

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Jermaine L. Smith,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

November 29, 2022

Court of Appeals Case No.  
22A-CR-1244

Appeal from the Marion Superior  
Court

The Honorable Jose Salinas, Judge

The Honorable John Christ,  
Magistrate

Trial Court Cause No.  
49D23-2201-CM-631

**May, Judge.**

[1] Jermaine L. Smith appeals his conviction of Class B misdemeanor criminal mischief.<sup>1</sup> Smith argues the State presented insufficient evidence to support his conviction because the State failed to prove the vandalized property did not belong to Smith. We affirm.

## Facts and Procedural History

[2] Smith dated R.T. for a few months in 2021. During the relationship, Smith bought a 2007 Chrysler van. The car was titled in R.T.'s name and the certificate of vehicle registration listed R.T. as the van's owner. Both R.T. and Smith drove the van. At some point, Smith and R.T. ended their romantic relationship.

[3] On November 21, 2021, Cedrick Murphy, one of R.T.'s coworkers at a barbeque restaurant, parked the van in a parking lot near the restaurant. That evening, two men entered the parking lot and broke the van's windows, slashed its tires, and damaged the gas tank. Ronald Jones, the restaurant's owner, discovered the damaged vehicle when he walked outside. He then contacted a technician to retrieve footage from the restaurant's video surveillance system, and he called the police. The surveillance system captured footage of the two individuals vandalizing the van. Jones showed the footage to R.T., and she identified Smith as one of the two perpetrators.

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<sup>1</sup> Ind. Code § 35-43-1-2.

[4] On January 6, 2022, the State charged Smith with Class B misdemeanor criminal mischief. The trial court held a bench trial on May 12, 2022. R.T. testified she was the owner of the van, and Smith “gifted” the van to her. (Tr. Vol. II at 66.) Smith testified the van was his property even though it was titled and registered in R.T.’s name. Smith explained he had the vehicle titled in R.T.’s name because he was concerned the State would place a lien on the vehicle for outstanding child support if he titled it in his name. The trial court found Smith guilty as charged and sentenced him to a term of 180 days in the Marion County Jail, all of which the trial court suspended to probation.

## Discussion and Decision

[5] Smith argues the State did not present sufficient evidence to support his conviction of Class B misdemeanor criminal mischief. Our standard of review regarding such a challenge is well-settled:

We neither reweigh the evidence nor judge the credibility of the witnesses. We consider only the probative evidence and reasonable inferences supporting the trial court’s decision. A conviction will be affirmed 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.

*Ervin v. State*, 114 N.E.3d 888, 895 (Ind. Ct. App. 2018) (internal citations and quotation marks omitted), *trans. denied*.

[6] Smith was convicted of Class B misdemeanor criminal mischief. Indiana Code section 35-43-1-2 provides: “A person who recklessly, knowingly, or

intentionally damages or defaces property of another person without the other person's consent commits criminal mischief, a Class B misdemeanor.” Smith contends the State failed to prove the vehicle he damaged was the property of another person. Property is “that ‘of another person’ if the other person has a possessory or proprietary interest in it, even if an accused person also has an interest in that property.” Ind. Code § 35-31.5-2-253(b). As we explained in *Womack v. State*, “the three primary indicia of ownership of personal property . . . are title, possession, and control.” 738 N.E.2d 320, 324 (Ind. Ct. App. 2000), *trans. denied*.

[7] Here, R.T. was listed as the owner of the van on both the certificate of title and the certificate of vehicle registration. While Smith purchased the van, R.T. testified Smith subsequently “gifted” the van to her. (Tr. Vol. II at 66.) She testified she was the vehicle's owner and the van did not belong to Smith. While Smith testified he owned the van, he also acknowledged R.T. would “borrow” the vehicle. (*Id.* at 70-71.) Thus, even under Smith's version of facts, R.T. exercised possession and control over the vehicle at least some of the time. To the extent Smith is asking us to credit his testimony over R.T.'s testimony regarding ownership of the van, he is asking us to reweigh the evidence, which we cannot do. *See Tate v. State*, 161 N.E.3d 1225, 1234 (Ind. 2021) (“By asking the Court to ignore the evidence that does not support Tate's arguments, he asks us to substitute our view of the evidence for that of the jury—something we will not do.”). Therefore, we hold the State presented sufficient evidence that

the damaged van was R.T.'s property.<sup>2</sup> See *Wallace v. State*, 896 N.E.2d 1249, 1253 (Ind. Ct. App. 2008) (holding evidence was sufficient to prove the house from which furnace and water heater were taken was the property of another as required to support criminal mischief conviction), *reh'g denied, trans. denied*.

## Conclusion

[8] The State presented sufficient evidence the vehicle Smith vandalized belonged to R.T. We accordingly affirm the trial court.

[9] Affirmed.

Crone, J., and Weissmann, J., concur.

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<sup>2</sup> Smith also alleges the State failed to prove R.T. suffered a pecuniary loss because the State failed to present evidence of a specific monetary amount of damage. However, while Class A misdemeanor criminal mischief requires that the victim incur between \$750 and \$50,000 in damages, there is no such monetary damage requirement with respect to Class B misdemeanor criminal mischief. Compare Ind. Code § 35-43-1-2(a)(1) with Ind. Code § 35-43-1-2(a). See *Pepper v. State*, 558 N.E.2d 899, 900 (Ind. Ct. App. 1990) (holding criminal mischief as a Class B misdemeanor requires only proof of damage and not the amount of damage).