MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Katterine Peebles,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 23, 2022

Court of Appeals Case No. 21A-CR-2834

Appeal from the St. Joseph Superior Court

The Honorable Jeffrey L. Sanford, Judge

Trial Court Cause No. 71D03-2101-F6-27

Altice, Judge.

Case Summary

[1] Katterine Peebles appeals her conviction for theft, a Class A misdemeanor,[1] challenging the sufficiency of the evidence. Peebles asserts that her conviction must be set aside because the State failed to prove that she intended to deprive the victim of the use of his property.

[2] We affirm.

Facts and Procedural History

[3] On January 3, 2021, Michael Small drove his truck to the South Bend Knights Inn (the Hotel) and picked up Peebles, a longtime friend. Small drove Peebles to his Mishawaka residence, where they talked and ate dinner together. Peebles stayed the night, and Small planned to take her back to the Hotel the next day.

[4] At approximately 3:00 p.m. on January 4, 2021, Small loaded his truck with baskets of clothing that he intended to take to a nearby laundromat. Inside

[1] Although the jury found Peebles guilty of auto theft, a Level 6 felony as charged under Ind. Code § 35-43-4-2(a)(1)(B)(ii), the trial court entered a judgment of conviction for theft as a class A misdemeanor at sentencing, pursuant to I.C. § 35-43-4-2(a).

Small's truck was a black and red "Milwaukee" brand bag that contained his mechanics tools. *Transcript Vol. II* at 49.

[5] As Small was preparing to leave, Peebles took the spare key to the truck that Small kept on a hook near his front door. Peebles then got into the truck and started to drive away without Small's permission. While pulling away, Peebles told Small that she was going to make him "suffer" because he had "threatened to tie [her] up" and put her "in a closet" the previous night. *Id.* at 60. Small called Peebles's cellphone and asked her to return his truck, but she refused.

[6] Peebles drove Small's truck to the Hotel, removed the clothes and bag of tools from the truck, and carried them to her hotel room. Later that afternoon, Small called Lauren Byrnes, the mother of his son. Small explained that he could not pick up their son as planned because Peebles took his truck. Byrnes then contacted Peebles, and they began to discuss plans for Peebles to return the truck. The two exchanged texts and phone calls about whether Peebles would be willing to allow Byrnes to pick up the truck and retrieve Small's property. Peebles eventually agreed to meet with Byrnes, but Peebles was afraid that Small or the police would become involved.

[7] On January 6, 2021, Byrnes drove to a restaurant/gas station near the Hotel and met Peebles, who drove up in Small's truck. Peebles drove Byrnes to the Hotel where they retrieved the bags of laundry from Peebles's room. The two carried the items to the truck, and Peebles handed Byrnes the keys.

[8] Byrnes called Small and parked the truck at a business next to the Hotel. While Small was on his way to meet Byrnes, he called the police to report that his truck had been stolen. Byrnes returned the truck to Small when he arrived. Small immediately realized that his bag of tools was still missing from his truck. Several police officers responded to Small's call, met with him, and subsequently went to Peebles's hotel room. They found the bag of tools and returned them to Small.

[9] On January 7, 2021, the State charged Peebles with auto theft, a Level 6 felony. Following a jury trial on October 8, 2021, Peebles was found guilty as charged. At the sentencing hearing on December 14, 2021, the trial court announced that it was going to treat Peebles's offense "as a misdemeanor." *Id.* at 157. Thus, it entered a judgment of conviction for theft as a class A misdemeanor and sentenced Peebles to four days of incarceration with two days of credit time.

[10] Peebles now appeals.

Discussion and Decision

[11] When challenging the sufficiency of evidence to support a conviction, our standard of review is well settled. This court will consider the evidence and reasonable inferences most favorable to the judgment, and we will not reweigh the evidence or determine the credibility of the witnesses. *Hurst v. State*, 890 N.E.2d 88, 96 (Ind. Ct. App. 2008), *trans. denied*. We are bound to respect the jury's exclusive province to weigh conflicting evidence, and we will affirm the conviction if the probative evidence and reasonable inferences drawn therefrom

could have allowed the jury to find the defendant guilty beyond a reasonable doubt. *McHenry v. State,* 820 N.E2d 124 (Ind. 2005); *Tobar v. State,* 740 N.E.2d 109 (Ind. 2000).

[12] In this case, the State alleged that Peeples committed auto theft by "knowingly" exerting unauthorized control over Small's truck with the intent to deprive Small of any part of its value or use pursuant to I.C. § 35-43-4-2(a)(1)(B)(ii). *Appellant's Appendix Vol. II* at 6. 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). Intent is a mental state, and knowledge and intent may be inferred from the facts and circumstances of each case. *Lykins v. State,* 726 N.E.2d 1265, 1270 (Ind. Ct. App. 2000). To exert control over property means to "obtain, take, carry, drive, lead away, conceal, abandon, sell, convey, encumber, or possess property, or to secure, transfer, or extend a right to property." I.C. § 35-43-4-1(a). And a person's control over another's property is unauthorized if it is exerted "without the other person's consent." I.C. § 35-43-4-1(b)(1). Thus, to convict Peebles of auto theft, the State was required to prove that she knowingly obtained, took, or drove Small's truck with the intent to deprive him of any part of the truck's value or use. *See* I.C. § 35-43-4-2(a)(1); I.C. § 35-43-4-2(a)(1)(B)(ii).

[13] The evidence at trial established that Peebles took Small's keys without his permission, got into his truck, and drove away. Peebles told Small that she was going to make him "suffer," and she refused to return the truck when Small demanded its return. *Transcript Vol. II* at 49-50, 60, 104. Peebles parked the

truck at the Hotel, removed Small's personal property from the vehicle, and placed those items in her hotel room.

[14] Byrnes testified that "it was back and forth with [Peebles] whether she was going to allow [her] to get the truck and the belongings back." *Id.* at 71. Peebles did not return the truck until Byrnes convinced her to do so, and Peebles sought to prevent Small or law enforcement from becoming involved.

[15] Although Peebles claims that she took the truck solely for the purpose of driving back to the Hotel because Small had threatened her, thus not intending to deprive Small of the truck's use, it was for the jury to weigh her testimony with the contradictory testimony and evidence that was presented at trial. *See Alkhalidi v. State,* 753 N.E.2d 625, 627 (Ind. 2001). Moreover, Peebles's intent to "permanently" deprive Small of the use of his truck is not an element of theft. *See Bennett v. State,* 878 N.E.2d 836 (Ind. 2008).

[16] Viewed in the light most favorable to the judgment, the evidence presented at trial was more than sufficient to establish Peebles's intent to deprive Small of the value or use of his truck. *See, e.g., Prentice v. State,* 474 N.E.2d 496, 500 (Ind. 1985) (evidence supported theft conviction where the defendant was found driving the stolen vehicle several days after its theft without permission and attempted to flee police); *Bennett v. State*, 871 N.E.2d 316, 322 (Ind. Ct. App. 2007) (evidence established that the defendant intended to deprive the owner of the vehicle where he requested to borrow the car, was refused, and was later

found living in the vehicle after it was stolen), *trans. granted and opinion adopted,* 878 N.E.2d at 836.

[17] Judgment affirmed.

Vaidik J. and Crone, J., concur.