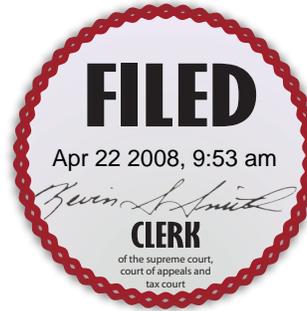


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

**CHASITY THOMPSON ADEWOPO**  
Indianapolis, Indiana

**STEVE CARTER**  
Attorney General Of Indiana

**KARL M. SCHARNBERG**  
Deputy Attorney General  
Indianapolis, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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KENNETH DODD,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0710-CR-844

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Mark D. Stoner, Judge  
The Honorable Jeffrey Marchal, Commissioner  
Cause No.49G06-0704-FC-70717

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**April 22, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**ROBB, Judge**

## Case Summary and Issue

Following a bench trial, Kenneth Dodd appeals his conviction of auto theft,<sup>1</sup> a Class C felony. Dodd raises the sole issue of whether his conviction is supported by sufficient evidence. Concluding sufficient evidence exists, we affirm.

## Facts and Procedural History

On April 24, 2007, Officer Marlin Sechrist, of the Indianapolis Metropolitan Police Department, observed a vehicle, driven by Dodd, traveling roughly sixty miles per hour in a thirty-five mile per hour zone. Officer Sechrist turned on his lights and siren and followed the vehicle. Dodd drove for roughly four blocks and pulled into a gas station. Officer Sechrist exited his vehicle and approached the vehicle driven by Dodd. Officer Sechrist observed a screwdriver on the seat next to Dodd and ordered Dodd to step out of the vehicle. After Dodd made an evasive maneuver, Officer Sechrist pinned Dodd up against the vehicle. At this time, another officer pulled into the parking lot, distracting Officer Sechrist. Dodd spun away and attempted to flee. The officers eventually subdued Dodd by use of a taser and arrested him.

Officer Sechrist then returned to the vehicle and discovered that its steering column had been cracked open, exposing the ignition system. Officer Sechrist then ran the vehicle's VIN, identified the vehicle's owner, and determined that she had not given Dodd permission to operate the vehicle. Dodd was acquainted with the owner, as he had cut her grass and done other household tasks for her.

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<sup>1</sup> Dodd was also convicted of resisting arrest, but does not challenge this conviction.

On April 26, 2007, the State charged Dodd with auto theft, a Class D felony, and resisting arrest, a Class A misdemeanor. The same day, the State filed a second part to the auto theft charge, alleging that Dodd had a prior conviction of auto theft, thereby elevating the instant offense to a Class C felony. The trial court held a bench trial on August 2 and 22, 2007. The trial court found Dodd guilty of both charges and sentenced Dodd to eight years for auto theft and one year for resisting, with the sentences to run concurrently. Dodd now appeals his conviction of auto theft.

## Discussion and Decision

### I. Standard of Review

When reviewing a claim of insufficient evidence, we will not reweigh evidence or judge witnesses' credibility. Grim v. State, 797 N.E.2d 825, 830 (Ind. Ct. App. 2003). We will consider only the evidence favorable to the judgment and the reasonable inferences drawn therefrom. Id. We will affirm a conviction if the lower court's finding is supported by substantial evidence of probative value. Id.

Our supreme court has recently summarized our standard of review when assessing claims of insufficient evidence.

When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The

evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations and citations omitted) (emphasis in original).

## II. Sufficiency of the Evidence

In order to convict a defendant of auto theft, the State must demonstrate that the defendant knowingly or intentionally exerted unauthorized control over the vehicle and had the intent to deprive the owner of the vehicle's value or use.<sup>2</sup> Ind. Code § 35-43-4-2.5(b).

Dodd's argument that insufficient evidence supports his conviction rests on his recitation of the facts based on his testimony at trial. Dodd testified that he was leaving an apartment when he observed two young men, whom Dodd knew, standing next to two vehicles. Dodd testified that he recognized one vehicle as the victim's, jumped in it, and drove away. He claims he intended to return the vehicle to the victim and was speeding in an attempt to escape from the young men.

Dodd's argument overlooks our standard of review, which requires that we look at the evidence in the light favorable to the verdict and forbids us from reweighing the evidence. The trial court heard Dodd's story and clearly did not believe it. Dodd was observed driving a vehicle, which he did not have permission to drive, and which had been stolen from the owner. "The mere unexplained, exclusive possession of recently stolen property will sustain a conviction of theft." Jelks v. State, 720 N.E.2d 1171, 1174 (Ind. Ct. App. 1999). Dodd

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<sup>2</sup> The State may also proceed under the theory that the defendant had the intent to deprive the owner of a component part of the vehicle. Ind. Code § 35-43-4-2.5(b)(2).

was in exclusive possession of a stolen vehicle roughly twelve hours after it was stolen. Dodd argues that his possession was not “unexplained,” as he testified that he took the car from the real thieves in an attempt to prevent them from disposing of or harming the vehicle. However, the trial court was not required to believe Dodd’s explanation as to how he came to be in possession of the vehicle. Cooper v. State, 165 Ind. App. 471, 473, 332 N.E.2d 843, 844 (1975) (“Although an honest claim of right is a valid defense to a charge of theft, [the defendant’s] assertion of this defense improperly assumes the trier of fact was required to believe his testimony.”); cf. Wash v. State, 456 N.E.2d 1009, 1011 (Ind. 1983) (recognizing that a trier of fact is entitled to entirely reject a defendant’s version of the events). Therefore, “possession remains unexplained where the trier of facts rejects the explanation as being beyond a reasonable doubt.” Gibson v. State, 533 N.E.2d 187, 188 (Ind. Ct. App. 1989).

Further, Dodd attempted to flee upon being approached by police officers and resisted arrest. “Evidence of flight may be considered as circumstantial evidence of consciousness of guilt.” Brown v. State, 563 N.E.2d 103, 107 (Ind. 1990). Although Dodd testified that he fled because he had an outstanding warrant, it is still a reasonable inference that Dodd fled to escape arrest for stealing the vehicle. See Cantrell v. State, 673 N.E.2d 816, 818 (Ind. Ct. App. 1996) (recognizing that evidence of flight has probative value only when “it satisfactorily appears that the accused fled to avoid arrest . . . for the crime charged” (quoting Bradley v. State, 153 Ind. App. 421, 427, 287 N.E.2d 759, 769 (1972)), trans. denied).

In sum, we conclude that Dodd’s argument boils down to a request that we give his testimony more weight than did the trial court. Recognizing that it is the trial court’s

province to judge witness credibility and weigh the evidence, we conclude sufficient evidence exists to support Dodd's conviction.

Conclusion

We conclude sufficient evidence exists to support Dodd's conviction of auto theft.

Affirmed.

BAKER, C.J., and RILEY, J., concur.