



## **Case Summary**

Sherman Harris appeals his conviction for theft, a class D felony. We affirm.

### **Issues**

Harris raises one issue, which is whether the State presented sufficient evidence to support Harris's conviction.

### **Facts**

James Gilbert works as a custodian at the Cold Springs Academy School in Indianapolis. On May 9, 2007, Gilbert's car was broken into while he was at work. His car was parked in front of the main building. Gilbert and his co-worker were standing outside having a conversation when they noticed a man walking down Cold Springs Road; the man then disappeared. The two men walked over toward the main building to investigate. Gilbert then noticed the same person leaning into the door of his car. Gilbert shouted at the individual who then began to run towards him. The perpetrator realized that he was running towards Gilbert, and he dropped items he had taken from Gilbert's car. The man fled the scene and Gilbert called the police. Gilbert gave the police a description of the suspect, and informed them what clothes he was wearing. In response to the call, the police quickly apprehended Harris. Less than five minutes had passed when Gilbert positively identified Harris as the person who had broken into his car.

The State charged Harris with Class D Felony theft. Gilbert was the only witness who testified at a bench trial. He testified that when he first saw Harris, Harris was about the length of a basketball court away from him. He also testified, however, as Harris ran towards him Gilbert was looking at him. Gilbert had never seen Harris before the day the

crime took place, and he did not see him again until trial. At trial some months later, Gilbert could not remember Harris as clearly as he did on the day the theft took place. The trial court found Harris guilty as charged. He now appeals.

### **Analysis**

Harris challenges the sufficiency of the evidence supporting his conviction. In reviewing a sufficiency of the evidence claim, we neither reweigh the evidence nor assess the credibility of the witnesses. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). We consider the probative evidence and reasonable inferences supporting the verdict, and may only reverse the trial court's decision if no reasonable fact-finder could have found the elements of the crime proven beyond a reasonable doubt. Id. In order to overcome reasonable doubt, the State does not need to overcome every reasonable hypothesis of innocence. Id. at 147.

Testimony from a single eyewitness is sufficient to sustain a conviction. Badelle v. State, 754 N.E.2d 510, 543 (Ind. Ct. App. 2001), trans. denied. Identification evidence does not need to be unequivocal to sustain a conviction. Scott v. State, 871 N.E.2d 341, 344 (Ind. Ct. App. 2007), trans. denied. However, if the identification is the only evidence offered, the identification must be unequivocal. Id.

In order to convict Harris of theft, the State was required to prove that he knowingly exerted unauthorized control of the property of another person with intent to deprive the person of any part of its value or use. Ind. Code § 35-43-4-2(a). "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." I.C. § 35-41-2-2(b).

Harris specifically claims Gilbert's eyewitness testimony was the only evidence linking him to the crime, that the eyewitness identification of him was equivocal, and it therefore was insufficient to sustain his conviction. The State argues that the evidence presented was not equivocal, and even if it were, there is enough circumstantial evidence to support a conviction. We agree with the State.

Not even five minutes had elapsed when Harris fled the scene, police apprehended him based on Gilbert's description, and Gilbert confidently identified Harris as the person who had broken into his car. Tr. p. 12. Some months later, Gilbert identified Harris again, this time in court, as the person who committed the crime.

Harris contends that the in-court identification made of him by Gilbert was made with the aid of the orange jumpsuit he was wearing, and suggested Gilbert "thought they had the right guy." Tr. p. 10. Harris also contends that there is insufficient evidence to sustain his conviction because Gilbert had a hard time remembering what Harris's face looked like at trial. Gilbert had never seen Harris until the day of the crime, and he did not see him again until trial.

Gilbert testified when he identified Harris to police when Harris was in custody, less than five minutes after the crime occurred, that he was confident enough to identify him that day and that he was "close enough to identify him as to the clothing he had on and his face at the time . . . ." Tr. p. 12. Harris does not contend that the identification Gilbert made of him the day of the crime was unduly suggestive or performed improperly.

There is enough evidence that a trier of fact could reasonably infer that Harris committed the crime. The trial court had the exclusive responsibility to decide whether to believe Gilbert's identification testimony, after observing him first-hand and considering reasons to believe or not to believe him. We will not interfere with the trial court's decision to weigh his credibility.

### **Conclusion**

There is sufficient evidence to support Harris's conviction for theft. We affirm.

Affirmed.

CRONE, J., and BRADFORD, J., concur.