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IN THE COURT OF APPEALS OF INDIANA

CHRISTOPHER DEARDORFF,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A03-0911-CR-550
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Kenneth Scheibenberger, Judge
Cause No. 02D04-0904-FD-340

June 29, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Christopher Deardorff appeals his conviction for Class D felony theft. We affirm.

Issue

Deardorff raises one issue, which we restate as whether there is sufficient evidence to support his theft conviction.

Facts

At 6:00 a.m. on March 31, 2009, Edmond Parent, a supervisor at American Electric Power ("AEP"), arrived at the building where he worked that was used to store equipment, trucks, and cable. The AEP property abutted Spy Run Creek, in Fort Wayne. A nine to ten foot high chain link fence topped by barbed wire surrounded the property. As he did every day, Parent walked the perimeter of the property looking for anything out of the ordinary. Parent did not notice anything unusual that morning.

Huth Tool ("Huth") was located on the other side of the creek from AEP. At approximately 8:30 a.m. that morning, Timothy Reinking, a machinist at Huth, observed two men pull up in a car that did not belong in the Huth parking lot. The men, one of whom was Deardorff, got out of the car and "scurried" across a railroad bridge that spanned Spy Run Creek. Tr. p. 65. Reinking observed the men trying to move something across the water from the bridge. After they got it to the Huth side of the creek, the two men "took off." Id. at 66. The men returned between 9:30 and 10:00 a.m., parked closer to the railroad bridge, and began cutting up what they had hauled across the bridge. Another Huth employee, Jeanne Diemer, also observed the two men get something heavy out of the creek. Diemer saw the men leave and then return. After they

returned, they struggled to put what they had retrieved from the creek into the trunk of the car.

Huth employees notified police and, when the police arrived, they observed Deardorff and another man loading black insulated wire into the back of a car. The wire had been cut into pieces with bolt cutters purchased from Walmart that morning. Later that morning, Parent identified the wire as insulated copper wire. Parent described the wire as "not your normal typical copper wire." Id. at 78. Parent stated that it is the type of wire used by AEP for heavy industry purposes and is not found in homes. Parent returned to the AEP property with police and observed that the barbed wire had been pulled down and there were black rub marks on a concrete retaining wall supporting the fence. There was also an empty reel near the concrete wall that had not been there earlier in the morning. The type of wire that had been on the reel was the same as the wire found in the car. The reel had contained 430 feet of wire worth approximately $1000. Because the wire had been cut, it was no longer usable.

On April 6, 2009, the State charged Deardorff with Class D felony theft.[1] A jury found Deardorff guilty as charged. Deardorff now appeals.

Analysis

Deardorff argues there is insufficient evidence to support his theft conviction. In reviewing a claim of insufficient evidence, we do not reweigh the evidence, nor do we reevaluate the credibility of witnesses. Rohr v. State, 866 N.E.2d 242, 248 (Ind. 2007).

[1] The State also alleged, and the jury found, that Deardorff was an habitual offender. Deardorff does not challenge that finding on appeal.

"The Court views the evidence most favorable to the verdict and the reasonable inferences therefrom and will affirm the conviction if there is substantial evidence of probative value from which a reasonable jury could find the defendant guilty beyond a reasonable doubt." Id.

To establish that Deardorff committed Class D felony theft, the State was required to prove that he 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 Ind. Code § 35-43-4-2(a). Deardorff argues that he and his cohort came upon a length of copper wire in the creek, retrieved it, cut it up, and loaded it into a vehicle. He contends there was no identification on the wire, and he assumed it had been abandoned.

"It is a defense that the person who engaged in the prohibited conduct was reasonably mistaken about a matter of fact, if the mistake negates the culpability required for commission of the offense." I.C. § 35-41-3-7. When the State has made a prima facie case of guilt, the burden is on the defendant to establish an evidentiary predicate of his or her mistaken belief of fact, such that it could create a reasonable doubt in the fact-finder's mind that the defendant had acted with the requisite mental state. Saunders v. State, 848 N.E.2d 1117, 1121 (Ind. Ct. App. 2006), trans. denied. The State retains the ultimate burden of disproving the defense beyond a reasonable doubt. Id. The State may meet this burden by directly rebutting evidence, by affirmatively showing that the defendant made no such mistake, or by simply relying upon evidence from its case-in-chief. Id.

There is simply no evidence to support Deardorff's claim that AEP abandoned the wire in the creek. Deardorff did not present any evidence on his behalf, and none of the State's evidence suggests that AEP had abandoned the wire in the creek. Instead, the evidence shows that Deardorff and his cohort took the wire from AEP's property through the fence, hauled it across the creek, cut it up, and placed it in the car. There is sufficient evidence to support Deardorff's conviction.

Conclusion

There is sufficient evidence to support Deardorff's Class D felony theft conviction. We affirm.

Affirmed.

BAILEY, J., and MAY, J., concur.