

Case Summary

Alexander Pruitt appeals his conviction for attempted theft, a Class D felony.¹ He argues that the evidence is insufficient to sustain his conviction. Because we find that his conduct constituted a substantial step toward the commission of the crime of theft, we affirm his conviction.

Facts and Procedural History

The facts most favorable to the verdict are as follows. Harry Hults is the owner of an automobile repair shop next to his residence. On April 18, 2005, at approximately 11:30 p.m., his wife Kelly was outside their house when she heard a loud noise. She looked over the fence separating their residence from the repair shop and observed a man standing by a blue Chevy pickup truck in the parking lot of the shop. Kelly then told Harry about the man and called 911 to report the presence of an intruder. Harry walked over to the automobile shop to investigate and observed two males, one, later identified as Tommy Watkins, standing beside the blue truck, and the other, later identified as Pruitt, lying under a Buick LeSabre with tools. Pruitt was removing the back bumper, which was halfway off when Harry arrived. Pruitt had also removed bumper filler from the car.

Neither Harry nor the owner of the Buick, Prentice Johnson, had given Pruitt permission to remove the bumper. Harry informed Watkins and Pruitt that the police were on their way. Pruitt gathered his tools, placed them in the back of the truck, and he and Watkins left. They were subsequently pulled over by police and apprehended. A

¹ Ind. Code § 35-43-4-2; Ind. Code § 35-41-5-1(a).

piece of the Buick taillight was found in the back of the pick-up truck. Pruitt was arrested and charged with Class D felony attempted theft. Following a bench trial, he was convicted as charged. The trial court sentenced him to 545 days with credit for 144 days served and with 401 days suspended.

Discussion and Decision

On appeal, Pruitt contends that the evidence is insufficient to sustain his conviction for attempted theft. When reviewing a challenge to the sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). We must consider only the probative evidence and reasonable inferences supporting the verdict. *Id.* We must affirm if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. *Id.*

To convict Pruitt of Class D felony attempted theft, the State must have proved that he knowingly or intentionally engaged in conduct that constitutes a substantial step toward exerting 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; Ind. Code § 35-41-5-1(a). Pruitt argues:

The evidence is insufficient because Pruitt had not taken a substantial step to taking the bumper from the car. The bumper was only half off when Hults confronted Pruitt and Watkins. Their efforts did not proceed far enough for them to have taken a substantial step to removing and taking away the car's bumper.

Appellant's Br. p. 7. We disagree.

This Court encountered a set of facts similar to those in the instant case in *Estep v.*

State, 716 N.E.2d 986 (Ind. Ct. App. 1999). In *Estep*, the defendant was convicted of attempted theft after he was found by a deputy police officer standing next to a car on a jack with a tire iron attached to one of the lug nuts. We held that this conduct was sufficient to constitute a substantial step toward theft and therefore affirmed the defendant's conviction. *Id.* at 987.

Just as the conduct of the defendant in *Estep* was sufficient to constitute a substantial step toward the commission of theft, so was Pruitt's conduct. Pruitt was in the parking lot of Harry's shop without permission from Harry late at night, was underneath a vehicle with tools when Harry discovered him, the Buick's bumper was halfway removed, and Pruitt had removed the bumper filler. Moreover, Pruitt and Watkins left the shop at Harry's mention of the police. Removal of half of the bumper is conduct that is sufficient to constitute a substantial step toward the theft of the bumper. Therefore, we affirm Pruitt's attempted theft conviction.

Affirmed.

BAKER, J., and CRONE, J., concur.