

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Charles Summers,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

September 27, 2021

Court of Appeals Case No.
21A-CR-974

Appeal from the Miami Superior
Court

The Honorable J. David Grund,
Judge

Trial Court Cause No.
52D01-1911-F5-392

Crone, Judge.

Case Summary

- [1] Charles Summers appeals his conviction for level 5 felony auto theft, arguing that the evidence is insufficient to sustain it. Concluding that the evidence is sufficient, we affirm.

Facts and Procedural History

- [2] In November 2019, Tammy Gibson was working the night shift as a CT technician at Dukes Memorial Hospital in Peru. The ER was very busy that night, and Summers was one of the ER patients. At around 9:30 p.m., the hospital staff was alerted that Summers had disappeared from his room. At approximately 1:00 a.m., Gibson took a break, during which she planned to bring in a case of sodas that she had left in her pickup truck. She went to an inner office marked with “staff only” signage to retrieve her keys, which were in her purse in her lunch bag. Tr. Vol. 3 at 51. When she entered that office, she noticed that her purse had been removed from her lunch bag. In addition, her keys were not in her purse, and a few dollars were missing from her billfold. Gibson retrieved a spare set of keys from a zippered compartment in her purse and walked to the hospital parking lot where she had parked her truck at the beginning of her shift. She discovered that her truck was gone and had the hospital secretary call the police.
- [3] Officers Keith Smith and Michael Vinopal responded to the call. When they arrived at the hospital, Gibson took them to the office where she kept her purse and explained that her keys, a few dollars, and her truck were missing. Gibson

also informed the officers that she kept a loaded handgun in the truck's glove compartment. Gibson and the police then went to the parking lot, so she could show them where she had parked her truck. As they stood outside discussing the missing truck, Gibson saw a truck that looked like hers coming toward the hospital and turning into the parking lot. Gibson told the officers it was her truck and went back inside the hospital.

[4] As the officers approached the truck, Officer Smith drew his gun, shined his flashlight into the truck, and recognized Summers in the driver's seat. Officer Smith told Summers to stop and asked to see his hands, but Summers started to back the truck up. Officer Smith believed that Summers was trying to turn around to go away from the officers. Officer Smith reached the passenger door and told Summers to unlock the door. Summers "kind of just sat there, frozen, not unlocking the door." *Id.* at 101. Gibson, who was watching from inside the hospital, used the remote control on her spare set of keys to unlock the truck doors. Officer Smith opened the passenger door, put the truck in park, and took the keys out of the ignition so Summers could not leave. By that time, Officer Vinopal had opened the driver's door and told Summers to step out. The officers arrested Summers and upon searching him found cigarettes, lighters, and chapstick, all of which had been in the truck's console. Gibson observed that eighty to eighty-eight miles had been put on the truck, and there was a bunch of leaves and debris in it.

[5] The State charged Summers with Count 1, level 5 felony auto theft; Count 2, class A misdemeanor driving while suspended; Count 3, level 5 felony burglary;

and Count 4, class A misdemeanor theft. The State also alleged that Summers was a habitual offender. A jury found Summers guilty of all charges except Count 3 and found that he was a habitual offender. The trial court sentenced Summers to five years on Count 1 enhanced by four years for being a habitual offender. The trial court also imposed concurrent terms of one year for Counts 2 and 4. This appeal ensued.

Discussion and Decision

[6] In reviewing a claim of insufficient evidence, we do not reweigh the evidence or judge the credibility of witnesses, and we consider only the evidence that supports the judgment and the reasonable inferences arising therefrom. *Bailey v. State*, 907 N.E.2d 1003, 1005 (Ind. 2009). It is “not necessary that the evidence ‘overcome every reasonable hypothesis of innocence.’” *Drane v. State*, 867 N.E.2d 144, 147 (Ind. 2007) (quoting *Moore v. State*, 652 N.E.2d 53, 55 (Ind. 1995)). “We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt.” *Bailey*, 907 N.E.2d at 1005. “A conviction may be based on circumstantial evidence alone so long as there are reasonable inferences enabling the factfinder to find the defendant guilty beyond a reasonable doubt.” *Long v. State*, 935 N.E.2d 194, 198 (Ind. Ct. App. 2010), *trans. denied*.

[7] The theft statute, Indiana Code Section 35-43-4-2, provides that “[a] person who 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, commits theft, a Class A misdemeanor.” Here, the offense was elevated to a level 5 felony because the property was a motor vehicle and Summers had a prior unrelated auto theft conviction. Ind. Code § 35-43-4-2(a)(2)(C)(i).

[8] Summers’s sole argument is that Indiana courts read the word “permanently” into the theft statute in order to distinguish theft from criminal conversion and the State failed to produce sufficient evidence that he intended to permanently deprive Gibson of any part of the truck’s value or use. Appellant’s Br. at 9-10 (citing *M.Q.M. v. State*, 840 N.E.2d 441, 445 (Ind. Ct. App. 2006)). He requests that his auto theft conviction be reduced to class A misdemeanor criminal conversion. Indiana Code Section 35-43-4-3(a) defines criminal conversion as follows: “A person who knowingly or intentionally exerts unauthorized control over property of another person commits criminal conversion, a class A misdemeanor.” The element that distinguishes theft from criminal conversion is the intent to deprive the other person of any of the property’s value or use. Our “[c]ourts have consistently held that criminal conversion is an inherently lesser included offense of theft because it can be established by proof of less than all of the material elements of theft.” *Lane v. State*, 953 N.E.2d 625, 630 n.4 (Ind. Ct. App. 2011) (citing *Shouse v. State*, 849 N.E.2d 650 (Ind. Ct. App. 2006), *trans. denied*).¹

¹ Summers did not request a jury instruction on criminal conversion.

[9] Summers's reliance on *M.Q.M.* is misplaced. In *Bennett v. State*, 871 N.E.2d 316 (Ind. Ct. App. 2007), *adopted by* 878 N.E.2d 836, 836 (Ind. 2008), another panel of this Court relied on *Coff v. State*, 483 N.E.2d 39 (Ind. 1985), to conclude that “the State was not required to prove that Bennett exerted control over [another person's] vehicle with intent to *permanently* deprive [that person] of the vehicle's value or use” to convict him of auto theft. *Id.* at 322. Our supreme court adopted this Court's opinion and confirmed that *Coff* is still good law and permanent deprivation is not required under Section 35-43-4-2. *Bennett*, 878 N.E.2d at 836.

[10] Accordingly, to sustain a conviction for theft, the State was only required to prove that Summers knowingly or intentionally exercised unauthorized control over Gibson's vehicle with the intent to deprive her “of any part of the [vehicle's] value or use.” Ind. Code § 35-43-4-2(a). Because intent is a mental state, the factfinder often must rely on reasonable inferences from the surrounding circumstances, including the defendant's conduct, to determine whether the defendant acted with the requisite criminal intent. *Diallo v. State*, 928 N.E.2d 250, 253 (Ind. Ct. App. 2010).

[11] Although Summers argues that the State failed to prove that he intended to permanently deprive Gibson of the vehicle's value or use, which is not an element of the offense, we will address his argument as it applies to whether the State failed to prove his intent to deprive Gibson of any part of the vehicle's value or use. Summers contends that he drove the truck back to the hospital and was driving to the parking space where the truck had originally been

parked, which he says establishes that he intended to return the vehicle. Summers's argument ignores the evidence showing that he had possession of Gibson's vehicle for approximately four hours, during which time she was wholly deprived of any part of its value or use. The jury reasonably could have concluded that Summers intended to deprive Gibson of her vehicle during the time that he had possession of it. Summers's argument is merely a request to reweigh the evidence, which we must decline. We conclude that the evidence is sufficient to prove that Summers committed auto theft and therefore affirm his conviction.

[12] Affirmed.

Bailey, J., and Pyle, J., concur.