

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.



ATTORNEY FOR APPELLANT

Timothy J. Burns
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General

Sierra A. Murray
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Deonte Lovell Smith,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

May 24, 2022

Court of Appeals Case No.
21A-CR-2602

Appeal from the
Marion Superior Court

The Honorable
James B. Osborn, Judge

Trial Court Cause No.
49D21-2007-CM-22195

Vaidik, Judge.

Case Summary

- [1] Deonte Lovell Smith appeals his conviction for Class A misdemeanor criminal conversion, arguing the evidence is insufficient to support it. We affirm.

Facts and Procedural History

- [2] On the afternoon of July 13, 2020, Smith was in an argument with the mother of his children in the front yard of their Indianapolis home. At some point, Smith became aware that Monika Mueller—who lived across the street—was filming the incident with her cell phone. Smith walked across the street and “grabbed the phone out of [Mueller’s] hand,” calling her a “stupid bit**.” Tr. p. 139. He took the phone with him “back across the street” and “mess[ed] with [it] for some minutes,” “deleting the video.” *Id.* at 140. Smith then walked back toward Mueller and “threw the phone at [her].” *Id.* The phone landed in the yard behind her. *Id.*
- [3] The State charged Smith with Class A misdemeanor criminal conversion for taking Mueller’s phone without her permission. A bench trial was held, and Smith represented himself. Smith said he “belie[ved]” Mueller had handed him her phone because her arm was extended. *See id.* at 144; *see also* Appellant’s Br. p. 11. Mueller, however, testified her arm was extended because she was filming the argument and that she didn’t hand the phone to Smith or give him permission to take it. She said she was “surprised” when Smith “grabbed” the phone from her. Tr. pp. 139, 143. The trial court found Smith guilty, explaining

it believed Mueller and that Smith’s version didn’t “make any sense on its face.” *Id.* at 174.

[4] Smith now appeals.

Discussion and Decision

[5] Smith contends the evidence is insufficient to support his conviction for criminal conversion. When reviewing this claim, we neither reweigh the evidence nor judge witness credibility. *Webb v. State*, 147 N.E.3d 378, 384 (Ind. Ct. App. 2020), *trans. denied*. We will consider only the evidence supporting the judgment and any reasonable inferences that can be drawn from the evidence. *Id.*

[6] Smith argues that “[a]lthough not directly stated or specifically argued [at trial], the facts support the ‘Mistake of Fact’ defense.” Appellant’s Br. p. 10. Mistake of fact is a defense under Indiana Code section 35-41-3-7, which provides, “It is a defense that the person who engaged in the prohibited conduct was reasonably mistaken about a matter of fact, if the mistake negates the culpability required for commission of the offense.” When a defendant invokes the mistake-of-fact defense, he must show: (1) the mistake was honest and reasonable; (2) the mistake was about a matter of fact; and (3) the mistake negates the culpability required to commit the crime. *Potter v. State*, 684 N.E.2d 1127, 1135 (Ind. 1997).

[7] The State responds Smith has waived this argument because he didn't raise a mistake-of-fact defense at trial. Regardless, it's clear from the record that had Smith specifically argued mistake of fact at trial, the trial court would have rejected it. The court found Smith's testimony that he believed Mueller had handed him her phone didn't "make any sense on its face." This conclusion is supported by the evidence. Mueller testified Smith approached her while she was filming the argument between him and the mother of his children; called her a "bit**"; "grabbed" the phone out of her hand, which "surprised" her; took the phone with him back across the street; and threw the phone at her after deleting the video. The evidence is sufficient to support Smith's conviction.

[8] Affirmed.

Crone, J., and Alice, J., concur.