

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE
Court of Appeals of Indiana

Daniel E. Payne,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



February 27, 2024

Court of Appeals Case No.
23A-CR-2350

Appeal from the Vanderburgh Circuit Court

The Honorable David D. Kiely, Judge
The Honorable Celia M. Pauli, Magistrate

Trial Court Cause No.
82C01-2101-F6-33

Memorandum Decision by Judge Bradford
Chief Judge Altice and Judge Felix concur.

Bradford, Judge.

Case Summary

- [1] In December of 2020, Daniel Payne was found to be in possession of three catalytic converters that had been stolen from work trucks belonging to Wow Cable Company (“Wow”). Payne was charged with, and found guilty of, one count of Level 6 felony theft and found to be a habitual offender. Payne was sentenced to an aggregate four-year executed sentence and was ordered to pay \$1845.00 in restitution to Wow. On appeal, Payne contends that the evidence is insufficient to sustain his conviction for Level 6 felony theft and the trial court abused its discretion in ordering him to pay restitution. We affirm.

Facts and Procedural History

- [2] In November 2020, the Vanderburgh County Sheriff’s Department began investigating a series of thefts of catalytic converters from commercial vehicles. When sold as scrap, catalytic converters range in value from \$100.00 to \$900.00, depending on the size of the catalytic converter and the amount of precious metals contained therein. Larger vehicles, including work trucks, have larger catalytic converters, making those catalytic converters more valuable.
- [3] As part of the investigation into the thefts, Sergeant Michael Hertweck used a database called “LeadsOnline[,]” which tracks people who attempt to sell “precious metal[s], catalytic converters, anything like that.” Tr. Vol. II p. 41. The database contains information entered by a scrapyard after it purchases a catalytic converter, including a copy of the identification information provided

to the scrapyard by the seller. Sergeant Hertweck's search produced records showing that Payne had sold approximately 107 catalytic converters and had made "close to \$21,000[.00]" selling them. Tr. Vol. II p. 42.

[4] At some point, police placed a GPS tracker on Payne's vehicle. Around 1:00 a.m. on December 29, 2020, police received an alert that Payne's vehicle was moving. Police set up a perimeter and followed Payne's vehicle to a location on Lynch Road where it parked for approximately "[f]orty, forty-five minutes." Tr. Vol. II p. 116. The location was in a commercial area near Wow. After Payne's vehicle left the area, it circled back to the same location where it had originally parked. When Payne's vehicle returned, it stayed at the location for another "forty-five minutes to an hour." Tr. Vol. II p. 75. At some point, police observed an individual, who was later identified as Payne, exit the vehicle and walk towards Wow. Once Payne returned to his vehicle, the police followed him to a barbeque restaurant where Payne got out of his vehicle and looked underneath a "work van" that had been parked in the lot. Tr. Vol. II p. 78.

[5] After Payne left the barbeque restaurant, police initiated a traffic stop of his vehicle after observing him change lanes without signaling. During a subsequent search of Payne's vehicle, police recovered three catalytic converters from a plastic bin in the back of the vehicle, blades for a Sawzall cutting saw, a battery charger for tools, and a headlamp. The officers took the catalytic converters back to Wow, where they matched the converters to the work trucks from which they had been removed.

[6] On January 4, 2021, Payne was charged with Level 6 felony theft and was alleged to be a habitual offender. After a jury found Payne guilty of the theft charge, Payne admitted to being a habitual offender. The trial court sentenced Payne to an aggregate four-year sentence and ordered him to pay \$1845.00 in restitution to Wow.

Discussion and Decision

[7] Payne contends that the evidence is insufficient to sustain his conviction for Level 6 felony theft and that the trial court abused its discretion in ordering him to pay restitution.

I. Sufficiency of the Evidence

[8] When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146–47 (Ind. 2007) (cleaned up). Stated differently, in reviewing the sufficiency of the evidence, “we consider only the

evidence and reasonable inferences most favorable to the convictions, neither reweighing evidence nor reassessing witness credibility” and “affirm the judgment unless no reasonable factfinder could find the defendant guilty.”

Griffith v. State, 59 N.E.3d 947, 958 (Ind. 2016).

[9] A person commits Class A misdemeanor theft if they “knowingly or intentionally exert[] unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use.” Ind. Code § 35-43-4-2(a). The offense is a Level 6 felony if “the value of the property is at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000).” Ind. Code 35-43-4-2(a)(1)(A).

[10] Payne concedes that “the State presented sufficient evidence to support a conviction for theft as a Class A misdemeanor.” Appellant’s Br. p. 10. He argues, however, that the State failed to “present sufficient evidence to show [that] the value of the stolen property was at least \$750[.00].” Appellant’s Br. p. 11. Payne asserts that “[a]t best, the State proved that the [catalytic] converters combined were worth between \$300[.00] and \$2,400[.00].” Appellant’s Br. p. 11. Thus, Payne claims that his “conviction for Level 6 felony theft should be reduced to a Class A misdemeanor, and his habitual offender enhancement should be vacated.” Appellant’s Br. p. 11. We disagree.

[11] The State’s evidence establishes that the value of a catalytic converter “could be anywhere from ... \$100, \$200, all the way up to ... \$800, \$900, depending on the size of the catalytic converter and how much precious metal is inside” and

that “the larger the catalytic converter the more money its worth[.]” Tr. Vol. II p. 69. The State’s evidence also establishes that larger vehicles have larger catalytic converters and that large work trucks would have larger catalytic converters than small passenger vehicles. The jury also viewed evidence depicting the large size of both the work trucks from which the catalytic converters had been taken and the catalytic converters themselves. Given the evidence establishing that large catalytic converters had a higher value coupled with evidence depicting the large size of the catalytic converters at issue, the jury reasonably inferred that the collective value of the catalytic converters was more than \$750.00. *See Purvis v. State*, 87 N.E.3d 1119, 1125 (Ind. Ct. App. 2017) (providing that the jury could reasonably infer that the stolen property was worth more than \$750.00 given the retail value of the property in question). Payne’s challenge to the sufficiency of the evidence effectively amounts to a request for this court to reweigh the evidence, which we will not do. *See Griffith*, 59 N.E.3d at 958.

II. The Restitution Order

[12] “An order of restitution is a matter within the trial court’s sound discretion and will only be reversed upon a showing of abuse of discretion.” *Archer v. State*, 81 N.E.3d 212, 215 (Ind. 2017).

An abuse of discretion occurs where the trial court’s decision is clearly against the logic and effect of the facts and circumstances before it. In determining whether the trial court abused its discretion, we will not reweigh the evidence. We will affirm the trial court’s decision if there is any evidence supporting it.

Evidence supporting a restitution order is sufficient if it affords a reasonable basis for estimating loss and does not subject the trier of fact to mere speculation or conjecture.

Flowers v. State, 154 N.E.3d 854, 871 (Ind. Ct. App. 2020) (internal citations and quotations omitted). “The purpose behind an order of restitution is to impress upon the criminal defendant the magnitude of the loss he has caused and to defray costs to the victim caused by the offense.” *Carswell v. State*, 721 N.E.2d 1255, 1259 (Ind. Ct. App. 1999).

[13] In arguing that the trial court abused its discretion in ordering him to pay \$1845.00 in restitution to Wow, Payne asserts that the State had “failed to present any evidence regarding the actual loss the company sustained as a result of the accident.” Appellant’s Br. p. 12. However, review of the record reveals that Wow submitted a restitution claim in the amount of \$1845.00 to the trial court, which detailed Wow’s losses.

[14] Wow’s restitution claim was submitted by the manager of legal compliance in the corporate legal department of Wow and contained purchase orders detailing costs of repair for each of the three trucks from which Payne had taken the catalytic converters. The purchase orders included the name and address of the vendor performing the repairs and showed that the cost of materials necessary to complete the repairs had totaled \$465.00 for each truck. The documentation also indicated that Wow had incurred additional labor costs associated with the repairs totaling \$450.00. The documentation submitted by Wow demonstrates that the total cost of the repairs was \$1845.00, the exact amount of restitution

ordered by the trial court. The evidence provided “a reasonable basis for estimating loss and [did] not subject the trier of fact to mere speculation or conjecture.” *Flowers*, 154 N.E.3d at 871. The trial court, therefore, did not abuse its discretion in ordering Payne to pay \$1845.00 in restitution to Wow.

[15] The judgment of the trial court is affirmed.¹

Altice, C.J., and Felix, J., concur.

ATTORNEY FOR APPELLANT

Cara Schaefer Wieneke
Wieneke Law Office, LLC
Brooklyn, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Kathy J. Bradley
Deputy Attorney General
Indianapolis, Indiana

¹ In Footnote 2 of Payne’s Appellant’s Brief, Payne concedes that the two-year executed sentence imposed for his status as a habitual offender is contrary to law. Indiana Code section 35-50-2-8(i)(2) provides that “[t]he court shall sentence a person found to be a habitual offender to an additional fixed term that is between ... three (3) years and six (6) years, for a person convicted of a Level 5 or Level 6 felony.” We therefore instruct the trial court to amend its sentencing order to reflect a one-year sentence for Payne’s Level 6 felony conviction enhanced by three years by virtue of his status as a habitual offender, for an aggregate four-year sentence, in compliance with the statutory requirements set forth in Indiana Code section 35-50-2-8(i)(2).