

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jack McCann,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

June 30, 2022

Court of Appeals Case No.
22A-CR-169

Appeal from the St. Joseph
Superior Court

The Honorable Elizabeth C.
Hurley, Judge

Trial Court Cause No.
71D08-1808-F6-805

Crone, Judge.

Case Summary

- [1] Jack McCann appeals his conviction, following a jury trial, for level 6 felony theft. He contends that the State presented insufficient evidence to support his conviction. Finding the evidence sufficient, we affirm.

Facts and Procedural History

- [2] The facts most favorable to McCann's conviction show that in 2017, Kalin Ziglear, who had dementia and had suffered a stroke, was living with McCann. Tr. Vol. 2 at 38. Ziglear received monthly Social Security payments, which, because of his cognitive impairments, he could not manage on his own. *Id.* at 24. Consequently, he had a representative payee, who was responsible for applying his benefits toward his current and future needs. *Id.* at 26. As of July 19, 2017, Ziglear appointed McCann his representative payee. *Id.* at 30. From August 2017 through June 2018, McCann received Ziglear's monthly Social Security checks. Ex. Vol. 2 at 17-27. When Ziglear was asked if he paid any rent while living with McCann, Ziglear stated, "Yeah. He was keeping my whole check. He gave me \$30 one time." Tr. Vol. 2 at 41.
- [3] On an icy day in February 2018, Ziglear fell and broke his hip. *Id.* at 39. A friend called first responders, who transported Ziglear to a local hospital, where he stayed for thirteen days. *Id.* In March, the hospital discharged Ziglear to Golden Living Center, a nursing facility. *Id.* at 21, 39. Once Ziglear entered the nursing facility, he never resided with, or saw, McCann again. *Id.* at 38, 42.

- [4] As business office manager of Golden Living Center, Angel Genth coordinated the finances of patients. *Id.* at 16, 17. When Ziglear became a resident at the nursing facility, Genth applied for Medicaid for him and learned that he had a representative payee. *Id.* at 19. After the Social Security Office informed her that McCann was Ziglear's representative payee, she tried several times to contact McCann but received no response. *Id.* at 19, 20. Despite the fact that Ziglear had moved into Golden Living Center, his Social Security checks continued to be delivered to and cashed by McCann from March 2018 through June 2018. Ex. Vol. 2 at 24-27 (copies of three checks for \$926, and one for \$524). McCann never paid the nursing facility that was housing and caring for Ziglear. Tr. Vol. 2 at 29. By July 2018, Genth had successfully transferred Ziglear's representative payee from McCann to Golden Living Center. *Id.* at 20.
- [5] Genth assisted Ziglear with filing a police report regarding his missing Social Security payments. *Id.* at 21. In August 2018, the State charged McCann with level 6 felony theft. Appellant's App. Vol. 2 at 4. A jury found McCann guilty as charged, and the trial court ordered a twelve-month, fully suspended sentence. *Id.* at 92, 93, 113. In addition, the court assessed a \$150 public defender fee, entered a \$3,302 restitution judgment in favor of Ziglear, and advised that restitution could be paid in \$100 monthly installments. *Id.* at 113.

Discussion and Decision

- [6] In reviewing a challenge to the sufficiency of the evidence, we neither reweigh the evidence nor judge the credibility of witnesses. *Anderson v. State*, 37 N.E.3d

972, 973 (Ind. Ct. App. 2015), *trans. denied*. We respect the jury’s exclusive province to weigh conflicting evidence, and we consider only the evidence most favorable to its verdict. *Id.* It is not necessary that the evidence overcome every reasonable hypothesis of innocence. *Gray v. State*, 957 N.E.2d 171, 174 (Ind. 2011). We must affirm if the evidence and the reasonable inferences drawn therefrom could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. *Anderson*, 37 N.E.3d at 974.

- [7] To establish that McCann committed the offense of level 6 felony theft, the State needed to prove beyond a reasonable doubt that he knowingly or intentionally exerted unauthorized control over another person’s property worth between \$750 and \$50,000, with intent to deprive the other person of any part of its value or use. *See* Ind. Code § 35-43-4-2(a)(1)(A).
- [8] McCann’s sufficiency challenge is twofold. First, he asserts that the State failed to prove that his control over Ziglear’s Social Security payments was unauthorized. Second, he contends that the State did not establish that McCann held the requisite intent to deprive Ziglear of the use or value of his payments.
- [9] A person’s control over property of another is “unauthorized” if it is exerted “without the other person’s consent” or “in a manner or to an extent other than that to which the other person has consented.” Ind. Code § 35-43-4-1(b); *see, e.g., Duren v. State*, 720 N.E.2d 1198, 1202 (Ind. Ct. App. 1999) (affirming theft conviction and concluding defendant’s control over homeowners’ funds was unauthorized where contractor told homeowners he needed costs for materials

up front yet actually used their funds for his own personal use), *trans. denied* (2000). A defendant's intent may be inferred from his conduct and the natural and usual sequence to which such conduct logically and reasonably points. *See Long v. State*, 867 N.E.2d 606, 614 (Ind. Ct. App. 2007), *reh'g denied*. Indeed, the finder of fact may infer intent based solely on circumstantial evidence. *See Brown v. State*, 67 N.E.3d 1127, 1131 (Ind. Ct. App. 2017).

[10] Here, the evidence shows that once Zigsaw, who was medically incapable of handling his own funds, began living with McCann, he authorized McCann to be his representative payee. As such, Zigsaw entrusted McCann to properly manage his Social Security payments for his care. McCann dutifully cashed Zigsaw's checks and housed him until Zigsaw's fall. Thereafter, Zigsaw was hospitalized and then moved to a nursing facility. Yet, McCann, who no longer housed, cared for, or visited Zigsaw, continued cashing Zigsaw's Social Security checks for four months. McCann neither responded to Genth's efforts to reach him nor applied any of the funds to the nursing facility that was now caring for and housing Zigsaw. Not until the nursing facility successfully changed the representative payee from McCann to the nursing facility did McCann stop receiving and cashing Zigsaw's checks.

[11] Presented with the above evidence, a reasonable trier of fact could determine that McCann exerted control over Zigsaw's Social Security payments in a manner or to an extent other than that to which Zigsaw consented. *See Ind. Code § 35-43-4-1(b)*. Given Zigsaw's cognitive challenges combined with the serious fall necessitating hospitalization and eventual full-time care in a nursing

facility, expecting Ziglear to immediately revoke his prior authorization of McCann as his representative payee was hardly logical or realistic. Rather, one could reasonably find that Ziglear's original authorization did not extend to McCann cashing \$3,302 of Ziglear's Social Security checks after Ziglear was no longer in his care, and using the payments for some purpose other than housing and caring for Ziglear. Moreover, a jury hearing that McCann retained and spent four months' worth of Ziglear's Social Security benefits when Ziglear resided in a hospital and then a nursing facility, could easily infer that McCann had the requisite intent to deprive Ziglear of his benefits. McCann's arguments otherwise constitute invitations to reweigh the evidence, which we must decline. We conclude that sufficient evidence supports McCann's level 6 felony theft conviction, and therefore we affirm it.

[12] Affirmed.

Vaidik, J., and Altice, J., concur.