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IN THE
COURT OF APPEALS OF INDIANA

GARY JONES,	)	
	)	
Appellant- Defendant,	)	
	)	
vs.	)	No. 49A02-1105-CR-400
	)	
STATE OF INDIANA,	)	
	)	
Appellee- Plaintiff,	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Reuben Hill, Judge
Cause No. 49F18-1005-FD-038091

December 6, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Chief Judge

Case Summary and Issue

After a bench trial, Gary Jones was convicted of theft, a Class D felony. He raises two issues for our review, which we consolidate and restate as whether the State presented sufficient evidence to support his conviction. Concluding the evidence was sufficient, we affirm the trial court's conviction.

Facts and Procedural History

Around 6:15 a.m. on March 15, 2010, Belinda Brinkley started her vehicle, placed her guitar inside her vehicle, and returned inside her home, letting her vehicle run so that it would warm up. Approximately fifteen minutes later she returned to her vehicle and discovered her guitar had been stolen. Brinkley called her friend, Indianapolis Metropolitan Police Department Officer Pamela Lee, to report the theft of the guitar. Later that day, shortly after 5:00 p.m., Jones pawned Brinkley's guitar at a nearby pawn shop and received $100.00 for the guitar. After police located the guitar, Brinkley identified it as hers, and Jones was charged with theft as a Class D felony. After a bench trial, the trial court found Jones guilty as charged and sentenced him to 545 days incarceration at the Department of Correction, suspended 365 days, and ordered 365 days of supervised probation. Jones now appeals.

Discussion and Decision

I. Standard of Review

When reviewing a challenge to the sufficiency of the evidence to support a conviction, we do not reweigh the evidence or judge the credibility of witnesses, but rather, we respect the jury's role in weighing conflicting evidence. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). We look to the evidence most favorable to the verdict

and the reasonable inferences drawn therefrom. Brasher v. State, 746 N.E.2d 71, 72 (Ind. 2001). We will affirm a conviction if the probative evidence and reasonable inferences drawn therefrom could lead a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. McHenry, 820 N.E.2d at 126.

The State must prove each element of the offense charged beyond a reasonable doubt, but circumstantial evidence and the logical inferences drawn therefrom can establish proof beyond a reasonable doubt. Hedges v. State, 443 N.E.2d 62, 67 (Ind. 1982). We "need not determine whether the circumstantial evidence is adequate to overcome every reasonable hypothesis of innocence," but rather, on review this court should determine "whether inferences may be reasonably drawn from that evidence which support the verdict beyond a reasonable doubt." Bustamante v. State, 557 N.E.2d 1313, 1318 (Ind. 1990).

II. Sufficiency of the Evidence

Jones contends that because our supreme court abandoned the "mere possession rule" in Fortson v. State, 919 N.E.2d 1136 (Ind. 2010), his conviction cannot stand because the only evidence supporting his conviction was his possession of Brinkley's guitar after it was stolen. The mere possession rule allowed a conviction of theft to stand based merely on a defendant's unexplained possession of a stolen item after its disappearance. Id. at 1139. Abandoning the mere possession rule in Fortson, our supreme court returned Indiana law to our pre-1970 stance concerning possession of a stolen item. Id. at 1143. Possession of a stolen item is no longer prima facie evidence of theft. Id. However, possession of a stolen item should still be considered along with the other evidence in a case, such as how recent or distant in time the possession occurs from

the moment the item was stolen and how near or far away in distance the possession occurs from the place where the item was stolen. Id.

While we agree with Jones' interpretation of our supreme court's recent change in position regarding the mere possession rule, we disagree with Jones' recitation of the evidence in this case. According to our supreme court's newly expressed analysis in Fortson, we examine the evidence surrounding Jones' possession of Brinkley's stolen guitar. He possessed the guitar mere hours after it was stolen and sold it before the day ended. Although Jones contends his legal address was never established, Jones testified that he was living with his parents at their residence at the time of the incident, which is within walking distance from Brinkley's home and close to the pawn shop where he sold her guitar. Also, Jones stated he was at his friend's house that day, which was also nearby both Brinkley's home and the pawn shop. The evidence supporting Jones' conviction consists of more than mere possession of Brinkley's guitar. Considering the proximity in time of the guitar's disappearance and Jones' possession and sale of it, and his proximity in location to Brinkley's home, the evidence and reasonable inferences drawn therefrom could lead a reasonable trier of fact to find Jones guilty beyond a reasonable doubt.

Jones second argument is that the trial court improperly placed the burden of proof on him rather than the State. He bases this argument on the trial court's express disbelief of his story of what happened on the day of the guitar being stolen and pawned:

> [Y]ou want [the] Court to believe that you purchased an item that was stolen from a person who [sic] name is only known to you by John. That you haven't seen that person since that day and I don't believe it. There are numbers that are [sic] kind of failed you in this situation. It is a high coincidence that a person's guitar would be stolen at 6:15 a.m. and get into

> your hands by way of a legitimate transaction and sold within ten hours, eleven hours.

Transcript at 27-28. Jones' argument is merely another way of arguing that the evidence was insufficient. If the State did not present sufficient evidence for a reasonable fact finder to find Jones guilty beyond a reasonable doubt, but Jones was still found guilty because he could not corroborate his story, that would be reversible error as Jones contends. Since we conclude sufficient evidence was presented in the trial court for a reasonable fact finder to find Jones guilty beyond a reasonable doubt, it was not error for the trial court to weigh the State's evidence against Jones' story of the events of the day of the incident. If Jones' story had been corroborated at trial, the State's evidence supporting conviction may have no longer been sufficient. Thus, the trial court's assessing the credibility of Jones' story and weighing the evidence was not improper.

Conclusion

We conclude sufficient evidence was presented at the trial that a reasonable finder of fact could find Jones guilty beyond a reasonable doubt of theft. Because sufficient evidence was presented, the trial court's act of weighing Jones' story and credibility against the evidence supporting his conviction was not improperly shifting the burden of proof to Jones. We therefore affirm Jones' conviction.

Affirmed.

BARNES, J., and BRADFORD, J., concur.