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**IN THE
COURT OF APPEALS OF INDIANA**

VENDEL VEGH,)
)
Appellant-Defendant,)
)
vs.) No. 71A03-0810-CR-507
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Roland W. Chamblee, Jr., Judge
Cause No. 71D08-0702-FD-156

JULY 22, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Vendel Vegh appeals his conviction of theft, a Class A misdemeanor, and the trial court's denial of his motion to correct error. We affirm.

ISSUES

Vegh raises two issues for our review, which we restate as:

- I. Whether the State presented sufficient evidence to support Vegh's conviction;
- II. Whether the trial court erred in denying Vegh's motion to correct error.

FACTS AND PROCEDURAL HISTORY

In the fall of 2006, Jay Crouch, a member of Southwestern Michigan College's ("SMC") brass band, borrowed a cornet from SMC's inventory. To identify the instrument, SMC had attached a "fixed asset" sticker labeled with "Southwestern Michigan College Fixed Asset" and a bar code. Additionally, SMC had stenciled "Southwestern Michigan College" and an inventory number on the instrument case.

On the morning on November 5, 2006, Crouch discovered that the cornet had been stolen from his vehicle in his driveway in Niles, Michigan. Crouch immediately reported the theft to the Berrien County (Michigan) Sheriff's Department.

On November 9, 2006, Kelley Watkins, a high school senior, entered Ozark's Trading Post ("Ozark's") in South Bend, Indiana, with the stolen cornet. Watkins had obtained the cornet from friends and knew it was stolen. Watkins handed the cornet case to Vegh, the owner of Ozark's, who conducted an inspection of the instrument with a

magnifying glass to determine the serial number. Vegh offered \$10 for the instrument, and Watkins accepted. Watkins provided some personal information and a thumbprint to complete the bill of sale, but failed to answer a question regarding the length of his ownership of the instrument. Vegh did not question Watkins regarding the legitimacy of his ownership. Vegh did not denote the SMC fixed asset sticker or SMC stenciling on the bill of sale, or in his description of the item on a required weekly report to the South Bend Police Department (“SBPD”).

In January of 2007, Detective Sergeant Scott Bryant, a pawn shop liaison officer with the SBPD, noticed the cornet during a random inspection. Detective Sergeant Bryant called the Director of Bands at SMC and learned the instrument was stolen.

The State charged Vegh with Class D felony theft, and a jury found him guilty. The judge denied Vegh’s Motion to Correct Error, entered judgment as a Class A misdemeanor, and sentenced Vegh to one year in the St. Joseph County Jail, suspended to probation. Vegh now appeals his conviction and the denial of his Motion to Correct Error.

DISCUSSION AND DECISION

I. Sufficiency of the Evidence

Vegh contends that the weight of the evidence does not support his conviction beyond a reasonable doubt. When reviewing the sufficiency of evidence to support a conviction, this court considers only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We will neither

reweigh the evidence nor judge the credibility of witnesses, *Wright v. State*, 828 N.E.2d 904, 906 (Ind. 2005), and will affirm unless “no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.” *Jenkins v. State*, 726 N.E.2d 268, 270 (Ind. 2000).

Theft occurs when a person 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. Thus, to convict Vegh of theft, the State needed to prove that Vegh knowingly or intentionally exerted unauthorized control over the cornet with intent to deprive SMC of any part of its value or use.

Vegh initially contends that the State failed to establish the “knowingly” element of theft. In Indiana, “[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). “[T]he test of knowledge is not a subjective one; instead, the test is whether, from the circumstances surrounding the possession, the defendant knew the property had been the subject of a theft.” *J.B. v. State*, 748 N.E.2d 914, 918 n.5 (Ind. Ct. App. 2001). A theft conviction may be sustained by circumstantial evidence. *Bennett v. State*, 871 N.E.2d 316, 323 (Ind. Ct. App. 2007), *opinion adopted by Bennett v. State*, 878 N.E.2d 836 (Ind. 2008).

At trial, Vegh claimed that he failed to notice the fixed asset sticker on the instrument, despite the fact that he inspected the instrument with a magnifying glass, and placed a price tag within one half inch of the sticker. Vegh claimed that his failure to

notice the fixed asset sticker and stenciling is what led to their description being left off the required report to the police. Although a failure to record and report the markings is consistent with a failure to notice them, it is also consistent with a deliberate attempt to avoid putting the police on notice.

Vegh also contends that even if he had noticed the fixed asset sticker, it is common for his shop to legally purchase items with fixed asset stickers on them. As the State points out, those transactions are typically made directly with the organization designated as the rightful owner on the fixed asset sticker. In this case, Vegh did not purchase the cornet directly from SMC, nor did he attempt to establish that Watkins was the legitimate owner.

Additionally, Vegh points out that he made no attempt to hide the stenciling or remove the fixed asset sticker, and instead displayed the cornet in open view in his shop. He argues that these actions are consistent with a man who believed he had made a legitimate transaction. Although Vegh's arguments are plausible, they were not enough to convince a jury with the opportunity to assess his credibility under all the circumstances. Based on the evidence, the jury's determination is reasonable.

In order to entertain Vegh's assertion that the evidence is insufficient to prove that he committed theft, the evidence would have to be reweighed. We decline to accept this invitation. We conclude that the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable jury to find Vegh guilty of theft.

II. Denial of Motion to Correct Error

In the alternative, Vegh requests that this Court remand the case to the trial court with instructions to properly rule on his submitted motion to correct error. Because Vegh's Motion was based solely on a claim of insufficient evidence, and this Court has agreed with the trial court that there was sufficient evidence, there is no point in sending it back to say so again.

Affirmed.

NAJAM, J., and VAIDIK, J. concur.