

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Robert Griffin,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

January 20, 2023

Court of Appeals Case No.
22A-CR-1816

Appeal from the Boone Circuit
Court

The Honorable John G. Baker,
Senior Judge

Trial Court Cause No.
06C01-2005-CM-772

May, Judge.

[1] Robert Griffin appeals his conviction of Class A misdemeanor home improvement fraud.¹ Griffin argues the State did not present sufficient evidence he committed the crime. We affirm.

Facts and Procedural History

[1] On August 5, 2019, Robert George Jr. met with Griffin to discuss home improvements George wanted to make to his home. George wanted Griffin to work on a “large concrete stamped patio” in the rear of his property. (Tr. Vol. II at 7.) The work required Griffin to complete a “stamp overlay^[2]” of the existing patio area, clear an area near the existing patio area, and pour and stamp concrete in a new patio area. (*Id.* at 29.) The project encompassed “roughly right around two hundred square feet, maybe.” (*Id.* at 40.) George agreed to pay Griffin \$6,250.00 for the job and was required to pay half, or \$3,125.00, up front. George wrote a check to Griffin for \$1,000.00 on August 5, 2019, and a check for \$1,000.00 on August 7, 2019.

¹ Ind. Code § 35-43-6-12(a)(3) (2019) (home improvement fraud) (repealed 2021) & Ind. Code § 35-43-6-13(a)(1) (2019) (enhancement for contracts over \$1,000) (repealed 2021).

² George explained a stamp overlay is

a process where instead of just looking like regular concrete they have some kind of solution they put on it and then they take some pads or some things and press it down and it gives an imprint and you can also color it. It ends up looking like stone you purchase, like instead of just looking like gray concrete.

(Tr. Vol. II at 19.)

[2] Despite not receiving the complete half-payment up front, Griffin began work on the patio and completed “stamping and . . . some work on the existing patio to prepare it for what he was going to pour.” (*Id.* at 15.) Griffin’s associate, Dennis Shatner, “scraped some top soil [sic] away” in the area where Griffin indicated he would pour the new patio area. (*Id.* at 13.) After that, George testified, the job “just kind of stopped and the machine [used to scrape the topsoil] was just left sitting there in the yard.” (*Id.* at 14.) George testified he attempted to contact Griffin about Shatner’s equipment but Griffin did not respond. Shortly thereafter, George’s homeowner’s association told him he had to move the equipment so he “loaded it up on a trailer, took it up the road about ten miles and put it in a fenced in lot[.]” (*Id.* at 16-7.) Shatner contacted George sometime after George moved Shatner’s equipment and George allowed Shatner to retrieve his equipment.

[3] On August 29, 2019, Griffin went to George’s property to discuss when he would receive the full up-front half-payment for the patio job. Of the \$3,250.00 agreed upon, George had paid only \$2,000.00. George testified Griffin, instead of wanting the remainder of the deposit, “wanted \$2,000.00 to go ahead and get started.” (*Id.* at 12.) Griffin told George “if [George] . . . couldn’t get him another \$2,000.00 [Griffin] just wasn’t going to do the job.” (*Id.*) George testified he felt he “had to decide whether to just walk away from what [he’d] paid so far or give another \$2,000.00 so [George] gave [Griffin] on that date \$2,000.00 cash.” (*Id.*) After the payment on August 29, George had paid Griffin \$4,000.00 in total.

[4] After that payment, Griffin did not complete any further work on the project. George testified he tried to communicate with Griffin via text message regarding when Griffin would return to finish the work and received in response “ten different reasons why [Griffin] couldn’t get there that day.” (*Id.* at 18.) George indicated he attempted to engage Griffin via text message for “many months[.]” (*Id.* at 19.) After eight months, George decided he “couldn’t wait” for Griffin to finish the job. (*Id.*) George and his son eventually finished the patio work themselves.

[5] On May 15, 2020, the State charged Griffin with Class A misdemeanor home improvement fraud. On July 5, 2022, the trial court held a bench trial. At the end of the trial, the judge found Griffin guilty as charged. The trial court sentenced Griffin to 60 days in the Boone County Jail, suspended all 60 days, and ordered 365 days on supervised probation. The trial court also ordered Griffin to pay George \$3,250.00 in restitution. The trial court agreed to release Griffin from probation six months early if he paid the restitution in full during the first six months of his probation.

Discussion and Decision

[6] Griffin argues the State did not present sufficient evidence he committed Class A misdemeanor home improvement fraud because Griffin intended to complete all, and did complete a portion, of the work pursuant to the parties’ contract. Our standard of review for claims challenging the sufficiency of the evidence is well-settled:

Sufficiency-of-the-evidence claims . . . warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility. Rather we consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. 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.

Powell v. State, 151 N.E.3d 256, 262-63 (Ind. 2020) (internal citations omitted).

- [7] To prove Griffin committed Class A misdemeanor home improvement fraud, the State had to present sufficient evidence he entered into a home improvement contract for over \$1,000.00 and knowingly promised performance that he did not intend to perform or knew would not be performed. Ind. Code §§ 35-43-6-12(a)(3) & 13(a)(1) (2019) (repealed 2021). 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).
- [8] “[I]ntent is a mental function and without a confession, it must be determined from a consideration of the conduct, and the natural consequences of the conduct.” *Duren v. State*, 720 N.E.2d 1198, 1202 (Ind. Ct. App. 1999), *trans. denied*. Accordingly, intent often must be proven by circumstantial evidence. *Id.* The trier of fact is entitled to infer intent from the surrounding circumstances. *White v. State*, 772 N.E.2d 408, 412 (Ind. 2002). The State presented evidence Griffin and George entered into a home improvement contract for \$6,250.00. At issue is whether the State presented evidence Griffin did not intend to perform the work or knew the work would not be performed.

[9] Griffin initially performed some of the work on the patio despite the fact George had not yet paid the full \$3,250.00 deposit. George testified Griffin completed the stamping work on the existing patio sometime after George paid Griffin a portion of the required deposit in early August. George also testified Griffin's associate, Shatner, came onto George's property and removed topsoil where Griffin was to pour new concrete. George provided pictures of the state of his property after the stamping and topsoil removal had been completed.

[10] However, after August 29, 2019, when George paid Griffin an additional \$2,000.00 to continue work on the job, Griffin did not return to finish the job. George attempted to contact Griffin for information regarding when Griffin would return to finish the patio work. George testified Griffin gave several reasons why he could not work on different occasions and eventually stopped responding to George at all. Based on Griffin's actions, a reasonable fact finder could infer Griffin did not intend to perform the work under the contract he signed with George on August 5, 2019. *See, e.g., Reust v. State*, 139 N.E.3d 1056, 1065-6 (Ind. Ct. App. 2019) (landscaping contractor had intent requisite to commit theft when he received \$20,000.00 to do work and only completed \$4,500.00 worth of landscaping project).

Conclusion

[11] The State presented sufficient evidence for a factfinder to infer Griffin committed Class A misdemeanor home improvement fraud. Accordingly, we affirm.

[12] Affirmed.

Crone, J., and Weissmann, J., concur.