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IN THE
COURT OF APPEALS OF INDIANA

LINZY C. MOTTON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 79A02-1012-CR-1440
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Les A. Meade, Judge
Cause No. 79D05-0807-FD-411

September 15, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Linzy Motton appeals his conviction for Class D felony theft. We affirm.

Issue

The sole issue before us is whether there is sufficient evidence to sustain Motton's conviction for theft.

Facts

On Saturday, July 7, 2007, about two weeks after Lafayette Wire Products ("LWP") installed surveillance cameras, recordings from the cameras showed that a white pick-up truck, belonging to Motton, appeared around 2:00 p.m. at LWP, then left, and returned around 9:00 p.m. On the following Monday, the plant manager found that machines stored both inside and outside a LWP shed were dismantled, and copper was taken out of them. Also, two spools in the shed that had had copper wrapped around them had all of their copper removed. The manager later noticed that a padlock near the south gate enclosing the surrounding area of the shed had been cut. Approximately 3,000 pounds of copper had been removed with an estimated value of $15,000. LWP does not allow "scrappers" to take metals because it would scrap extra metals itself.

Motton admitted he and others were at LWP "scrapping" on July 7, 2007. In a pretrial statement made on July 16, 2007, Motton said, "[W]e were thinking at the dumpsters it would be okay to get it. . . . We know the dump truck gonna come pick this up." Tr. p. 86-87. On January 26, 2010, over two years later, Motton testified at trial that either James Ross or another person had permission to take the copper. In a pretrial

statement, James Ross said that Motton had permission, but during trial Ross testified that was a lie and that someone else had told him they had permission to scrap.

The State charged Motton with Class D felony theft and being an habitual offender. After a bench trial, the trial court found Motton guilty on both counts. Motton now appeals his theft conviction.

Analysis[1]

Motton contends there is insufficient evidence to sustain his conviction for theft. In reviewing a sufficiency of the evidence claim, we do not reweigh the evidence nor do we assess the credibility of the witnesses. Treadway v. State, 924 N.E.2d 621, 639 (Ind. 2010). We look to the evidence and reasonable inferences drawn therefrom that support the verdict. Id. We will uphold the conviction if there is probative evidence from which a fact finder could have found the defendant guilty beyond a reasonable doubt. Id. The theft statute states, "A person who knowingly or intentionally exerts unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use, commits theft, a Class D felony." Ind. Code § 35-43-4-2(a). "The intent necessary to support a conviction for theft can be inferred from surrounding circumstances." Smith v. State, 664 N.E.2d 758, 761 (Ind. Ct. App. 1996), trans. denied.

Motton argues this court should reverse his conviction due to insufficient evidence of mens rea, claiming he thought he had permission to remove the copper from LWP's premises. Regardless of Motton's testimony that he thought he had permission or that

[1] Motton stated in his brief that the appellate court may reverse on application of the incredible dubiosity rule, but he did not elaborate, so we will not address that issue. See Ind. App. R. 46(A)(8)(a).

Ross changed his testimony that it was someone other than Motton who said they had permission, the evidence is sufficient to reasonably infer that Motton knew he lacked permission to take the copper. It was not company practice to allow metal scrapping, the act was carried out at night, and the padlock to the south gate was found cut. Furthermore, LWP does not put copper, which they keep and sell, in the metal dumpster and machines stored both inside and outside of the shed were found dismantled with copper taken out of them. Someone who has to cut a lock and dismantle machines during the middle of the night to remove copper clearly does not have permission to take the copper. There is sufficient evidence to show Motton had intent to deprive LWP of its copper without permission.

Conclusion

There is sufficient evidence to sustain Motton's conviction for theft. We affirm.

Affirmed.

RILEY, J., and DARDEN, J., concur.