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ATTORNEY FOR APPELLANT:

**ELLEN M. O’CONNOR**  
Marion County Public Defender Agency  
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

**STEPHEN R. CARTER**  
Attorney General of Indiana

**CHRISTOPHER A. AMERICANOS**  
Deputy Attorney General  
Indianapolis, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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ANDREW CORK,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0611-CR-1003

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable, Amy Barbar, Magistrate  
Cause No. 49G03-0606-FC-106916

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**July 17, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

## **Case Summary**

Andrew Cork appeals his conviction for class C felony auto theft. We affirm.

### **Issue**

We restate the issue as whether the State presented sufficient evidence to convict Cork of auto theft.

### **Facts and Procedural History**

The facts most favorable to the judgment indicate that on June 1, 2006, Brian Flint was at Doug Chapman's house in Indianapolis. Cork was also present at Chapman's house. Flint owned a red 1990 Chevy S-10 pickup truck with a cracked steering column. To drive the truck, Flint used a push button lever, not an ignition key. Chapman asked Flint if he and Cork could borrow the truck to run some errands. Flint agreed that the men could use his truck in exchange for gas and money.

Chapman and Cork left and returned in the truck, and then Cork left Chapman's house. Later that evening, Flint discovered that his truck was missing from the driveway. Chapman suggested Cork had taken Flint's truck, without Flint's permission, so Chapman took Flint to Cork's parents' apartment. At the parents' request, Flint agreed not to call the police right away. The next morning, Flint called the parents again, and they notified Flint that Cork would return the truck by noon. Cork's mother and Flint waited on Cork to return with the truck, but Cork never showed up. Flint called the police and later identified Cork in a photo array.

On June 11, 2006, Indianapolis Police Department Officer Douglas Lepsky saw a truck, which he recognized from a stolen vehicle report he had taken earlier in the week.

After receiving confirmation that the truck was Flint's stolen vehicle, Officer Lepsky followed Cork until Cork stopped the truck. Cork asked Officer Lepsky, "What did you stop me for? What did I do wrong?" Tr. at 30. Officer Lepsky told Cork that he had been informed that the truck was stolen. While the officer was informing Cork of his *Miranda* rights, Cork stated, "I should have walked. I shouldn't have taken that damn truck." *Id.* at 32-33. Cork then asked Officer Lepsky if he was going to arrest him for auto theft. Officer Lepsky answered in the affirmative.

On June 13, 2006, the State charged Cork with class C felony auto theft and with being a habitual offender. At a bench trial on September 28, 2006, the trial court found Cork guilty of auto theft but did not find him to be a habitual offender. Cork now appeals.

### **Discussion and Decision**

To convict Cork of auto theft, the State had to satisfy the necessary elements set out in Indiana Code Section 35-43-4-2.5(b), which states:

A person who knowingly or intentionally exerts unauthorized control over the motor vehicle of another person, with intent to deprive the owner of the . . . vehicle's value or use . . . commits auto theft, a class D felony. However, the offense is a class C felony if the person has a prior conviction of an offense under this section or subsection (c).<sup>[1]</sup>

Cork claims that the State presented insufficient evidence that he intended to deprive Flint of his truck's value or use. Our standard of review remains the same as for any sufficiency of the evidence claim.

We will neither reweigh the evidence nor judge the credibility of the witnesses when reviewing the sufficiency of the evidence. We examine the evidence most favorable to the judgment and all reasonable inferences to be drawn

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<sup>1</sup> Cork had a prior auto theft conviction.

therefrom. We will affirm a conviction when there is substantial evidence of probative value from which the trier of fact could find guilt beyond a reasonable doubt.

*Trotter v. State*, 838 N.E.2d 553, 556-57 (Ind. Ct. App. 2005) (citations omitted). The trier of fact is entitled to determine which version of the incident to credit. *Duren v. State*, 720 N.E.2d 1198, 1201 (Ind. Ct. App. 1999), *trans. denied* (2000).

“It is well-established that knowledge and intent may be inferred from the facts and circumstances of each case.” *Johnson v. State*, 837 N.E.2d 209, 214 (Ind. Ct. App. 2005), *trans. denied* (2006). Cork took Flint’s truck without permission and kept it for nine days, until he was stopped by Officer Lepsky. Once Cork was arrested, he stated that he “shouldn’t have taken that damn truck,” and asked Officer Lepsky if he was going to be arrested for auto theft. Cork’s actions and his words support the conclusion that he exerted unauthorized control over Flint’s vehicle and deprived Flint from using the vehicle. Cork’s argument to the contrary is merely a request to reweigh evidence and judge witness credibility, which we may not do. The evidence was sufficient to support Cork’s conviction.

Affirmed.

BAKER, C. J., and FRIEDLANDER, J., concur.