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IN THE
COURT OF APPEALS OF INDIANA

ZIN W. HTUT,)
Appellant-Defendant,)
vs.) No. 02A03-0612-CR-605
STATE OF INDIANA,)
Appellee-Plaintiff.)

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Kenneth R. Scheibenberger, Judge
Cause No. 02D04-0603-FD-220

October 9, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Zin W. Htut appeals her conviction for Receiving Stolen Property,[1] a class D felony. Specifically, Htut argues that the evidence was insufficient to sustain her conviction because she did not know that the property she received was stolen. Concluding that the evidence was sufficient, we affirm the judgment of the trial court.

FACTS

On March 17, 2006, Kristina Harris discovered that her home in Fort Wayne had been burglarized and that her jewelry, credit cards, birth certificate, and cash had been stolen. Harris contacted the police to report the burglary and also telephoned various credit card companies to cancel her credit cards. While talking with one of the companies, Harris discovered that her credit card had recently been used at a local gas station. Harris called the gas station and the store clerk notified her that the transaction had been videotaped.

Harris went to the gas station and viewed the videotape. Harris recognized Cynthia Germano as the woman using Harris's credit card at the store. Harris immediately telephoned Germano, who initially denied knowledge of the theft. However, Germano eventually admitted that she knew where Harris's stolen property was but that she had not stolen it. After Germano told Harris that she would return the stolen items to Harris's home, Harris notified the police of the impending exchange.

Htut was a friend of Germano. Prior to receiving Harris's phone call, Germano had met with Htut and had given her two of Harris's rings, warning her "not to pawn them." Tr.

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[1] Ind. Code § 35-43-4-2(b).

p. 113, 150-51, 156. During the transaction, Htut did not ask Germano where the rings were from or why she should not pawn them.

Germano and Htut drove to Harris's home with some of the stolen items. When Htut handed Harris a bag containing stolen property, the police approached the women and arrested Htut and Germano. Fort Wayne Police Department Detective Jerome Bostic interviewed Htut, who had signed a Miranda[2] rights waiver, at the police station. Htut told Detective Bostic that she had purchased Harris's rings from Germano for $80 and that Germano had repeatedly warned her, "Do not pawn these items." Id. at 134. Htut told Detective Bostic that she thought Germano's warnings meant that the rings "were probably stolen, but [] that the items were stolen from maybe her husband or a friend, but not in a burglary." Id.

The State charged Htut with class D felony receiving stolen property on March 23, 2006. A jury trial was held on September 21, 2006, and Htut was found guilty as charged. After a sentencing hearing on November 7, 2006, the trial court sentenced Htut to eighteen months probation. Htut now appeals.

DISCUSSION AND DECISION

The standard of review for sufficiency claims is well settled. In addressing Htut's challenge we neither reweigh the evidence nor reassess the credibility of witnesses. Sanders v. State, 704 N.E.2d 119, 123 (Ind. 1999). Instead, we consider the evidence most favorable to the verdict and draw all reasonable inferences supporting the ruling below. Id. We affirm

[2] Miranda v. Arizona, 384 U.S. 436 (1966).

the conviction if there is probative evidence from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. O'Connell v. State, 742 N.E.2d 943, 949 (Ind. 2001). A conviction may be sustained wholly on circumstantial evidence if such evidence supports a reasonable inference of guilt. Maul v. State, 731 N.E.2d 438, 439 (Ind. 2000).

To sustain a conviction for class D felony receiving stolen property, the State was required to prove beyond a reasonable doubt that Htut knowingly or intentionally received, retained, or disposed of another's property that had been the subject of a theft. I.C. § 35-43-4-2(b). Htut does not argue that she did not exert control over Harris's stolen rings; instead, she challenges the intent element of the crime.

Intent, being a mental state, can only be established by considering the behavior of the relevant actor, the surrounding circumstances, and the reasonable inferences to be drawn from them. Davis v. State, 791 N.E.2d 266, 270 (Ind. Ct. App. 2003). Knowledge that property is stolen may be inferred from the circumstances surrounding the possession. Purifoy v. State, 821 N.E.2d 409, 414 (Ind. Ct. App. 2005), trans. denied. The test of knowledge is not whether a reasonable person would have known that the property had been the subject of theft but whether, from the circumstances surrounding the possession of the property, the defendant knew that it had been the subject of theft. Id. Possession of recently stolen property, when joined with attempts at concealment, evasive or false statements, or an unusual manner of acquisition, may be sufficient evidence of knowledge that the property was stolen. Gibson v. State, 643 N.E.2d 885, 888 (Ind. 1994).

Htut testified at trial that she received the rings from Germano and that Germano repeatedly told her "not to pawn them." Tr. p. 150-51, 156. Detective Bostic testified at trial that when he asked Htut why she thought Germano had warned her not to pawn the items, "[Htut] said that the items were probably stolen." Id. at 134. Furthermore, while Htut contends that she gave Germano $80 for the rings, Germano testified at trial that she "didn't get any financial gain for the[] rings." Id. at 113. Moreover, Htut accompanied Germano to Harris's house to return some of the stolen property, and the police arrested Htut after she handed Harris "a huge bag of [the stolen] belongings." Id. at 91-92, 93.

The totality of the circumstances surrounding Htut's acquisition of the rings indicate that Htut was aware that the rings were stolen when she received them. Htut's attempt to remain willfully ignorant by not asking Germano directly if the rings were stolen does not negate the intent element of the crime because she admitted to Detective Bostic that Germano's repeated warnings suggested that the rings "were probably stolen." Id. at 134. Htut's arguments to the contrary are a request for us to reweigh the evidence and assess the credibility of the witnesses—a practice in which we do not engage when reviewing the sufficiency of evidence. Thus, we conclude that the State presented sufficient evidence to sustain Htut's conviction for class D felony receiving stolen property.

The judgment of the trial court is affirmed.

BAILEY, J., and VAIDIK, J., concur.