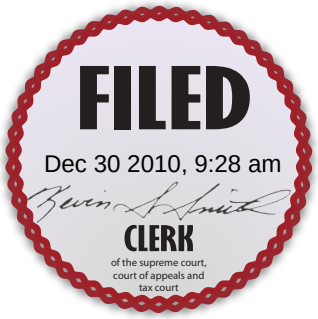


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# IN THE
# COURT OF APPEALS OF INDIANA

| | | |
|---|---|---|
| DONNIE R. PIERCE, | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 49A05-1006-CR-347 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE MARION SUPERIOR COURT
CRIMINAL DIVISION, ROOM 21
The Honorable David J. Certo, Judge
The Honorable Richard B. Veen, Judge Pro Tempore
Cause No. 49G21-1003-CM-18478

**December 30, 2010**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**RILEY, Judge**

## STATEMENT OF THE CASE

Appellant-Defendant, Donnie R. Pierce (Pierce), appeals his conviction for criminal mischief, a Class B misdemeanor, Ind. Code § 35-43-1-2.

We affirm, in part, and remand, in part.

## ISSUES

Pierce raises two issues on appeal, which we restate as follows:

(1) Whether the State presented sufficient evidence to sustain Pierce's conviction for criminal mischief beyond a reasonable doubt; and

(2) Whether Pierce's conviction was mistakenly entered as a Class A misdemeanor.

## FACTS AND PROCEDURAL HISTORY

Pierce and Am.W. have a child together. However, their relationship did not work out well. On February 18, 2010, Am.W. obtained a protective order prohibiting Pierce from contacting her and her family. On February 27, 2010, someone threw a brick into the front window of Am.W.'s house. Al.W., Am.W.'s sister, who was in the house with Am.W. at the time, immediately ran outside the door and saw Pierce jumping into the passenger side of a car which was waiting for him right outside the window. Al.W. yelled for Pierce to stop, but the car drove off. There was no one else outside the house or the area around it.

On March 11, 2010, the State filed an Information charging Pierce with Count I, criminal mischief, a Class A misdemeanor, I.C. § 35-43-1-2, and Count II, invasion of privacy, a Class A misdemeanor, I.C. § 35-46-1-15.1. Following a bench trial on May 12,

2010, the trial court found Pierce guilty of criminal mischief as a Class B misdemeanor and sentenced him to 180 days, suspended to probation.

Pierce now appeals. Additional facts will be provided as necessary.

## DISCUSSION AND DECISION

### I. *Sufficiency of Evidence*

Pierce argues that the State did not provide sufficient evidence to prove beyond a reasonable doubt Pierce's identity as the person who threw the brick through Am.W.'s front window. We disagree.

Our standard of review with regard to sufficiency claims is well settled. *Perez v. State*, 872 N.E.2d 208, 212 (Ind. Ct. App. 2007), *trans. denied*. In reviewing sufficiency of the evidence claims, this court does not reweigh the evidence or judge the credibility of the witnesses. *Id.* at 212-13. We will consider only the evidence most favorable to the verdict and the reasonable inferences drawn therefrom and will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. *Id.* at 213. A conviction may be based upon circumstantial evidence alone. *Id.* Reversal is appropriate only when reasonable persons would not be able to form inferences as to each material element of the offense. *Id.*

Here, to sustain Pierce's conviction for criminal mischief, the State was required to prove that Pierce recklessly, knowingly, or intentionally damaged the window without consent. I.C. § 35-43-1-2; *Pepper v. State*, 558 N.E.2d 899, 900 (Ind. Ct. App. 1990).

Criminal mischief without evidence of any pecuniary loss is a Class B misdemeanor; it only requires proof of damage, not the amount of damage. *Pepper*, 558 N.E.2d at 900.

We find that the State presented substantial evidence supporting the judgment. The brick was thrown through the front window of the home of Pierce's ex-girlfriend, with whom he had a child, and her family. Ten days before the incident, Am.W. had obtained a protective order against Pierce. While no one actually saw Pierce throwing the brick, Al.W., Am.W.'s sister, ran outside within seconds of the brick shattering the window and saw Pierce running to a waiting car. The car was parked just outside the window with a driver waiting and the engine running. Al.W. yelled for them to stop, but Pierce jumped in the passenger seat, and drove away in the car. Other than Pierce and the driver, Al.W. did not see anyone else in the area. As such, we conclude that a reasonable person would be able to draw an inference as to the identity of the brick thrower under these circumstances. We conclude that the evidence presented by the State was sufficient.

II. *Correction of the Abstract of Judgment*

Pierce also argues that the trial court made a mistake in the Abstract of Judgment. Specifically, Pierce contends that, during the sentencing hearing, the trial court found Pierce guilty of a Class B misdemeanor, whereas the Abstract of Judgment reflects Pierce's conviction as a Class A misdemeanor. The State agrees with Pierce.

The approach employed by Indiana appellate courts in reviewing sentences in non-capital cases is to examine both the written and oral sentencing statements to discern the findings of the trial court. *McElroy v. State*, 865 N.E.2d 584, 589 (Ind. 2007). Rather than

presuming the superior accuracy of the oral statement, we examine it alongside the written sentencing statement to assess the conclusions of the trial court. *Id*. This court has the option of crediting the statement that accurately pronounces the sentence or remanding for resentencing. *Id*.

Here, the record reveals that the trial court clearly intended to enter the conviction as a Class B misdemeanor. It appears that the Abstract of Judgment contains a mere clerical mistake. As such, we remand with instructions to correct the Abstract of Judgment to reflect the proper conviction.

## CONCLUSION

Based on the foregoing, we conclude that the State presented sufficient evidence to convict Pierce of the charged offense, and that the mistake in the Abstract of Judgment should be corrected.

Affirmed in part and remanded in part.

ROBB, J., and BROWN, J., concur.