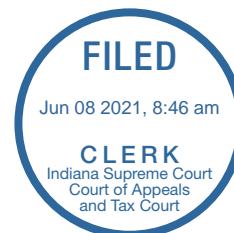


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

David Len Pace,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 8, 2021

Court of Appeals Case No.
21A-CR-92

Appeal from the St. Joseph
Superior Court

The Honorable Jeffrey L. Sanford,
Judge

Trial Court Cause No.
71D03-1912-F6-1398

Tavitas, Judge.

Case Summary

- [1] David Pace appeals his conviction for theft, a Class A misdemeanor, following a jury trial. Pace argues that insufficient evidence was introduced to sustain his conviction for the theft of Robert Peglow's bicycle. On the day the bicycle was discovered missing from outside Barnaby's restaurant in Mishawaka, Pace was captured on surveillance video, in possession of the bicycle in question, at a pawn shop in South Bend. Although Pace brought the bicycle to the pawn shop, Pace's companion, Cendrick Sanders, transacted the pawn of the bicycle. The evidence, including surveillance video depicting Pace bringing the bicycle to the pawn shop, is sufficient to sustain Pace's conviction, and we affirm.

Issue

- [2] Pace raises one issue, which we restate as whether the State presented sufficient evidence to sustain Pace's conviction for theft, a Class A misdemeanor.

Facts

- [3] On September 3, 2019, Peglow, a long time employee of Barnaby's restaurant in Mishawaka, parked and locked his bicycle, a specialized Devorage Model, against the wall outside the back of the restaurant when he arrived for his shift. Later that day, Peglow went outside and noticed that his bicycle was missing. Peglow reported the bicycle missing to police and gave the serial number and pictures of the specialized Devorage model bicycle to Detective Randy Wisler of the Mishawaka Police Department.

- [4] That same day, Detective Wisler located Peglow's bicycle at Worldwide Jewelry and Pawn ("Worldwide Pawn") in South Bend by searching the bicycle's serial number on Leads Online.¹ Detective Wisler was able to determine from the pawn shop records that Cedrick Sanders pawned the bicycle.
- [5] The surveillance video footage from that day revealed that Pace and Sanders walked into Worldwide Pawn together at 7:00 p.m. and that Pace wheeled the bicycle into the shop. The pawn shop store clerk testified that he recognized Pace because Pace frequented the store during that time period. During the transaction, Sanders transacted the pawn, which included filling out all of the paperwork, providing his thumb print, and presenting a valid identification, while Pace perused other items in the shop.
- [6] On December 17, 2019, the State charged Pace with theft, a Level 6 felony, and a jury trial was held on October 15, 2020. At trial, Pace testified and denied taking Peglow's bicycle and denied knowledge that it was stolen. Pace testified that he only went to the pawn shop to help Sanders negotiate a good price for a bicycle that Sanders claimed to own. Sanders did not testify at Pace's jury trial.

¹ Leads Online is a website on which police departments can cross-reference a pawn shop's merchandise against property reported as stolen.

[7] The jury found Pace guilty of the lesser included offense of theft, as a Class A misdemeanor. The trial court sentenced Pace to four days of incarceration, with two days of credit time. This appeal ensued.

Analysis

[8] Pace claims that insufficient evidence was presented to convict him of theft, a Class A misdemeanor, because the only evidence presented was the fact that he accompanied Sanders to the pawn shop, and Sanders pawned a stolen bicycle. Sufficiency of the evidence claims “warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility.” *Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020). We consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. *Id.* We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt. *Id.*

[9] The offense of theft, a Class A misdemeanor, is governed by Indiana Code Section 35-43-4-2(a), which provides, in pertinent part that “[a] person who knowingly or intentionally exerts unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use, commits theft, a Class A misdemeanor.” Pace argues that his mere presence at the pawn shop is insufficient to sustain his conviction. We note that our Supreme Court has held:

[T]he mere unexplained possession of recently stolen property standing alone does not automatically support a conviction for theft. Rather, such possession is to be considered along with the other evidence in a case, such as how recent or distant in time was the possession from the moment the item was stolen, and what are the circumstances of the possession (say, possessing right next door as opposed to many miles away). In essence, the fact of possession and all the surrounding evidence about the possession must be assessed to determine whether any rational juror could find the defendant guilty beyond a reasonable doubt.

Fortson v. State, 919 N.E.2d 1136, 1143 (Ind. 2010).

[10] Here, we have direct evidence of Pace’s possession of the bicycle, as depicted in the pawn shop’s surveillance video. The State is not required to present direct evidence to support each element of a crime, and convictions can rely partially or entirely on circumstantial evidence. *Perry v. State*, 78 N.E.3d 1, 8-9 (Ind. Ct. App. 2017). Circumstantial evidence does not have to overcome every reasonable hypothesis of innocence. *Id.* at 9. Circumstantial evidence is different from direct evidence in that direct evidence is evidence that if true proves a fact without inference. *Hampton v. State*, 961 N.E.2d 480, 489 (Ind. 2012). Whereas circumstantial evidence is evidence that if true proves a fact from which a further fact may be inferred. *Id.*

[11] In addition to the direct evidence of possession, we find that the State presented additional circumstantial evidence to the jury that tended to show that Pace’s role involved more than mere possession of Peglow’s bicycle. Pace was captured on surveillance video at Worldwide Pawn in South Bend, in possession of Peglow’s bicycle, without Peglow’s permission, on the same day that the bicycle went missing from the nearby Barnaby’s restaurant in

Mishawaka. Pace wheeled the stolen bicycle into a pawn shop in a nearby town on the same day as the theft. Based on the direct evidence of possession and the circumstantial evidence here, a rational juror could reasonably infer that Pace took the bicycle from Barnaby's Restaurant and transported it to a nearby town to pawn it with an acquaintance. Moreover, from the fact that Pace declined to take any part in the transaction at Worldwide Pawn, which included the requirement of a valid identification and a thumb print, a rational juror could reasonably infer that Pace knew he possessed unauthorized control over the bicycle and that he did not want his name associated with the pawn of it.

[12] Pace's arguments amount to an invitation to reweigh the evidence, which we cannot do when assessing sufficiency of the evidence claims. *See Powell*, 151 N.E.3d at 262. Accordingly, we find that the evidence is sufficient to sustain Pace's conviction for theft, a Class A misdemeanor. *See, e.g., Holloway v. State*, 983 N.E.2d 1175, 1179-80 (Ind. Ct. App. 2013) (holding that the evidence was sufficient to sustain the defendant's conviction of theft where the defendant pawned stolen property a short time after the property went missing and he lived next to the victim).

Conclusion

[13] The State presented sufficient evidence to sustain Pace's conviction for theft, a Class A misdemeanor. Accordingly, we affirm.

[14] Affirmed.

Najam, J., and Pyle, J., concur.