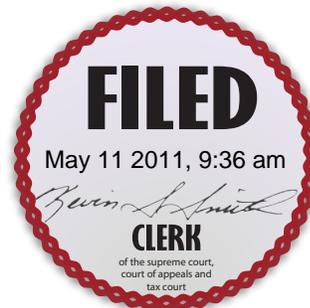


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JEFFREY S. WHITE,)

Appellant-Defendant,)

vs.)

No. 41A01-1010-CR-581

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE JOHNSON CIRCUIT COURT
The Honorable Richard L. Tandy, Magistrate
Cause No. 41C01-0906-CM-254

May 11, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Jeffrey S. White appeals his conviction for Class A misdemeanor criminal conversion. White arranged to buy a minivan from his friend. He began using the van on a regular basis but failed to meet his payment obligations. He then drove off in the van and kept it for one month without his friend's permission. The trial court found White guilty of criminal conversion. White appeals, claiming the evidence is insufficient to sustain his conviction. We find sufficient evidence and affirm.

Facts and Procedural History

The evidence most favorable to the judgment reveals that in February or March 2009, White orally contracted to buy a minivan from friend Michelle Lawrence. Lawrence agreed to sell the van to White for \$300 payable in weekly installments of \$50.

At some point White tendered the first \$50 to Lawrence, although the next day he needed money and borrowed \$65 right back from her. White failed to make any further payments on the van, Lawrence never transferred title to White, and White never registered the van in his name.

Nonetheless, White drove the van regularly with Lawrence's apparent permission. White and Lawrence "were both using it to take [Lawrence's] kids back and forth to school and everything else." Tr. p. 9. And White "was driving around that van as if it were his." *Id.* at 15.

Soon, however, White took possession of the van and did not return it despite being asked by Lawrence. On May 2, 2009, Lawrence contacted police and reported a theft. About one month passed before Lawrence saw her van or heard from White again.

The State charged White with Class A misdemeanor criminal conversion. Ind. Code § 35-43-4-3(a). The charging information alleged that White “did knowingly or intentionally exert unauthorized control over the property of Michelle Lawrence to-wit: vehicle.” Appellant’s App. p. 1.

White was tried to the bench, and the trial court found him guilty as charged. White now appeals.

Discussion and Decision

White argues that the evidence is insufficient to sustain his conviction for criminal conversion.

In reviewing a sufficiency-of-the-evidence claim, this Court does not reweigh the evidence or judge the credibility of the witnesses. *Bond v. State*, 925 N.E.2d 773, 781 (Ind. Ct. App. 2010), *reh’g denied, trans. denied*. We consider only the evidence most favorable to the judgment and the reasonable inferences drawn therefrom and affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. *Id.* Reversal is appropriate only when reasonable people would not be able to form inferences as to each material element of the offense. *Id.*

“A person who knowingly or intentionally exerts unauthorized control over property of another person commits criminal conversion, a Class A misdemeanor.” Ind. Code § 35-43-4-3(a). Criminal conversion is a lesser included offense of theft, Ind. Code § 35-43-4-2. *Poling v. State*, 938 N.E.2d 1212, 1215 (Ind. Ct. App. 2010). The distinction is that theft requires an additional “intent to deprive the other person of any

part of [the property's] value or use.” I.C. § 35-43-4-2; *Irvin v. State*, 501 N.E.2d 1139, 1142 (Ind. Ct. App. 1986).

To “exert control over property” for purposes of theft or criminal conversion 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(a).

Control over property of another person is “unauthorized” if it is exerted, among other ways, “without the other person’s consent,” *id.* § 35-43-4-1(b)(1), or “by promising performance that the person knows will not be performed,” *id.* § 35-43-4-1(b)(6).

“The key to the offense of theft by promising performance that the person knows will not be performed is the intent of the person when he secures control of the property.” *Long v. State*, 935 N.E.2d 194, 197 (Ind. Ct. App. 2010). In *Long*, the defendant purported to enter a lease-to-purchase contract for a furnished condominium. *Id.* at 195, 196. He told the seller that “he was having trouble and he was having some money transferred in from somewhere out of state. I think New Jersey.” *Id.* at 195-96. The defendant moved into the condo, executed his lease a month thereafter, but failed to make his first rent payment. *Id.* at 196. The seller tried contacting him to no avail. *Id.* The defendant then vacated the condo—almost three months after moving in and one month after his first payment came due—and took all of the condo’s furnishings with him. *Id.* The State charged the defendant with theft, and the trial court found him guilty as charged. *Id.* at 196-97. The court found that the defendant never intended to make his contract payments and thus never acquired an interest in the subject property before

taking it. *Id.* at 198. We affirmed, finding sufficient evidence to support the trial court’s conclusion. *Id.* We noted that “[t]he legislature did not intend to criminalize bona fide contract disputes. But where, as here, the evidence supports a reasonable inference that at the inception of a contract, a party has no intention of honoring the contract, even in part, a criminal conviction may stand.” *Id.* at 197 (citation omitted).

We conclude, as in *Long*, that the evidence is sufficient to sustain White’s conviction for criminal conversion. White promised to pay Lawrence \$300 for her minivan in six weekly installments of \$50. White paid the first \$50 to Lawrence but effectively reclaimed it the next day when he borrowed back \$65. White made no further payments on the van at any time. Lawrence never transferred title to White, nor did White register the van in his name. And although at first White used the van with Lawrence’s authorization, ultimately he appropriated it for one month without her knowledge or consent. From these circumstances a reasonable factfinder could conclude that White never intended to pay for Lawrence’s van, he never acquired a proprietary interest in it, and he thus knowingly and intentionally exerted unauthorized control over the van when he took it without Lawrence’s permission. White argues that his initial payment of \$50 distinguishes this case from *Long* and proves that he intended to honor the original purchase agreement. The trial court found otherwise. White’s contention is no more than an invitation to reweigh the evidence, something which this Court is not at liberty to do. For these reasons we find sufficient evidence and affirm the judgment of the trial court.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.