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.

FILED
Jun 23 2009, 9:11 am
CLERK
of the supreme court, court of appeals and tax court

ATTORNEY FOR APPELLANT:

LAURA M. TAYLOR
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

NICOLE N. SCHUSTER
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

RALPH ROGERS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0812-CR-1065
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable John W. Hammel, Judge
Cause No. 49F24-0802-FD-36740

June 23, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Ralph Rogers appeals his conviction for Theft,[1] a class D felony, challenging the sufficiency of the evidence as the sole issue on appeal.

We affirm.

The facts most favorable to the conviction reveal that on January 7, 2008, Jason Thornton, an owner of Thornton Brothers Concrete, arrived at his jobsite located at the intersection of Vincennes Circle and Michigan Road in Indianapolis and discovered that his tools had been stolen from his trailer that was parked on-site. Thornton reported the theft to the Indianapolis Metropolitan Police Department. Thornton and his wife compiled a list of the items taken, including a concrete floor saw, a trawl machine worth $4300, a 3600 Mack generator, a grinder, a cordless drill, and a surveyor's laser, among other items, complete with serial numbers for the items.

On January 17, 2008, Rogers went to Cash American Pawn of Indianapolis #7 and pawned an electric grinder and cordless drill. The serial numbers on these items matched the numbers on items that were reported stolen by Thornton. After matching the serial numbers, Detective Mary Harty of IMPD claimed the items as stolen and returned them to Thornton.

At trial, Rogers testified that he bought the items from an acquaintance he knew from a Lowe's store in Indianapolis. Rogers claimed that this acquaintance offered him a lot of tools for $400. Rogers testified that he believed he could use the concrete saw, the generator, and the grinder for work, and that he could make his money back by pawning the rest of the items. Rogers testified that his acquaintance brought the items to his home and that he paid

[1] Ind. Code Ann. § 35-43-4-2 (West, Premise through 2008 2nd Regular Sess.).

him $400 in cash. According to Rogers, his acquaintance gave him a receipt with the name "William Miller" and an address. Rogers had not seen this acquaintance since, and his attorney was unable to locate him at the address provided on the receipt. Rogers denied stealing the items.

On February 13, 2008, the State charged Rogers with theft as a class D felony. A bench trial was held on October 21, 2008, at the conclusion of which the trial court found Rogers guilty as charged. In so concluding, the trial court specifically noted that Rogers's story about how he came into possession of the tools was not credible.

On appeal, Rogers argues that the evidence is insufficient to sustain his conviction for theft. When considering a challenge to the sufficiency of evidence to support a conviction, we respect the fact-finder's exclusive province to weigh the evidence and therefore neither reweigh the evidence nor judge witness credibility. *McHenry v. State*, 820 N.E.2d 124 (Ind. 2005). We consider only the probative evidence and reasonable inferences supporting the conviction, and "must affirm 'if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.'" *Id*. at 126 (*quoting Tobar v. State*, 740 N.E.2d 109, 111-12 (Ind. 2000)).

To convict Rogers of theft, the State was required to prove that Rogers knowingly or intentionally exerted unauthorized control over the property of another person with the intent to deprive the other person of any part of its value or use. *See* I.C. § 35-43-4-2(a). This court has held that "the mere unexplained, exclusive possession of recently stolen property will

sustain a conviction of theft . . . ." *Gibson v. State*, 533 N.E.2d 187, 188 (Ind. Ct. App. 1989). Possession remains unexplained where the trier of fact rejects the defendant's explanation for the possession of the stolen property. *Gibson v. State*, 533 N.E.2d 187.

Here, Rogers admitted to his possession of the tools stolen from Thornton. Rogers does not argue that his possession was not recent. Rather, Rogers argues that he explained his possession and that he had no reason to believe the items had been stolen. The trial court, however, found that Rogers's explanation of how he came into possession of the items was not credible. Implicit in this conclusion is that the court found that Rogers made up the story to cover-up his theft of the items. In light of our standard of review, we must accept the trial court's determination in this regard. We decline Rogers's request that we reweigh the evidence and assess his credibility.

Judgment affirmed.

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