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IN THE
COURT OF APPEALS OF INDIANA

ANTHONY FLOYD,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0704-CR-322
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
CRIMINAL DIVISION, ROOM 6
The Honorable Jeffrey Marchal, Magistrate
The Honorable Mark D. Stoner, Judge
Cause No. 49G06-0612-FC-247855

November 14, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Anthony Floyd (Floyd), appeals his conviction for theft, a Class D felony, Ind. Code § 35-43-4-2.

We affirm.

ISSUE

Floyd raises one issue on appeal, which we restate as follows: Whether the State provided sufficient evidence to sustain Floyd's conviction for theft.

FACTS AND PROCEDURAL HISTORY

In November of 2006, Heath and Elizabeth Dailey (the Daileys) were in the process of moving from their old house at 6201 Sexton Avenue in Indianapolis. In the process of moving out, the Daileys left a two-year-old refrigerator and some other items inside of their old house. Jeremy Earl (Earl), one of the Daileys' neighbors, periodically checked on the Daileys' old house. On December 22, 2006, Earl noticed that Floyd's red pickup truck was stuck in the mud next to the Daileys' house with the Daileys' refrigerator in the back of the truck. He called Andrew Weist (Weist), the Daileys' stepson, and told him about the truck next to his parents' house. Weist immediately called his parents who reported the incident to the police. While the truck was stuck in the mud, Floyd left the place to find a towing car to get his truck from the mud. When the Daileys arrived at their old house, they observed their refrigerator in Floyd's truck. They also noticed the house had been ransacked, and the back door of the house had been forced open. Indianapolis Police Department Officers (the Officers), who arrived at the scene, also reported that the truck was stuck in the mud with the

refrigerator in it, and the back door of the house had been forced open. The Officers arrested Jerome Hailey (Hailey), Floyd's co-defendant, who also took part in taking and loading the refrigerator in the truck. About thirty to forty minutes later, they arrested Floyd when he came back to the scene with a tow truck.

On December 26, 2006, the State filed an Information charging Floyd with Count I, burglary, a Class C felony, I.C. § 35-43-2-1; and Count II, theft, a Class D felony, I.C. § 35-43-4-2. On February 22, 2007, the State filed an additional Information charging Floyd with habitual offender, I.C. § 35-50-2-8. On March 7, 2007, a bench trial was held. The trial court found Floyd guilty on Count II, theft, a Class D felony and dismissed Count I, burglary. On March 14, 2007, Floyd was sentenced to two years imprisonment at the Indiana Department of Correction for Count II. The court did not find that Floyd was a habitual offender.

Floyd now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Floyd contends that the evidence presented by the State was not sufficient to sustain his conviction for theft. Particularly, he alleges that he believed the items from residence had been abandoned and that no evidence supported a finding that he knowingly or intentionally deprived the Daileys of their property. We disagree.

Our standard of review for a sufficiency of the evidence claim is well settled. In reviewing sufficiency of the evidence claims, we will not reweigh the evidence or judge the credibility of the witness. *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. Ct. App. 2005). We

will consider only the evidence most favorable to the judgment, together with all reasonable and logical inferences to be drawn therefrom. *Moore v. State*, 869 N.E.2d 489, 492 (Ind. Ct. App 2007). Appellate courts must affirm if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier-of-fact to find the defendant guilty beyond a reasonable doubt. *McHenry*, 820 N.E.2d at 127.

I.C. § 35-43-4-2 states that: "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."

"A person engages in conduct 'intentionally' if, when he engages in the conduct, it is his conscious objective to do so." *See* I.C. § 35-41-2-2. 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.* A direct statement of intent from a defendant is not necessary. *Id.* Furthermore, I.C. § 35-41-2-2 (b) states that "[a] person engages in conduct 'knowingly' if, when he engages in the conduct, he is aware of a high probability that he is doing so."

Although Floyd is now claiming that he did not have the intent to steal anything, the circumstances show otherwise. According to the Daileys' testimonies, the refrigerator was inside the house, and the back door of the house was padlocked and bolted. The record supports that the house was ransacked, and the back door was forced open at the time Floyd and Hailey were arrested, and it is undisputed that the refrigerator was in Floyd's truck. The Daileys never gave permission to either Floyd or Hailey to take the refrigerator. At trial,

Hailey testified that he and Floyd loaded the refrigerator in the truck. The circumstantial evidence that Floyd had no permission from Daileys to get the refrigerator, combined with Hailey's testimony that Floyd loaded the refrigerator on the truck with him, shows Floyd's intent or knowledge of exerting unauthorized control over the Daileys' refrigerator with intent to deprive the Daileys of their property's value and use.

Floyd quotes *Pennington v. State,* 459 N.E.2d 764 (Ind. Ct. App. 1984) to support his argument. However, we find facts and circumstances of *Pennington* unpersuasive here. In that case, Pennington came to the store with a stereo unit asking the store clerk if they could repair it. *Id.* Her brother stole an item from a store display while she was blocking clerk's view of the store by talking to him. *Id.* Although Pennington and her brother arrived in the same vehicle, there was no indication that Pennington knew or was intentionally participating in her brother's conduct. *Id.* In *Pennington* it was undisputed that Pennington did not exert unauthorized control over the stolen stereo. *Id.* However, the circumstances here clearly indicate that Floyd knew he was exerting unauthorized control over the refrigerator; Hailey testified that Floyd participated in loading the refrigerator into Floyd's own truck. Based on the above, we find *Pennington* differs from the case at bar.

In sum, based on the evidence and circumstances of the case at bar, the trial court could reasonably infer from the facts and circumstances of the case that Floyd engaged in the conduct intentionally and knowingly. Accordingly, we hold that the State provided sufficient evidence beyond a reasonable doubt to sustain Floyd's conviction for theft.

CONCLUSION

Based on foregoing, we find that the State presented sufficient evidence to sustain Floyd's conviction for theft.

Affirmed.

BAKER, C.J., and SHARPNACK, J., concur.