

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Aaron McDuffee,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 12, 2023

Court of Appeals Case No.
22A-CR-2503

Appeal from the Madison Circuit
Court

The Honorable Scott A. Norrick,
Judge

Trial Court Cause No.
48C05-1904-F6-933

Memorandum Decision by Judge Brown
Judges Bailey and Weissmann concur.

Brown, Judge.

[1] Aaron McDuffee appeals his convictions for theft as a level 6 felony. McDuffee claims the trial court erred in admitting a photocopy of a check and the evidence is insufficient to sustain the conviction. We affirm.

Facts and Procedural History

[2] Van Wyck Croshier posted a set of eight-lug rims and tires for sale using OfferUp. On January 9, 2019, McDuffee, using the name “david,” sent a message to Croshier expressing an interest in purchasing the items. State’s Exhibit 3. McDuffee and Croshier exchanged several messages about the price of \$1,600 and the reason Croshier was selling the items. Croshier provided his address in Pendleton, and McDuffee stated he would arrive in a few hours.

[3] At about 10:30 p.m., McDuffee arrived at Croshier’s home and backed into the driveway. Croshier saw a woman in the passenger seat of McDuffee’s truck and was told she was asleep. McDuffee showed his truck to Croshier, discussed how he was fixing it up, and indicated that he intended to put the wheels Croshier was selling on the truck and that “these wheels were going to give it the off-road look.” Transcript Volume II at 162. Croshier was under the impression McDuffee was self-employed. They talked about their work and tattoos. At some point after 11:00 p.m., Croshier indicated he needed to go to bed because he had work the next morning, McDuffee dropped his tailgate, and Croshier helped him load the tires. Croshier said, “You had cash, right?” *Id.* at 165. McDuffee stated, “Ah, yeah. I got you. I got you,” went to his truck, returned, said that he had forgotten his wallet, and “handed [Croshier] a blank check . . . made for sixteen hundred dollars (\$1600) . . . with a driver’s license

number on the top” *Id.* The check was from IU Credit Union, dated January 9, 2019, written in the amount of \$1,600, and signed. The name on the check stated “Benjamin K Farris,” “DL # 1250-12- . . .” was handwritten above the date, and “Rims & tires” was written on the memo line. State’s Exhibit 15. The following morning, Croshier wrote his name on the check, went to the bank, and “deposited the check.” Transcript Volume II at 170. Croshier later learned there were no funds in his account from that check.

[4] Madison County Sheriff’s Detective Jim Sundheimer learned that Farris, whose name was on the check, was in the Marion County Jail on January 9, 2019.¹ Detective Sundheimer obtained information from OfferUp for the account with which Croshier communicated, found the information included an email address, a phone number, and I.P. address associated with the account, obtained the address of a residence in Plainfield associated with the I.P. address from Comcast, and determined that McDuffee lived at the residence. Detective Sundheimer went to McDuffee’s residence, observed the truck described by Croshier, knocked on the front door, and spoke with McDuffee. McDuffee stated that he did not purchase rims and tires from someone and that he had not been to Madison County. Detective Sundheimer also looked up McDuffee’s driver’s license number and found that it did not match the driver’s license number written on the check.

¹ When asked “what did Mister Farris indicate his involvement in this, in this transaction, he involved in this transaction,” Detective Sundheimer said “No.” Transcript Volume II at 205.

[5] The State charged McDuffee as amended with theft as a level 6 felony. The court held a jury trial at which Croshier, Detective Sundheimer, and Chasity Henderson testified and the court admitted photographs of Croshier's post on OfferUp, the messages exchanged by Croshier and McDuffee, the check McDuffee handed to Croshier, and McDuffee's truck as well as McDuffee's official driver record containing his driver's license number. Croshier testified:

He dropped the tailgate down, and their [sic] big wheels, I mean they're thirty-three (33) inch mud tires, and I was like, "I'll help you load them up", and I grabbed one (1) and I picked it up and he threw it up in there. We both struggled. And uh, I said, "You had cash, right?", and he was like, "Ah, yeah. I got you. I got you." And then he went to his truck and came back, and he said, "I'd forgotten my wallet." uh, here's check though. He handed me a blank check uh, it was made out, it was a blank check, it was made for sixteen hundred dollars (\$1600) . . . with a driver's license number on the top and I was like man. Well, he had convinced me that he was like me. . . . I've never screwed anybody over in my life. I work everyday for what I got, and I was like, "I'm going to give this guy the opportunity." "My driver's license number's on there. Don't worry about, you got my phone number." And I was like, "Okay. Cool."

Id. at 165. The prosecutor asked Croshier if he would recognize photos of the check, and he replied affirmatively. McDuffee's counsel stated: "I'll object. Uh, best evidence rule. It's not the original check." *Id.* at 166. The court asked if he had a copy and if he received it in discovery, and McDuffee's counsel stated he had a photocopy and had not seen the original. The court overruled the objection.

[6] The prosecutor handed a photocopy of the front of the check marked as State’s Exhibit 15 and a photocopy of the back of the check marked as State’s Exhibit 16 to Croshier. When asked what he was just handed, Croshier testified “you just handed me a copy of the check that was blank with the driver’s license number on the top with that day’s address [sic].” *Id.* When asked “is that [] a fair and accurate depiction of that check,” Croshier answered “most definitely,” and when asked “[i]t’s the same check,” he replied “[y]eah . . . Most definitely.” *Id.* The prosecutor moved to admit State’s Exhibits 15 and 16, and the court admitted the exhibits. Henderson testified that she was McDuffee’s neighbor, she went with McDuffee to purchase the rims on January 9, 2019, she was asleep during the trip and McDuffee woke her up, she gave McDuffee \$500 in cash, and she saw McDuffee hand the \$500 in cash to Croshier. The jury found McDuffee guilty of theft as a level 6 felony.

Discussion

I.

[7] McDuffee challenges the admission of State’s Exhibits 15 and 16 into evidence. We review the trial court’s ruling on the admission of evidence for an abuse of discretion. *Roche v. State*, 690 N.E.2d 1115, 1134 (Ind. 1997), *reh’g denied*. A trial court’s ruling on the admission of evidence is generally accorded a great deal of deference on appeal. *Hall v. State*, 36 N.E.3d 459, 466 (Ind. 2015), *reh’g denied*. We consider only evidence that is either favorable to the ruling or unrefuted and favorable to the defendant. *Beasley v. State*, 46 N.E.3d 1232, 1235 (Ind. 2016). Even if the trial court erred in the admission of evidence, we will

not reverse the conviction if that error was harmless. *Turner v. State*, 953 N.E.2d 1039, 1058 (Ind. 2011). The improper admission is harmless error if the conviction is supported by substantial independent evidence of guilt satisfying the reviewing court there is no substantial likelihood the challenged evidence contributed to the conviction. *Id.* at 1059.

[8] Ind. Evidence Rule 1002 provides “[a]n original writing, recording, or photograph is required in order to prove its content unless these rules or a statute provides otherwise.” Ind. Evidence Rule 1003 provides “[a] duplicate is admissible to the same extent as an original unless a genuine question is raised about the original’s authenticity or the circumstances make it unfair to admit the duplicate.”

[9] The record reveals that Croshier testified that McDuffee handed him a check for \$1,600 and that there was a driver’s license number on the check. The prosecutor asked, “[i]f I were to show you photos of that check, would you be able to recognize it,” and Croshier testified “[o]h most definitely.” Transcript Volume II at 165. The prosecutor stated he was handing Croshier what was marked as State’s Exhibits 15 and 16 and asked him to review the exhibits. When asked what he was just handed, Croshier testified “you just handed me a copy of the check that was blank with the driver’s license number on the top with that day’s address [sic].” *Id.* at 166. When asked “is that [] a fair and accurate depiction of that check,” Croshier answered “most definitely,” and when asked “[i]t’s the same check,” he replied “[y]eah . . . [m]ost definitely.” *Id.* State’s Exhibit 15 consists of a photocopy of the front side of a personal

check. The check was dated January 9, 2019, written in the amount of \$1,600, and signed. A handwritten notation stating “DL # 1250-12- . . .” was located above the date. State’s Exhibit 15. The phrase “Rims & tires” was written on the memo line. *Id.* We cannot say a genuine question was raised about the original’s authenticity or that the trial court abused its discretion in admitting State’s Exhibits 15 and 16. We find no reversible error.

II.

[10] McDuffee also asserts the evidence is insufficient to support his conviction. He argues the State did not present evidence that he “gave that check to Mr. Croshier knowing it was bad.” Appellant’s Brief at 9. He also argues that Croshier helped him load the rims into his truck and “[t]hus Mr. Croshier freely gave over control of the rims” to him. *Id.*

[11] When reviewing claims of insufficiency, we do not reweigh the evidence or judge the credibility of witnesses. *Jordan v. State*, 656 N.E.2d 816, 817 (Ind. 1995), *reh’g denied*. We look to the evidence and the reasonable inferences therefrom that support the verdict. *Id.* We will affirm the conviction if there exists evidence of probative value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. *Id.*

[12] Ind. Code § 35-43-4-2 provides 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 and that the offense is a level 6 felony if the value of the property is at least \$750 and less

than \$50,000. A person engages in conduct “intentionally” if, when he engages in the conduct, it is his conscious objective to do so. Ind. Code § 35-41-2-2(a). 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). A theft conviction may be sustained by circumstantial evidence. *Hayworth v. State*, 798 N.E.2d 503, 507 (Ind. Ct. App. 2003). Intent is a mental function and must be determined from a consideration of the conduct and the natural consequences of the conduct. *Id.* at 508.

[13] Ind. Code § 35-43-4-1(a) provides “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.” Ind. Code § 35-43-4-1(b) provides a person’s control over property of another person is “unauthorized” if it is exerted: (1) without the other person’s consent; (2) in a manner or to an extent other than that to which the other person has consented; (3) by transferring or encumbering other property while failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of that other property; (4) by creating or confirming a false impression in the other person; (5) by failing to correct a false impression that the person knows is influencing the other person, if the person stands in a relationship of special trust to the other person; (6) by promising performance that the person knows will not be performed; (7) by expressing an intention to damage the property or impair the rights of any other person; or (8) by transferring or reproducing recorded sounds or a live performance without consent of the owner.

[14] The record reveals that McDuffee handed Croshier a check in payment for the rims and tires, and Croshier helped load the rims and tires into McDuffee's truck. The check was made for the amount of \$1,600 as shown on the sale posting and as mentioned in the messages between McDuffee and Croshier before McDuffee arrived at Croshier's house. The check was signed and dated January 9, 2019, the day Croshier helped McDuffee load the rims and tires into his truck. Further, a handwritten notation "DL # 1250-12- . . ." appeared above the date, and "Rims & tires" was written on the memo line. State's Exhibit 15. Farris, whose name was on the check, was in jail at the time of the sale and had no involvement in the transaction. Croshier took the check to his bank and later learned there were no funds in his account from that check. Croshier's testimony shows that he was hesitant to accept the check, McDuffee assured him and noted that his driver's license number was on the check and Croshier had his phone number, and Croshier accepted the check as payment for the rims and tires. We conclude the State presented evidence of a probative nature from which a jury could find beyond a reasonable doubt that McDuffee committed theft as a level 6 felony.

[15] For the foregoing reasons, we affirm McDuffee's conviction.

[16] Affirmed.

Bailey, J., and Weissmann, J., concur.