonging to Calvert. *Id.* at 28. The State charged Bailey with auto theft as a Class C felony based on Bailey's prior conviction for auto theft and theft as a Class D felony. At a bench trial, the court found Bailey guilty of both counts. The court sentenced him to eight years for the auto theft and two years for the theft, with the sentences to be served consecutively. Bailey now appeals.

DISCUSSION AND DECISION

I. Sufficient Evidence

Our standard of review for sufficiency claims is well settled. We do not reweigh the evidence or judge the credibility of the witnesses. *Williams v. State*, 873 N.E.2d 144, 147 (Ind. Ct. App. 2007). We will consider only the evidence most favorable to the judgment together with the reasonable inferences to be drawn therefrom. *Id.*; *Robinson v. State*, 835 N.E.2d 518, 523 (Ind. Ct. App. 2005). We will affirm the conviction if sufficient probative evidence exists from which the fact finder could find the defendant guilty beyond a reasonable doubt. *Williams*, 873 N.E.2d at 147; *Robinson*, 835 N.E.2d at 523.

A. Sufficient Evidence for Auto Theft Conviction

Bailey maintains that there was insufficient evidence to convict him of auto theft as a Class C felony. In order to convict Bailey of the instant auto theft, the State was required to prove that he knowingly or intentionally exerted unauthorized control over the motor vehicle of another person, with the intent to deprive the owner of the vehicle's value or use. IC 35-43-4-2.5(b)(1). Bailey contends that the State did not present sufficient evidence to support his conviction for auto theft. Specifically, he argues that there was no evidence to prove that he was the person who stole the car and no evidence to prove that he was in exclusive possession of the car during the ten days that the car was missing.

Bailey was found in possession of the stolen vehicle ten days after it was stolen. *Tr.* at 26. He relies on a recent case, *Shelby v. State*, 875 N.E.2d 381 (Ind. Ct. App. 2007), *trans. denied*, and two cases cited by *Shelby*, *Buntin v. State*, 838 N.E.2d 1187 (Ind. Ct. App. 2005) and *Trotter v. State*, 838 N.E.2d 553 (Ind. Ct. App. 2005), to support his contention that there was no evidence that he had exclusive control of the vehicle during the ten days before he was found in possession of it and therefore that there was insufficient evidence to support a conviction for auto theft.

This case is distinguishable from *Shelby*, *Trotter*, and *Buntin*. In each of those cases there was no corroborating evidence to support the convictions and the issue was whether the unexplained possession of a vehicle not recently stolen was sufficient to support a theft conviction. *Shelby*, 875 N.E.2d at 383-84; *Buntin*, 838 N.E.2d at 1190; *Trotter*, 838 N.E.2d at 558.

Here, there is corroborating evidence of Bailey's guilt. When he was pulled over by police during a traffic stop, he took evasive action by walking away from the car and the officer. After twice being ordered by the officer to return to the vehicle, Bailey voluntarily fell to his knees and put his hands behind his back. When asked by the officer why he stole the car, Bailey replied, "Just because." *Tr.* at 27. When the officer then asked him, "Do you understand that the car is stolen?" Bailey replied, "Yes." Bailey's behavior at the time of the traffic stop and his admission of guilt to the officer are sufficient corroborating evidence for a reasonable trier of fact to find him guilty of auto theft beyond a reasonable doubt.

Bailey next argues that the State failed to prove his prior conviction for auto theft, which conviction enhanced the current auto theft charge to a Class C felony. The State entered into evidence a certified copy of a 1998 arrest report documenting the arrest for auto theft of a Cory Bailey, described as a black male with the same date of birth as Bailey, and containing a fingerprint taken at the time of the arrest. The State also provided the charging information, written plea agreement, and judgment of conviction indicating that a Cory Bailey had entered a plea of guilty to auto theft as a result of that 1998 arrest. An identification specialist from the police department who had taken a fingerprint from Bailey earlier on the day of trial testified that the print taken earlier that day matched the fingerprint on the 1998 arrest report.

The expert comparison of the fingerprint exemplar with the fingerprint records on the arrest report of a person with the same name, same physical characteristics, and same

date of birth as Bailey are sufficient evidence to prove his prior conviction for auto theft and enhance his conviction to a Class C felony.

B. Sufficient Evidence for Theft Conviction

Bailey argues that the State did not present sufficient evidence to support his conviction for theft. He claims that there was no evidence that he exerted unauthorized control over the wallet found in the car. "Unexplained possession of recently stolen property will support an inference of guilt of . . . theft of that property." *Ward v. State*, 439 N.E.2d 156, 159 (Ind. 1982) (citing *Muse*, 419 N.E.2d at 1304). "Possession remains 'unexplained' when the trier of fact rejects the defendant's explanation as being unworthy of credit." *Allen v. State*, 743 N.E.2d 1222, 1230 (Ind. Ct. App. 2001), *trans. denied* (citing *Gibson*, 533 N.E.2d at 188).

Bailey was found in possession of Calvert's wallet on the very day she discovered it missing. His explanation as to how he came into possession of the wallet was that it belonged to his girlfriend's aunt. Calvert testified that she did not have any nieces, did not know Bailey, and had not given him permission to exert control over her wallet. Bailey's possession of a stolen car in which Calvert's wallet was found on the front seat, along with his untruthful explanation about the wallet to the police officer, provided sufficient evidence for a reasonable trier of fact to find him guilty of theft.

II. Inappropriate Sentence

Bailey argues that his consecutive sentence of eight years for the auto theft and two years for theft was inappropriate in light of the non-violent nature of the offense. Likewise, he contends that although he does have "some criminal history," his lack of

any convictions after 2002 warrants a reduction in sentence to a maximum five years executed.

Appellate courts may revise a sentence after careful review of the trial court's decision if they conclude that the sentence is inappropriate based on the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). Even if the trial court followed the appropriate procedure in arriving at its sentence, the appellate court still maintains a constitutional power to revise a sentence it finds inappropriate. *Hope v. State*, 834 N.E.2d 713, 718 (Ind. Ct. App. 2005).

While the nature of Bailey's offenses is not particularly egregious, he has an extensive criminal history. His adult record began at the age of eighteen with convictions for operating a vehicle without a license and theft. Over the next seven years, he was convicted of theft on four separate occasions, of resisting law enforcement on three separate occasions, of auto theft, disorderly conduct, driving while suspended, carrying a handgun without a license and burglary. Bailey maintains that the fact that his most recent conviction was in 2002 should be considered a mitigating factor as to the sentence imposed. That argument is unpersuasive considering that Bailey was incarcerated from 2002 to 2006. Therefore, we do not believe that his ten-year aggregate sentence was inappropriate.

Affirmed.

VAIDIK, J., and CRONE, J., concur.