

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Abiyel Tsegai,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

December 7, 2023

Court of Appeals Case No.
23A-CR-989

Appeal from the Hendricks
Superior Court

The Honorable Mark Smith, Judge

Trial Court Cause No.
32D04-2112-F6-1242

Memorandum Decision by Judge May
Judges Bailey and Felix concur.

May, Judge.

- [1] Abiyel Tsegai appeals his conviction of Level 6 felony theft.¹ He argues the evidence was insufficient to support his conviction because he did not knowingly or intentionally exert unauthorized control over the property of Embassy Suites with the intent to deprive Embassy Suites of any part of the use or value of the property.² Because the evidence most favorable to the State supports Tsegai’s conviction, we affirm.

Facts and Procedural History

- [2] On December 26, 2021, Marisa Pera was working as a front desk agent at the Embassy Suites in Plainfield. When she was not helping customers at the front desk, Pera would check the monitors in the back office that displayed footage from the security cameras on the premises. Around 11:00 p.m., Pera saw a person walking down the sixth floor hallway with a vacuum, which Pera thought was odd because “all the housekeepers had the day off[.]” (Tr. Vol. 2 at 12.) Pera quickly determined which rooms on the sixth floor had not been rented by customers, and then she and a co-worker went to the sixth floor to

¹ Ind. Code § 35-43-4-2(a) (2021) (modified in irrelevant part by P.L. 175-2022, SEC. 7, eff. July 1, 2022).

² Class A misdemeanor theft becomes Level 6 felony theft if the defendant has a prior conviction of theft. *See* Ind. Code § 35-43-4-2(a)(1)(C)(i) (2021). Tsegai does not challenge that he had a prior conviction of theft, and we accordingly need not address the sufficiency of the evidence of his prior conviction.

look for the person with the vacuum. Pera and her co-worker checked vacant rooms with a master key that Pera wore on a bracelet.

[3] When they arrived at Room 628, which should have been vacant, the door would open only about two inches because the hinged swing bar lock had been latched from inside the room. When Pera peeked through the gap between the door and door frame, she saw Tsegai sitting on the floor with the vacuum. Pera walked away from the room to call the police on a cell phone, and she went back to the main desk to watch the security cameras.

[4] Tsegai left Room 628, spent time “bouncing around” other floors, opening doors with a master key, and then opened and entered Room 701. (*Id.* at 15.) Police found Tsegai in Room 701, where he had turned the tv toward the bed, which was unmade. Police found a black jacket, a trash bag full of cans and food, a Speedway Styrofoam cup, and an opened beer bottle that Tsegai claimed he had brought into the hotel. When police detained Tsegai, they removed a master key from his pocket and returned it to Pera.

[5] Because no cleaning staff were on duty, the rooms Tsegai entered could not be cleaned and, therefore, could not be rented to customers that night. The price to rent a room at Embassy Suites on December 26, 2021, was \$172.50. After police removed Tsegai from the premises, Pera reviewed video recorded from the security cameras earlier that evening and found Tsegai had entered the hotel around 5:00 p.m. Just before 11:00 p.m., Tsegai entered the service closet on the sixth floor, which can be accessed only with a master key, and took the

vacuum cleaner that he had moved to Room 628. When Pera thereafter entered Room 628, she found chips and bottles of water next to the vacuum.

[6] On December 27, 2021, the State charged Tsegai with Class A misdemeanor theft and Level 6 felony theft, which were distinguished only by the felony charge requiring proof of a prior conviction of theft. On March 17, 2023, the State added a charge of Class A misdemeanor criminal trespass.³ At the initial hearing on the new criminal trespass charge, Tsegai pled guilty only to criminal trespass. The trial court then held a bench trial on the two charges of theft. Tsegai argued he could not be convicted of theft of a hotel room because the State had not proven Embassy Suites was “deprived of any value or use of this empty room that had not been cleaned” when there were no guests waiting to rent it. (*Id.* at 62.) In finding Tsegai guilty the trial court explained:

I understand the Defense’s argument. The problem I have, couple problems I have with the Defense’s argument in relation to the evidence was first of all there was all this focus on the hotel rooms and a completely [sic] ignoring of the fact that he had unauthorized control, possession and use of the key that no one gave him to, that no one gave him access to. . . .

* * * * *

. . . You had possession and use of the key. There was no explanation about how you got it, why you had it. The evidence was she saw it, you used it to get in and out of places in that hotel

³ Ind. Code § 35-43-2-2(b)(4).

you didn't have authorized permission to get in and out of. So that with regard to the key that's one portion of the evidence that the Court took heavily. Second of all, with regard to they couldn't rent out the hotel room. That's not what I heard from the evidence. The evidence from the first witness, Ms. Pera, was that she didn't know whether or not they'd been cleaned. Okay? If they had been cleaned and they certainly couldn't have re-rented out because someone had been in the bed or used the room they would have had to have been cleaned again before they were able to, to rent them out again, but even so with regard to I think it's Room 628. It's clear from the evidence that they went up and knocked on the door, he had the bolt over the door. The intent is to prevent people from getting in otherwise why would you not [sic] have the, the latch across the door. So for those reasons the Court finds the State's met its burden of proof beyond a reasonable doubt with regard to theft[.]

(*Id.* at 63-4.) The court entered conviction of Level 6 felony theft with a prior conviction of theft and Class A misdemeanor criminal trespass. The trial court ordered Tsegai to serve 545 days for the Level 6 felony concurrent to 202 days for criminal trespass.

Discussion and Decision

[7] Tsegai challenges the sufficiency of the evidence supporting his conviction of theft. Sufficiency-of-the-evidence assertions

implicate a deferential standard of review, in which this Court will neither reweigh the evidence nor judge witness credibility, but lodge such matters in the special province and domain of the [fact-finder], which is best positioned to make fact-centric determinations. In reviewing the record, we examine all of the evidence and reasonable inferences supporting the verdict and

thus will affirm the conviction if probative evidence supports each element of the crime beyond a reasonable doubt.

Carmack v. State, 200 N.E.3d 452, 459 (Ind. 2023) (internal quotations and citations omitted). “[T]he task for us, as an appellate tribunal, is to decide whether the facts favorable to the verdict represent substantial evidence probative of the elements of the offense.” *Drane v. State*, 867 N.E.2d 144, 147 (Ind. 2007).

[8] “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[.]” Ind. Code § 35-43-4-2(a). Tsegai argues the State failed to prove he knowingly or intentionally exerted unauthorized control with the intent to deprive Embassy Suites of the value or use of its property. Knowing behavior occurs if a person who engages in conduct “is aware of a high probability that he is doing so.” Ind. Code § 35-41-2-2(b). Behavior is intentional when it is a person’s “conscious objective” to engage in the conduct. Ind. Code § 35-41-2-2(a). “Knowledge and intent are mental states and, absent an admission by the defendant, the trier of fact must resort to the reasonable inferences from both the direct and circumstantial evidence to determine whether the defendant has the requisite knowledge or intent to commit the offense in question.” *Griffin v. State*, 81 N.E.3d 243, 249 (Ind. Ct. App. 2017), *trans. denied*.

[9] Tsegai challenges the validity of Pera’s testimony that, after arresting Tsegai, police gave Pera a master key that she watched police remove from Tsegai’s

pocket. Tsegai asserts the body camera footage does not support Pera's testimony about that detail. Tsegai also notes no video footage confirmed that he entered the housekeeping area on the first floor to remove a master key from a cleaning cart. However, our task is not to reweigh the evidence or reassess the credibility of witnesses, as that is a task entrusted to the factfinder. *See Carmack*, 200 N.E.3d at 459 (stating standard of review).

[10] Pera testified that nearly six hours passed between when video demonstrated Tsegai entered the hotel and when she saw Tsegai walking down the sixth floor hallway with a vacuum from the sixth floor service closet, which was accessible only with a master key. In addition, after finding Tsegai in Room 628, Pera returned to the back office of the front desk and watched Tsegai "bounce" from floor to floor, opening various doors, until he returned to Room 701 where he was found by police. The only logical inference for how Tsegai was able to open the service closet and various hotel rooms is that he had possession of a master key. Moreover, Tsegai had more than adequate time between 5:00 p.m. and 10:30 p.m. to descend in the service elevator to the unsecured housekeeping area on the first floor and find a master key on a cart.

[11] Nor do we have any hesitation affirming the trial court's determination that Tsegai was depriving Embassy Suites of the value or use of the hotel rooms that he dirtied by his entry. Pera testified she was unsure whether Room 628 or Room 701 had been cleaned prior to Tsegai's entry, but the Record clearly reflects that Room 701 would need to be cleaned after Tsegai was removed, as the bed was unmade, the television was moved, and trash was left around the

room. Tsegai also left chips, water, and the vacuum in Room 628. That Tsegai lied about having a friend staying in the hotel, when confronted by Pera about his presence, demonstrated he knew he should not have been wandering into the hotel to use its rooms without paying. The evidence was sufficient to convict Tsegai of theft. *See, e.g., J.G. v. State*, 30 N.E.3d 777, 782-83 (Ind. Ct. App. 2015) (evidence sufficient to convict defendant of theft of a rental car because defendant keeping rental car in his home's driveway after rental period ended demonstrated intention to exert control over car and deprive rental company of its use or value).

Conclusion

[12] The State presented sufficient evidence to permit a reasonable factfinder to find beyond a reasonable doubt that Tsegai exerted unauthorized control over the property of Embassy Suites with the intent to deprive Embassy Suites of the use or value of that property. We accordingly affirm.

[13] Affirmed.

Bailey, J., and Felix, J., concur.