

Case Summary

Dale E. Moore contracted with two men to sell them collector cars, and the men paid him for the cars. Moore neither delivered the cars to the buyers nor returned their money. After a jury trial, he was convicted of theft by deception. He appeals, challenging the sufficiency of the evidence to prove that he used deception to obtain the victims' property. Concluding that the evidence is sufficient, we affirm.

Facts and Procedural History

The facts most favorable to the conviction are as follows. Sometime in July 2007, Moore met Terry Tucker in Allen County, Indiana. The two men discussed a mutual interest in collector cars, and Moore informed Tucker that he had a collection of more than 900 vehicles in South Bend. Tucker told Moore that he wanted a 1969 Mach I Mustang 428, and Moore claimed to own three such cars. After telling Tucker that one of the cars was for sale, Moore showed him a picture of it. Moore offered to sell the car to Tucker for \$3800, and Tucker agreed to buy it for that price. Moore and Tucker also agreed that Tucker would purchase a 1963 Corvette with split windows from Moore for \$10,000. Tucker arranged with another car enthusiast, Jessie Jenkins, to split the cost of the Corvette with him.

In August 2007, Tucker paid Moore in full for the Mustang with a cashier's check. He also made cash payments totaling \$3500 toward the purchase price of the Corvette. Jenkins paid \$2000 toward the cost of the Corvette. Although Moore was supposed to deliver the Mustang to Tucker in "very short order," and Tucker believed that he would receive the car during the following weekend, Moore failed to produce the car. Tr. p. 87-

88. Moore had also agreed to transport the Corvette from South Bend at the same time as the Mustang, and Tucker and Jenkins were to pay the balance owed for the Corvette when it was delivered. *Id.* at 88. Moore never delivered the cars or returned the money. After about a month, having repeatedly contacted Moore, Tucker and Jenkins contacted the police. *Id.* at 122.

The State charged Moore with theft, a Class D felony.¹ After a jury trial, he was convicted as charged and sentenced to three years in the Department of Correction. Appellant's App. p. 10. Moore now appeals his conviction.

Discussion and Decision

Moore appeals his conviction for theft. On appeal, he challenges the sufficiency of the evidence to support his conviction. Specifically, he argues that the evidence is insufficient to prove that he intended to deprive the victims of their property by creating or confirming a false impression. 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. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). It is the factfinder'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. *Id.* To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider only the evidence most favorable to the trial court's ruling. *Id.* Appellate courts affirm the conviction unless no reasonable factfinder could find the

¹ Ind. Code § 35-43-4-2(a).

elements of the crime proven beyond a reasonable doubt. *Id.* The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. *Id.* at 147.

In order to convict Moore for theft, the State had to prove that he “knowingly or intentionally exert[ed] unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use[.]” I.C. § 35-43-4-2(a). Moore’s control over the property of another person was “unauthorized” if he exerted it, among other things, “by creating or confirming a false impression in the other person” or “by promising performance that the person knows will not be performed[.]” Ind. Code § 35-43-4-1(b)(4), (6). On appeal, Moore argues that the evidence is insufficient to show that he intentionally misrepresented to Tucker and Jenkins that he would deliver the cars to them. He contends that the cars in question did, in fact, exist and that he was unable to deliver them only because of “dire financial straits.” Appellant’s Br. p. 8. Thus, he argues that he had no intent to defraud Tucker and Jenkins and, therefore, did not intentionally exercise unauthorized control over their money.

As we have observed in the past, “[i]ntent’ is ‘a mental function, and without a confession, it must be determined from a consideration of the conduct and the natural consequences of the conduct giving rise to the charge that the defendant committed theft.’” *Long v. State*, 867 N.E.2d 606, 614 (Ind. Ct. App. 2007) (quoting *Duren v. State*, 720 N.E.2d 1198, 1202 (Ind. Ct. App. 1999), *trans. denied*), *reh’g denied*. “Accordingly, intent may be proven by circumstantial evidence, and it may be inferred from a defendant’s conduct and the natural and usual sequence to which such conduct logically and reasonably points.” *Id.* (quoting *Duren*, 720 N.E.2d at 1201). Where a defendant

commits theft by creating a false impression in the mind of the victim, “the representations creating that false impression must be of past or existing fact and the party relinquishing control of the property must have relied on the misrepresentation.” *Dunnuck v. State*, 644 N.E.2d 1275, 1278 (Ind. Ct. App. 1994), *trans. denied*.

Moore’s challenge to the sufficiency of the evidence is merely a request that we reweigh the evidence. The State presented evidence at trial that Moore convinced Tucker and Jenkins to give him money by informing them that he had inherited a large number of cars and that he needed to sell them. Tr. p. 115. To Tucker, Moore claimed that his collection contained over 900 cars that were stored in South Bend. *Id.* at 82-83. However, Jenkins was told that the cars were stored in Huntington. *Id.* at 126. Further, after receiving money from Tucker and Jenkins, Moore never delivered the cars or returned their money, giving multiple excuses for not delivering the cars:

[State:]: What was his reason for not delivering the cars?

[Tucker:] “I don’t have time. I can’t get a key to the building. The building security system’s down,” any number of excuses. “The gate was locked,” just couldn’t seem to get to South Bend and get the car or cars.

[Jenkins:] [T]here were excuses why the cars had not shown up. They were in transit. They were in storage. There was always an excuse, you know, why the cars weren’t going to be here.

[Jenkins:] There were so many lies with all of this, or what I presumed to be lies, that [the cars] were either in transit, they were in Huntington, the keys were lost – I mean, just every excuse you can think of.

Id. at 89, 121, 126-27. We have previously held that the evidence was sufficient to prove that a defendant intended to commit theft where the defendant contracted over the internet to sell car parts to two buyers, received payment from the buyers, and never

delivered the promised goods or refunded the payments. *Long*, 867 N.E.2d at 614. Likewise, here, the evidence is sufficient to prove that Moore induced payment from Tucker and Jenkins without intending to perform his portion of the arrangement, thus creating a false impression in his victims' minds.² From the evidence presented, the jury was free to disbelieve Moore that he intended at the time of contracting with Tucker and Jenkins to ever deliver cars to them.

Affirmed.

NAJAM, J., and FRIEDLANDER, J., concur.

² Moore cites to *Pierce v. State*, 226 Ind. 312, 79 N.E.2d 903, 904 (1948), in support of his claim that the evidence is insufficient to support his conviction. *Pierce* does not help his claim, however, because it affirmed a defendant's conviction for theft by false pretenses where the defendant contracted to sell a car, took a monetary deposit, and never delivered the car.