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**IN THE  
COURT OF APPEALS OF INDIANA**

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KEITH HARRIS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A05-0605-CR-278

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Mark Stoner, Judge  
Cause No. 49F09-0412-FD-219765

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**December 28, 2006**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

## **Case Summary**

Keith Harris appeals his conviction of auto theft, a class D felony. We affirm.

## **Issue**

We restate the issue as whether the evidence was sufficient to convict Harris of auto theft.

## **Facts and Procedural History**

The facts most favorable to the verdict are as follows. On December 4, 2004, at about 8:00 p.m., Kevin Ruble parked his black 1984 BMW in his driveway in Indianapolis. About an hour and a half later, he noticed that his car was no longer there and reported the vehicle stolen. Officer Keith Minch came to Ruble's house and took his statement.

Minutes later, Sergeant Steven Cheh was waiting at a traffic signal when he noticed a vehicle approach the intersection and then stall. Concerned that the vehicle would block the intersection, Cheh continued his observation, noting that the driver was the sole occupant of the vehicle. At one point, as the vehicle passed him, Sergeant Cheh looked the driver in the eye and noticed the man mouth the words, "Oh Shit." Tr. at 35. As the vehicle drove away, Sergeant Cheh realized that the car was a black BMW and recalled the earlier report of a stolen vehicle of the same model. Sergeant Cheh turned on his lights and closely pursued the vehicle. Turning a corner just seconds behind, Sergeant Cheh came upon the BMW, which had stopped in the middle of the road. Sergeant Cheh, seeing that the occupant of the car was attempting to climb out the vehicle's passenger door, drew his weapon and ordered the man to the ground. The man, later identified as Harris, complied and was arrested. The officer noted that no one else was nearby who matched the description of the man he had seen

driving the vehicle. Thus, at around 10:00 p.m., Ruble's BMW was recovered just three miles away from his home.

On April 12, 2006, a jury found Harris guilty of auto theft, a class D felony. Harris now appeals.

### **Discussion and Decision**

Harris asserts that the evidence was insufficient to convict him of auto theft. Our standard for review is well established:

In reviewing a claim of insufficient evidence, we will affirm a conviction unless, considering only the evidence and reasonable inferences favorable to the judgment, and neither reweighing the evidence nor assessing the credibility of the witnesses, we conclude that no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.

*Winn v. State*, 748 N.E.2d 352, 357 (Ind. 2001). To obtain a conviction for auto theft, the State had to prove that Harris knowingly or intentionally exerted unauthorized control over Ruble's vehicle, with intent to deprive him of the vehicle's value or use. Ind. Code § 35-43-4-2.5. "A theft conviction may be sustained by circumstantial evidence." *J.B. v. State*, 748 N.E.2d 914, 916 (Ind. Ct. App. 2001).

Harris contends that the State failed to prove that he exerted unauthorized control over the car. We disagree. Sergeant Cheh identified Harris as the man he pursued, and later arrested, for driving the stolen BMW. Harris argues that the poor lighting conditions and his attempt to exit via the passenger door proves only that he might have been a passenger in the car. Yet, as the trier of fact, the jury was free to believe the testimony of Sergeant Cheh that Harris was the sole occupant and driver of the car. *See Moreland v. State*, 701 N.E.2d 288,

291 (Ind. Ct. App. 1998). We may not reassess Sergeant Cheh’s credibility or reweigh his testimony.

Harris also contends that the evidence establishes only that he was an unknowing possessor of stolen goods. We find no merit to this claim, as Harris was seen driving the BMW less than two hours after Ruble last saw his car. *See Gibson v. State*, 533 N.E.2d 187, 188 (Ind. Ct. App. 1989) (“The rule is that the mere unexplained, exclusive possession of recently stolen property will sustain a conviction of theft[.]”). Finally, Harris’s attempt to flee upon realizing that an officer was in pursuit is additional evidence that he exerted unauthorized control over the vehicle. *See Maxey v. State*, 730 N.E.2d 158, 162 (Ind. 2000) (stating that “evidence of flight is relevant as circumstantial evidence of ... consciousness of guilt.”). As such, we conclude that the evidence was sufficient to convict Harris of auto theft.

Affirmed.

SULLIVAN, J., and SHARPNACK, J., concur.