

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Michael Allan Hardy,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 24, 2016

Court of Appeals Case No.
20A03-1511-CR-1908

Appeal from the Elkhart Superior
Court

The Honorable Charles Carter
Wicks, Judge

Trial Court Cause No.
20D05-1412-CM-2063

Najam, Judge.

Statement of the Case

[1] Michael Allan Hardy appeals his conviction for theft, as Class A misdemeanor, following a jury trial. Hardy raises two issues for our review:

1. Whether the State presented sufficient evidence to support his conviction; and
2. Whether the trial court erred when it ordered Hardy to pay restitution.

[2] We affirm.

Facts and Procedural History

[3] Around 7:00 a.m. on July 17, 2014, Kari Nichols, who managed the United Pie Company (“United Pie”) in Elkhart, observed a steel pallet jack on the company’s property. Later that morning, Josh Nichols, Kari’s brother who also worked at United Pie, also observed the pallet jack. The pallet jack belonged to United Pie, and employees had placed the pallet jack near an older building with the intention of eventually selling it for scrap. However, the next morning, Kari noticed that the pallet jack and other metal objects near the pallet jack belonging to United Pie had gone missing. No one from United Pie had authorized anyone to remove the pallet jack.

[4] Around noon on July 17, Hardy arrived at Sam Winer and Company (“Winer”), an Elkhart scrapping business. Hardy presented Joseph Winer, who was working that day, with a steel pallet jack and other metal objects. Hardy received a total of \$81.18 for the metal.

- [5] Upon discovering the pallet jack missing, Kari notified local law enforcement. In turn, officers contacted Winer, where they discovered a pallet jack. Kari was able to identify the pallet jack as United Pie's based on distinctive markings. Officers reviewed Winer's surveillance video and identified Hardy as the person who had brought the pallet jack to the scrap yard.
- [6] On October 22, 2014, the State charged Hardy with theft, as a Class A misdemeanor. Following a jury trial, the jury found Hardy guilty as charged. At the ensuing sentencing hearing, the court, over Hardy's objection, ordered Hardy to pay restitution to United Pie if United Pie requested restitution. This appeal ensued.

Discussion and Decision

Issue One: Sufficiency of the Evidence

- [7] Hardy first asserts that the State failed to present sufficient evidence to support his conviction. Our standard for reviewing the sufficiency of the evidence needed to support a criminal conviction is as follows:

First, we neither reweigh the evidence nor judge the credibility of witnesses. *Bailey v. State*, 907 N.E.2d 1003, 1005 (Ind. 2009). Second, we only consider “the evidence supporting the [verdict] and any reasonable inferences that can be drawn from such evidence.” *Id.* (quoting *Henley v. State*, 881 N.E.2d 639, 652 (Ind. 2008)). A conviction will be affirmed if there is substantial evidence of probative value supporting each element of the offense such that a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id.* “It is the job of the fact-finder to determine whether the evidence in a particular case sufficiently proves each element of an offense, and we

consider conflicting evidence most favorably to the trial court's ruling." *Wright v. State*, 828 N.E.2d 904, 906 (Ind. 2005) (citations omitted).

Willis v. State, 27 N.E.3d 1065, 1066-67 (Ind. 2015). To demonstrate theft, as a Class A misdemeanor, the State was required to show that Hardy intentionally exerted unauthorized control over the property of another, with the intent to deprive the other person of any part of its value or use. Ind. Code § 35-43-4-2(a) (2014).

[8] Hardy's sufficiency challenge is without merit. The State's evidence plainly shows him in control, without authorization, of United Pie's steel pallet jack. And Hardy's exercise of control coincides with Kari's observations of when the pallet jack went missing from United Pie's property. Indeed, Hardy's only argument on appeal is that the State did not demonstrate that he committed theft with respect to other metal items that went missing from United Pie's property at the same time the pallet jack went missing. But this argument is neither here nor there; the State did not separately charge Hardy for each missing item but, rather, only charged him once for the missing property. We affirm Hardy's conviction.

Issue Two: Restitution

[9] Hardy also asserts that the trial court erred when it ordered him to pay restitution. A trial court has the authority to order a defendant convicted of a crime to make restitution to the victims of the crime. *Henderson v. State*, 848 N.E.2d 341, 345-46 (Ind. Ct. App. 2006) (citing I.C. § 35-50-5-3). The purpose

of a restitution order is to impress upon the criminal defendant the magnitude of the loss he has caused and to defray costs to the victims caused by the offense. *Id.* at 346. An order of restitution is a matter within the sound discretion of the trial court, and we will only reverse upon a showing of an abuse of that discretion. *Id.* An abuse of discretion occurs if the court's decision is clearly against the logic and effects of the facts and circumstances before it. *Id.*

[10] Here, Hardy asserts that the evidence at trial “was inconclusive as to whether the pallet jack had been returned to the pie company, what the value of loss was, if any, and whether the company even wanted restitution.” Appellant’s Br. at 13. But we conclude that Hardy has not demonstrated error. There is no evidence to support Hardy’s suggestion that the pallet jack might have been returned to United Pie and, as such, it was reasonable from the evidence presented for the trial court to conclude that it had not been. The evidence also plainly demonstrated that Hardy received \$81.18 for the metal he sold to Winer on July 17. And, although United Pie might not have expressly asked for restitution,¹ that does not obviate the trial court’s discretion to impose restitution on Hardy to “impress upon the criminal defendant the magnitude of the loss he has caused.” *Henderson*, 848 N.E.2d at 346. Accordingly, we cannot

¹ Hardy does not challenge the amount of restitution.

say that the trial court abused its discretion when it ordered Hardy to pay restitution.

[11] We affirm Hardy's conviction and the trial court's order on restitution.

[12] Affirmed.

Robb, J., and Crone, J., concur.