

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

William J. Burns,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 9, 2022

Court of Appeals Case No.
22A-CR-787

Appeal from the St. Joseph
Superior Court

The Honorable John M.
Marnocha, Judge

Trial Court Cause No.
71D02-2109-F6-882

Brown, Judge.

[1] William J. Burns appeals his conviction for criminal conversion as a class A misdemeanor and asserts the evidence is insufficient to sustain his conviction. We affirm.

Facts and Procedural History

[2] In August 2021, Breanna Thompson lived in Galesburg, Illinois, which is about “four and a half hours away” from South Bend, Indiana, in St. Joseph County, and knew Burns for about seven years. Transcript Volume II at 6. Burns had previously borrowed Thompson’s car “[l]ike to the gas station and back” and that was usually in Galesburg. *Id.* at 7. Sometime prior to August 30, 2021, Burns asked Thompson to take him to Indiana, and she “told him no because [she] had to work” and had responsibilities. *Id.* at 11.

[3] On August 30, 2021, Thompson talked with Burns at her house at about 11:00 a.m. or 12:00 p.m. Burns asked to borrow her car to “go get parts for his truck because his truck was broke[n] down.” *Id.* at 8. Thompson agreed to let him take her car to the junkyard in Galesburg. She told him that “it was . . . okay” that he had her car “as long as he brought [her] cigarettes and Taco Bell ‘cause [she was] hungry.” *Id.* at 12. Burns said he would “bring it back” and took her car “around 11:00 or 12:00 that day.” *Id.* at 9, 13. Thompson expected him to have her car for an hour.

[4] Thompson called Burns within an hour, but he did not answer his phone. Thompson “called . . . and left messages” and “tried calling on Facebook.” *Id.*

at 9. Thompson told him: “You’ve got pretty much, like, 24 hours to return my car. If you don’t return my car, I’m calling the police.” *Id.*

[5] Thompson never received an answer from Burns and eventually called the police in Galesburg. The police told her that her car had to be missing for twenty-four hours before she could report it stolen. Thompson called the police the next day and reported her car stolen because she had to go to work as a CNA.

[6] On September 1, 2021, Mishawaka Police Sergeant James Bartlett received a notification regarding a vehicle through a license plate reader program. Sergeant Bartlett checked the vehicle through IDAX and NCIC and received a “stolen-vehicle hit on that vehicle.” *Id.* at 17. He found the vehicle at a gas station in St. Joseph County, Indiana, initiated a traffic stop, and had Burns exit the vehicle. A police officer called Thompson and informed her that her car had been found in Indiana.

[7] On September 28, 2021, the State charged Burns with auto theft as a level 6 felony. On February 16, 2022, the court held a bench trial. The State presented the testimony of Thompson and Sergeant Bartlett. During cross-examination, Thompson indicated that Burns had previously borrowed her car overnight to go fishing. She indicated that Burns left his vehicle in her possession but it was “towed because it’s not supposed to be there” because she lived in “apartment buildings, and we have parking stickers on each car.” *Id.* at 14.

[8] After the State rested, Burns testified that Thompson allowed him to use her car “whether it be to go fishing or go to the bars.” *Id.* at 28. He stated that Thompson allowed him to use her car to “take care of the business” that he had, they were “texting throughout the whole afternoon” while he had her car, his phone died, and “[i]rresponsibly, [he] wasn’t able to get it back to a charger.” *Id.* at 29. He stated that he did not “get a sense of any urgency to return” during the last time he talked with Thompson. *Id.* He also stated that he did not intend to deprive her of her car. On cross-examination, Burns stated that he borrowed the car to go to the junkyard, that his truck kept dying, and that he did not tell the officer that his phone had died. The court found Burns guilty of the lesser included offense of criminal conversion as a class A misdemeanor and imposed an executed sentence of twelve months.

Discussion

[9] Burns argues the evidence failed to prove that he knowingly exerted unauthorized control over Thompson’s vehicle. He contends there was a “clear history of borrowing each other[']s cars for various amounts of time” and he was “[a]t most . . . rudely late in returning the car.” Appellant’s Brief at 8. The State asserts the surrounding circumstances established Burns’s knowledge that his actions were unauthorized.

[10] When reviewing the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We do not assess witness credibility or reweigh the evidence. *Id.* We consider conflicting

evidence most favorably to the trial court's ruling. *Id.* We will affirm the conviction unless no reasonable factfinder could find the elements of the crime proven beyond a reasonable doubt. *Id.*

[11] Ind. Code § 35-43-4-3 provides “[a] person who knowingly or intentionally exerts unauthorized control over property of another person commits criminal conversion, a Class A misdemeanor.” “[A] person’s control over property of another person is ‘unauthorized’ if it is exerted . . . without the other person’s consent” or “in a manner or to an extent other than that to which the other person has consented.” Ind. Code § 35-43-4-1. A person engages in conduct “intentionally” if, when he engages in the conduct, it is his conscious objective to do so. Ind. Code § 35-41-2-2(a). A person engages in conduct “knowingly” if, when he engages in the conduct, he is aware of a high probability that he is doing so. Ind. Code § 35-41-2-2(b).

[12] The record reveals that, when asked what Burns said that day, Thompson answered: “He asked to borrow my car to go get parts for his truck because his truck was broke[n] down. We have a local junkyard there.” Transcript Volume II at 8. During direct examination of Thompson, the following exchange occurred:

Q. . . . Did you agree to let him take your car?

A. To the junkyard, yes, in Galesburg, Illinois.

Q. Did you tell him that?

A. Yes.

Id. at 9. She testified that she never gave Burns permission to go to Indiana. She told him that “it was . . . okay” that he had her car “as long as he brought [her] cigarettes and Taco Bell ‘cause [she was] hungry.” *Id.* at 12. Sergeant Bartlett found Burns the following day with Thompson’s vehicle more than four hours away from Thompson’s residence.

[13] Based upon the record, we conclude that evidence of probative value exists from which a reasonable trier of fact could find Burns guilty beyond a reasonable doubt of criminal conversion as a class A misdemeanor.

[14] For the foregoing reasons, we affirm Burns’s conviction.

[15] Affirmed.

Altice, J., and Tavitas, J., concur.