

STATEMENT OF THE CASE

Appellant-Defendant, David Sanders (Sanders), appeals his conviction for theft, a Class D felony, Ind. Code § 35-43-4-2, and his adjudication as an habitual offender, I.C. § 35-50-2-8.

We affirm.

ISSUE

Sanders raises one issue for our review, which we restate as follows: Whether the State presented sufficient evidence beyond a reasonable doubt that Sanders was guilty of theft.

FACTS AND PROCEDURAL HISTORY

The facts most favorable to the judgment are as follows. In the early morning of August 26, 2010, James Anderson (Anderson) was informed that someone had taken his moped. Anderson had chained up his blue and white Honda Metropolitan moped with a construction cable and padlock the night before. Upon confirming that the moped was no longer outside and noting that the construction cable was cut and lying on the ground, Anderson called 911 to report the moped stolen. Meanwhile, Officer Ronald Clayton (Officer Clayton) of the Indianapolis Metropolitan Police Department was conducting a routine patrol in Anderson's neighborhood. Around 5:20 a.m., Officer Clayton turned onto St. Clair and was surprised by Sanders, who was in the middle of the street and pushing a dolly with a blue and white moped on top. Officer Clayton avoided hitting Sanders, then stopped to see if Sanders was alright, noting that the moped was damaged.

Officer Clayton looked at the moped and saw that its kickstand was down and no key was in the ignition. Officer Clayton knew from his training and experience that on that particular type of moped, once the kickstand is down, the rear wheel lock is engaged, rendering the moped immobile. Sanders told Officer Clayton that he bought the moped for \$200 and that the dolly was from his the washer and dryer factory where he worked.

Officer Clayton became suspicious and after obtaining Sanders name, ran a check and learned that Sanders had an open warrant. Officer Clayton arrested Sanders on the open warrant and conducted a search of Sanders' clothes and backpack with Sanders' permission. The backpack contained a pair of bolt cutters and two screwdrivers. Sanders explained that these tools were used as a part of his work with washers and dryers. Officer Clayton asked Sanders if he had a key, proof of insurance, or a bill of sale for the moped. Sanders denied that he had a bill of sale, but replied that the key was in his front pocket, but no key was found by Officer Clayton.

Anderson arrived at the scene. Anderson explained that he had called 911 regarding the moped and confirmed he owned the moped by providing his identification and the key. Anderson opened the moped's seat compartment to show Officer Clayton the moped's registration. Anderson noted that the moped's rear was damaged, in contrast to its condition the night before. Officer Clayton asked Anderson to return the dolly back to a nearby factory.

On August 30, 2010, the State charged Sanders with Count I, burglary, a Class C felony, Ind. Code § 35-42-5-1; and Count II, theft, a Class D felony, I.C. § 35-43-4-2.

On October 14, 2010, the State charged Sanders with being an habitual offender. On March 11, 2011, Sanders' bench trial began. Following the close of the State's case in chief, Sanders was granted judgment on the evidence on Count I, the burglary charge. On March 22, 2011, the trial court found Sanders guilty on Count II, theft, and thereafter Sanders pled guilty to Count III and admitted being an habitual offender. On April 6, 2011, the trial court held a sentencing hearing and sentenced Sanders to three years executed on the theft charge, enhanced by an additional four years for his adjudication as an habitual offender.

Sanders now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Sanders argues that there was insufficient evidence beyond a reasonable doubt to support his conviction for theft. When reviewing sufficiency of the evidence claims, we do not reweigh the evidence or judge the credibility of the witness. *Perez v. State*, 872 N.E.2d 208, 212-13 (Ind. Ct. App. 2007), *trans. denied*. Only that evidence which is most favorable to the verdict as well as reasonable inferences drawn therefrom will be considered. *Id.* at 213. We will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. *Id.* We will reverse only if reasonable persons could not form inferences for each material element of the crime. *Id.*

In order to convict Sanders of theft, the State was required to prove beyond a reasonable doubt that Sanders knowingly or intentionally exerted unauthorized control

over Anderson's moped, with the intent to deprive Anderson of the moped's value or use. I.C. § 35-43-4-2(a). Sanders's sole contention on appeal is that "the State failed to provide any direct physical evidence that [Sanders] knowingly exerted unauthorized control over the moped or that he had actually possessed the moped by either finger print or DNA evidence," and thus the trial court improperly inferred Sanders knowing exertion of unauthorized control over the moped. (Appellant's Br. p. 7).

Sanders bases his argument on the supreme court's decision in *Fortson v. State*, which concluded that "the mere unexplained possession of recently stolen property standing alone does not automatically support a conviction for theft." *Fortson v. State*, 919 N.E.2d 1136, 1143 (Ind. 2010). In *Fortson*, the supreme court required that "all the surrounding evidence about the possession" be assessed "to determine whether any rational juror could find the defendant guilty beyond a reasonable doubt." *Id.*

In light of the *Fortson* requirements, Sanders argues that the trial court's inference that Sanders knowingly exerted control over Anderson's moped was improper. First, Sanders contends that Officer Clayton's observation that Sanders possessed the moped is uncorroborated by physical evidence, whether through fingerprints, DNA evidence, or even the dolly, since it was not impounded. However, this argument contests the weight and credibility of Officer Clayton's testimony. This is an invitation to reweigh the evidence and determine witness credibility, which we may not do on appeal. *See Perez*, 872 N.E.2d at 212-13. Second, Sanders argues that no presumption should arise that Sanders took the moped from Anderson's residence since the burglary charge against

Sanders was dismissed. Next, Sanders points to his cooperative behavior during Officer Clayton's investigation, arguing that such behavior evinces the lack of a guilty conscience. Finally, Sanders contends that his statements regarding the key and bill of sale should be viewed as "sarcasm" given that Officer Clayton's pat-down of Sanders already revealed that Sanders was not in possession of either. (Appellant's Br. p. 11).

Applying the *Fortson* elements to Sanders' case, we instead conclude that the surrounding evidence about Sanders' possession of the moped justifies the trial court's inference. Officer Clayton saw Sanders pushing a dolly, carrying a moped with its kickstand down at 5:20 a.m., and testified that based on his experience, he knew that the moped was immobilized. Thereafter, Officer Clayton learned that Sanders had an open warrant and arrested him. Bolt cutters and two screwdrivers were found in a search of Sanders' backpack. When questioned, Sanders said that he had a key to the moped, but no key was found during Officer Clayton's search.

After Anderson's arrival, Anderson put his key in the moped's ignition and then unlocked its seat compartment to produce paperwork showing his ownership. Anderson testified that he had never met Sanders, did not give anyone permission to use the moped, and the moped's rear was not damaged when he last saw it. Finally, Anderson's address was shown to be about five blocks away from where Sanders was stopped by Officer Clayton. Based on the surrounding evidence of Sanders' possession of the moped, we conclude that trial court's inference that Sanders exerted unauthorized control over

Anderson's property was reasonable. As a result, Sanders has not shown the existence of insufficient evidence to disturb his conviction for theft.

CONCLUSION

We conclude that the State presented evidence sufficient to convict Sanders for theft beyond a reasonable doubt.

Affirmed.

FRIEDLANDER, J. and MATHIAS, J. concur