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**IN THE
COURT OF APPEALS OF INDIANA**

JOE T. BRYANT,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A05-0704-CR-233

APPEAL FROM THE MARION SUPERIOR COURT

The Honorable Patricia J. Gifford, Judge

The Honorable Steven Rubick, Commissioner

Cause No. 49G04-0604-FC-62556

November 16, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Joe T. Bryant (“Bryant”) appeals his conviction of Auto Theft, as a Class C felony.¹

We affirm.

Issue

On appeal, Bryant raises the sole issue of whether there was sufficient evidence to support his conviction of Auto Theft.

Facts and Procedural History

The following are the facts most favorable to the judgment. At approximately 7:00 a.m. on April 4, 2006, Linda Atkinson (“Atkinson”) parked her 1991 Buick on Walnut Street in Indianapolis. At approximately 5:00 p.m., she returned to find that her car was gone. She reported to the police that her Buick had been stolen.

That night, Indianapolis Metropolitan Police Department Officer Tanya Eastwood (“Officer Eastwood”) was patrolling a different area of the city when she drove past the Buick and determined that it had been reported as stolen. Bryant was in the driver’s seat. Officer Eastwood stopped her vehicle and backed up. Bryant quickly exited the Buick and started to cross the street. Officer Eastwood arrested him.

The State charged Bryant with Auto Theft, as a Class D felony, and alleged that he had previously been convicted of Auto Theft. A jury found him guilty of having committed Auto Theft, as a Class D felony. In a separate phase, the trial court then found that Bryant

¹ Auto Theft is a Class D felony. However, the offense is a Class C felony if the person has a prior conviction of Auto Theft. Ind. Code § 35-43-4-2.5.

had previously been convicted of the same offense.² The trial court sentenced Bryant to a seven-year term of imprisonment.

Bryant now appeals his conviction.

Discussion and Decision

I. Standard of Review

Bryant asserts that there was not sufficient evidence to support his conviction of Auto Theft. “We will not reweigh the evidence or assess the credibility of witnesses. Rather, we look to the evidence and reasonable inferences drawn therefrom that support the verdict and will affirm the conviction if there is probative evidence from which a reasonable jury could have found the defendant guilty beyond a reasonable doubt.” Lee v. State, 735 N.E.2d 1169, 1173 (Ind. 2000) (citation omitted). Where a verdict is based solely on circumstantial evidence, we “need not find that the evidence overcomes every reasonable hypothesis of innocence but only that an inference may be drawn from the circumstantial evidence that supports the jury’s verdict.” Craig v. State, 730 N.E.2d 1262, 1266 (Ind. 2000) (citations omitted).

II. Analysis

A person who knowingly or intentionally exerts unauthorized control over another’s car with the intent to deprive the owner of its value or use commits Auto Theft. Ind. Code § 35-43-4-2.5(b)(1). Under that Chapter, “exert control over property” means “to obtain, take, carry, drive, lead away, conceal, abandon, sell, convey, encumber, or possess property, or to

² Bryant waived his right to a jury for the second phase of the trial. He does not challenge the trial court’s finding that he had previously committed Auto Theft. Regardless, there was documentary evidence of prior

secure, transfer, or extend a right to property.” Ind. Code § 35-43-4-1(a) (emphasis added).

Atkinson testified that she did not know Bryant and did not authorize him to exert control over her car. Officer Eastwood testified as follows. She saw Bryant in the driver’s seat of the Buick. He was the only person in the vehicle. As she backed up, Bryant quickly exited the Buick and started to cross the street. Officer Eastwood turned on her car’s emergency lights, exited her vehicle, drew her gun, and ordered Bryant to put his hands on her car. Bryant continued to walk away from her, asking “Why, why, why?” Transcript at 30.

After arresting Bryant, Officer Eastwood observed two screwdrivers in the front seat and that part of the Buick’s steering column had been removed. She found game tokens from Chuck E. Cheese in Bryant’s pocket and on the front seat. Bryant denied having been in the driver’s seat.

In support of his argument, Bryant cites Irvin v. State. In that case, Irvin was convicted of criminal conversion. Irvin v. State, 501 N.E.2d 1139, 1140 (Ind. Ct. App. 1986). Irvin was a passenger in a stolen car. There was no evidence that she drove the vehicle or that she controlled the driver. Id. at 1142. This Court reversed the conviction, holding that evidence that a person was a passenger in a stolen vehicle did not support a finding that the person exerted unauthorized control of the car. Id. at 1140. However, Irvin is clearly distinguishable, as Bryant was observed in the driver’s seat. Furthermore, Officer Eastwood observed no one else in the Buick.

The unexplained possession of recently stolen property supports an inference of guilt

of the theft of that property. Miller v. State, 563 N.E.2d 578, 581 (Ind. 1990); see also Gibson v. State, 533 N.E.2d 187, 188 (Ind. Ct. App. 1989). Officer Eastwood observed Bryant in the driver's seat of the Buick on the same day the owner reported that it had been stolen. Thus, the evidence supporting the judgment establishes that Bryant had unauthorized possession of the vehicle the same day it was stolen. We therefore conclude that the evidence was sufficient to support Bryant's conviction of Auto Theft.

Affirmed.

BAKER, C.J., and VAIDIK, J., concur.