

STATEMENT OF THE CASE

Defendant-Appellant Daniel W. Oliver appeals his convictions of two counts of theft, both Class D felonies. Ind. Code § 35-43-4-2(a) (1985). We affirm.

ISSUE

Oliver raises one issue, which we restate as: whether the evidence is sufficient to sustain Oliver's convictions.

FACTS AND PROCEDURAL HISTORY

In 2007, Gary and Lorene Link owned a shop in Brown County. One of their daughters, Michelle, managed the shop. Michelle also lived in the Links' home, which was located in rural Brown County.

In February or March of 2007, Michelle set up a profile on a dating website. Through the website, she communicated with a man who identified himself as Wayne. Wayne was later identified as Oliver. They agreed to meet, and on March 17, 2007, Oliver came to the Links' shop to meet Michelle in person. After Michelle closed the shop, the two went to her home so that she could change clothes before they went out to eat. The Links were out of town that week on vacation. At Oliver's request, Michelle turned on a computer so that he could check his e-mail while she changed clothes. The computer was in her father's home office, where checkbooks, silver dollars, and several days' worth of income from the shop were kept. After Michelle changed her clothes, the two set out for Greenwood, Indiana, but Oliver received a phone call. Stating that he

needed to take care of something at work, Oliver returned Michelle home and left. They agreed that Oliver would return the next day.

The next day, Oliver returned to the shop. The two went back to Michelle's home, where Oliver again checked his e-mail in the office while Michelle changed clothes. Next, Oliver drove Michelle to a deli in Avon, Indiana. Oliver asked Michelle to go get in line and get a table. After she got in line, Oliver came in with her jacket and gave it to her. Michelle asked Oliver what he wanted to eat, and he told her and went back outside. After Michelle purchased the food and sat down, she discovered that Oliver had left. She tried to call Oliver, but he did not respond to her messages. Eventually, Michelle contacted a friend to get a ride back to Brown County.

Upon returning home, Michelle checked her father's office. She determined that two hundred and fifty dollars in cash from the shop was missing, along with silver dollars. Later, she discovered that checks had also been stolen from her dad's office, and a pendant was missing from the shop.

The State charged Oliver with three counts of theft, all Class D felonies. The case was tried to the bench. The trial court found Oliver guilty of counts one and three, but not guilty of count two. The trial court merged count three into count one and sentenced Oliver accordingly. He now appeals.

DISCUSSION AND DECISION

When an appellant challenges the sufficiency of the evidence supporting a conviction, we do not reweigh the evidence or judge the credibility of the witnesses. *Joslyn v. State*, 942 N.E.2d 809, 811 (Ind. 2011). We consider only the probative

evidence and reasonable inferences supporting the verdict. *Id.* A conviction may be based on circumstantial evidence alone so long as there are reasonable inferences enabling the factfinder to find the defendant guilty beyond a reasonable doubt. *Long v. State*, 935 N.E.2d 194, 198 (Ind. Ct. App. 2010), *trans. denied*.

In order to convict Oliver of two counts of theft as charged, the State was required to prove beyond a reasonable doubt that Oliver (1) knowingly or intentionally (2) exerted unauthorized control over the property of Gary Link and/or his business entities, specifically United States currency (Count 1) and checks (Count 3) (3) with the intent to deprive Link and/or his business entities of any part of the use or value of the property. Appellant's App. p. 15; Ind. Code § 35-43-4-2(a).

Oliver contends that the circumstantial evidence presented at trial fails to establish beyond a reasonable doubt that he took anything from the Links' residence. We disagree. In addition to the evidence discussed above, it was established at trial that all entrances to the home were locked whenever Michelle or the Links were absent. Furthermore, there was no sign of forced entry at the Links' home. The evidence, and all reasonable inferences drawn from the evidence, demonstrate beyond a reasonable doubt that Oliver exerted unauthorized control over currency and checks that he found in the Links' home office.

Next, Oliver argues that the trial court's judgment is inconsistent and should be reversed because the court found him not guilty of one count of theft while finding him guilty of the other two counts. Specifically, Oliver asserts that the State presented the same evidence to prove all three charges.

Where the trial of a defendant results in acquittal upon some charges and convictions upon others, the results will survive a claim of inconsistency where the evidence is sufficient to support the convictions. *Robinson v. State*, 814 N.E.2d 704, 709 (Ind. Ct. App. 2004). Only extremely contradictory and irreconcilable verdicts warrant corrective action. *Id.* Here, we have determined that the evidence is sufficient to sustain Oliver's two convictions for theft. Furthermore, the two convictions are based on the taking of property from the Links' home. By contrast, the count of theft upon which the trial court entered a judgment of not guilty addressed the alleged theft of a pendant from the shop. Therefore, the theft charge upon which Oliver was acquitted was based on different allegations and evidence. We find no error.

Oliver cites several cases in support of his claims, but they are distinguishable. In *Shelby v. State*, 875 N.E.2d 381 (Ind. Ct. App. 2007), *trans. denied*, and *Buntin v. State*, 838 N.E.2d 1187 (Ind. Ct. App. 2005), this Court determined that the evidence was insufficient to sustain the defendants' convictions for auto theft. However, in both cases the defendants were found in possession of stolen vehicles several days after the thefts, with no other evidence to tie them to the thefts. By contrast, in the current case there is evidence that Oliver was in the Links' home office at the time the checks and currency were stolen.

CONCLUSION

For the reasons stated above, we affirm the judgment of the trial court.

Affirmed.

BAILEY, J., and MATHIAS, J., concur.