

Shane Allen Pyle appeals his conviction for Criminal Mischief,¹ a class A misdemeanor. On appeal, Pyle presents the following issue for review: Did the State present sufficient evidence of the defendant's reckless damage of another's property that would result in a conviction for criminal mischief as a class A misdemeanor?

We reverse and remand.

The facts favorable to the conviction are that on September 13, 2007, Dan Wasilenski was checking out of his hotel room in Hamilton County in the early morning hours. Wasilenski placed his cooler in the car and returned to his room for his suitcase. Moments later, Wasilenski returned to his car to find Pyle inside of his car. Pyle then exited Wasilenski's car and began walking to a nearby field. As Pyle was walking away, he told Wasilenski: "I only broke a piece of plastic," and offered to give money to Wasilenski for the damage. *Transcript* at 70. When Wasilenski told Pyle that he wanted to go inside to straighten things out, Pyle fled. Shortly thereafter, Pyle was arrested and taken to the Hamilton County Jail.

On September 24, 2007, the State charged Pyle with auto theft, a class D felony, and criminal mischief, a class A misdemeanor. The State subsequently moved to amend the charging information from auto theft to attempted auto theft, also a class D felony, which motion the court granted. A jury trial was conducted on November 18, 2008, and the jury found Pyle guilty as charged. On December 19, 2008, Pyle was sentenced to concurrent sentences of three years for attempted auto theft and one year for criminal mischief as a class

¹ Ind. Code Ann. § 35-43-1-2 (West, PREMISE through 2008 2nd Regular Sess.)

A misdemeanor. Pyle now appeals only his conviction for criminal mischief as a class A misdemeanor.

In reviewing the sufficiency of the evidence, we neither reweigh the evidence nor resolve questions of credibility. *Tyler v. Highsmith*, 884 N.E.2d 436 (Ind. Ct. App. 2008). We look only to the evidence of probative value and reasonable inferences that support the trial court's judgment. *Id.*

To sustain a conviction for criminal mischief as a class A misdemeanor, the State must prove beyond a reasonable doubt that: 1) the defendant; 2) recklessly, knowingly, or intentionally damaged or defaced property of another person; 3) without the other person's consent; 4) resulting in a pecuniary loss of at least \$250 but less than \$2,500. I.C. § 35-43-1-2(a)(1)(A)(i). Pyle argues that the State brought forth no evidence that he caused a pecuniary loss as a result of the damage to Wasilenski's property as charged, which means that a conviction for criminal mischief as a class A misdemeanor was inappropriate in that the fourth element required was not met. The State concedes that no evidence of any pecuniary loss was ever introduced at trial. After reviewing the record, we agree that there is no evidence of an amount of Wasilenski's pecuniary loss. Therefore, Pyle's conviction for class A misdemeanor criminal mischief is not supported by the evidence.

A conviction for criminal mischief as a class B misdemeanor, however, is supported by the evidence. A conviction for a class B misdemeanor requires proof as to the same elements as class A misdemeanor criminal mischief except no proof of a pecuniary loss is required. *See* I.C. § 35-43-1-2(a). Pyle does not challenge the evidence presented

establishing that he recklessly, knowingly, or intentionally damaged Wasilenski's property without Wasilenski's consent. We therefore reverse Pyle's conviction for class A misdemeanor criminal mischief and remand with instructions to the trial court to enter a judgment of conviction for criminal mischief as a class B misdemeanor and to sentence accordingly.

Judgment reversed and remanded.

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