

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Kathrine D. Jack
Jack Law Office
Greenfield, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General

Kelly A. Loy
Assistant Section Chief for
Criminal Appeals
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Charles Hunter,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

February 27, 2023
Court of Appeals Case No.
22A-CR-2152

Appeal from the
Hancock Superior Court

The Honorable
Dan E. Marshall, Judge

Trial Court Cause No.
30D02-2109-F6-1213

Memorandum Decision by Judge Vaidik
Judges Tavitas and Foley concur.

Vaidik, Judge.

Case Summary

- [1] Charles Hunter was convicted of Level 6 felony theft of a motor-vehicle component part. He appeals, arguing the trial court erred in admitting certain evidence and that there is insufficient evidence to support the conviction. Finding any error in the admission of evidence harmless and the evidence sufficient to support the conviction, we affirm.

Facts and Procedural History

- [2] On September 8, 2021, Phillip Jessup drove by his mother's home in Greenfield and noticed an unknown gray car on the property. He pulled into the driveway and saw Hunter under a black Oldsmobile that belonged to Jessup's mother, Phyllis. The car had been jacked up, and Hunter was using a Sawzall saw to cut underneath the car. Jessup confronted Hunter, who admitted he "was stealin' your catalytic converter" and then left. Tr. Vol. II pp. 93-94. After Hunter left, Jessup and his family examined all the cars on the property, including a red Oldsmobile parked thirty feet from the black car. While the black car still had its catalytic converter, the red car did not.
- [3] Jessup called law enforcement, and deputies from the Hancock County Sheriff's Department arrived. Deputy Rodney Fawver examined both cars and noted the red car had "fresh cut marks on the exhaust" and the area near the marks was "shiny" compared to the rest of the car, which was rusted. *Id.* at 121, 122. He

also noted the tall grass near both cars looked “disturb[ed]” and “smashed” and “the foliage had been laid down as if . . . somebody was either walking or lying next to the cars.” *Id.* at 120, 140. Deputy Jarrod Bradbury also examined the red car and found “metal shavings in the grass underneath” the car indicating the catalytic converter had “recently been cut.” *Id.* at 171.

[4] About a week later, Deputy Danielle Pruitt, also of the Hancock County Sheriff’s Department, saw Hunter commit a traffic violation and stopped him. When Hunter could not provide proof of insurance, she had his car towed and conducted an inventory search. The search of Hunter’s car revealed a Sawzall saw and three catalytic converters. Hunter then spoke with deputies and admitted he went to Phyllis Jessup’s property the week before to steal catalytic converters but said the three currently in his car belonged to him and various family members.

[5] The State charged Hunter with Level 6 felony theft of a motor-vehicle component part based on the red car’s missing catalytic converter.¹ A jury trial was held in August 2022. The defense theory at trial was that while Hunter may have been attempting to steal the black car’s catalytic converter, no evidence connects him to the charged offense of theft of the red car’s catalytic converter. Over the defense’s objection, Deputy Pruitt testified as to the Sawzall saw and catalytic converters discovered in Hunter’s car. Detective Christie McFarland,

¹ The State did not charge Hunter in connection with his attempt to steal the catalytic converter from the black car.

of the Hancock County Sheriff's Department, testified that there were not "resources available . . . to identify a catalytic converter as having come from a specific car" and thus could not link any of these catalytic converters to the red car. *Id.* at 182.

[6] The jury found Hunter guilty as charged, and the trial court sentenced him to two years, with one year executed and one year suspended to probation.

[7] Hunter now appeals.

Discussion and Decision

[8] Hunter first argues the trial court erred by admitting evidence about the three catalytic converters found in his car.² He contends such evidence is inadmissible under Indiana Evidence Rule 404(b)(1), which provides "[e]vidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." The State responds that the mere possession of catalytic converters is not a "misdeed" and thus "is not 'evidence of a crime, wrong, or other act' that would preclude its admission [under] Indiana Evidence Rule 404(b)." Appellee's Br. p. 10.

² Hunter does not challenge the admission of other evidence from the traffic stop, namely the Sawzall saw found near the catalytic converters.

[9] We need not resolve this issue because we find any error in the admission of this evidence to be harmless. An error in the admission of evidence does not require reversal “unless it prejudices the defendant’s substantial rights.” *Blount v. State*, 22 N.E.3d 559, 564 (Ind. 2014). “To determine whether an evidentiary error was prejudicial, we assess the probable impact the evidence had upon the jury in light of all of the other evidence that was properly presented.” *Id.* “If we are satisfied the conviction is supported by independent evidence of guilt such that there is little likelihood the challenged evidence contributed to the verdict, the error is harmless.” *Id.*

[10] Given the circumstances of this case, we do not believe the challenged evidence contributed to the verdict because there is substantial independent evidence of guilt. “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.” Ind. Code § 35-43-4-2. The offense is a Level 6 felony if the property is a component part of a motor vehicle, which includes a catalytic converter. *Id.*; I.C. § 9-13-2-34.

[11] Hunter was caught on Phyllis Jessup’s property in the act of stealing a catalytic converter from the black car. Hunter admitted he was there to steal a catalytic converter and had with him the tools to do so. The environment around the red car suggested it had been recently disturbed—the long grass and foliage around it was trampled, fresh metal shavings were found underneath, and the area around the missing catalytic converter was free of rust. A week later, Hunter was again found with a Sawzall saw and admitted that he had gone to Phyllis

Jessup's property to steal a catalytic converter. While this evidence is circumstantial, it leads to the strong inference that Hunter exerted unauthorized control over the catalytic converter. *See Brink v. State*, 837 N.E.2d 192, 198 (Ind. Ct. App. 2005) (circumstantial evidence, including that defendant was found near the crime scene with a tool to facilitate the crime, was sufficient to convict him of theft even though victims were uncertain how much money had been taken and could not prove the cash found on defendant was theirs), *trans. denied*. Given this independent evidence of guilt, any error in the admission of the catalytic converters is harmless.³

[12] Affirmed.

Tavitas, J., and Foley, J., concur.

³ Hunter also challenges his conviction on the ground that the State presented insufficient evidence. Given our conclusion that the unchallenged evidence was strong enough to render harmless any potential Rule 404(b) error, we need not separately address the sufficiency argument.