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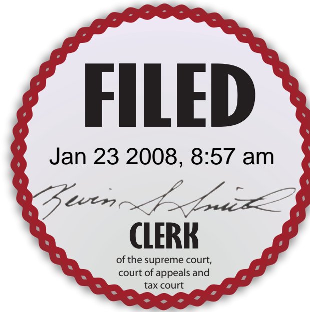

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IN THE
COURT OF APPEALS OF INDIANA

KWELI A. QUIROZ,)
)
Appellant-Defendant,)
)
vs.) No. 71A05-0705-CR-274
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Jane Woodward-Miller, Judge
Cause No. 71D01-0502-FC-42

January 23, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Kweli Quiroz appeals his conviction for auto theft as class C felony.[1] Quiroz raises one issue, which we revise and restate as whether the evidence is sufficient to sustain Quiroz's convictions. We affirm.

The facts most favorable to the conviction follow. On February 1, 2005, between 3:30 and 4:00 a.m., Paul Gill, an employee of the South Bend Tribune, was driving a South Bend Tribune vehicle with the number nineteen on the back and collecting money out of paper vending machines. After collecting money from a machine on Lincolnway East, Gill returned to his vehicle, a white Chevrolet Cavalier with the number nineteen written on the back. Someone approached Gill and ordered him out of his vehicle. Gill exited the vehicle, and the person "got in the car" and "took off." Transcript at 127. Gill immediately called the police and reported the theft. Gill stated that the person that stole the vehicle was a black male between nineteen and twenty-two years old.

Around 9:45 p.m. that same day, South Bend Police Corporal Neil Graber drove past the stolen vehicle stopped in the southbound lane of North Portage. Corporal Graber noticed Quiroz and a passenger "ducking down" as he went past the vehicle. Id. at 147. Corporal Graber ran the plate and discovered that the vehicle was stolen. After Corporal Graber drove northbound past the vehicle, Quiroz and the passenger "sat up" and Quiroz "t[ook] off" driving south on Portage. Id. at 148, 153. Corporal Graber turned around and turned on his lights. Corporal Graber conducted a traffic stop and arrested Quiroz.

[1] Ind. Code § 35-43-4-2.5 (2004).

In addition to Quiroz, a male passenger who was in his early fifties and a female passenger were in the vehicle. Quiroz told officers that "some dude gave [the vehicle] to him." Id. at 153. Corporal Graber found several South Bend Tribune coin bags and keys in the trunk.

The State charged Quiroz with: (1) Count I, auto theft as a class D felony;[2] and (2) Count II, auto theft, after having been convicted of auto theft in September 1995, as a class C felony. After a jury trial, the jury found Quiroz guilty of Count I, auto theft as a class D felony. Quiroz then pleaded guilty to Count II, auto theft as a class C felony.[3] The trial court sentenced Quiroz to six years in the Indiana Department of Correction for Count II.

The sole issue is whether the evidence is sufficient to sustain Quiroz's convictions. When reviewing claims of insufficiency of evidence, we do not reweigh the evidence or judge the credibility of witnesses. Stewart v. State, 768 N.E.2d 433, 435 (Ind. 2002), cert. denied, 537 U.S. 1004, 123 S. Ct. 493 (2002). Rather, we look to the evidence and the reasonable inferences therefrom that support the verdict. Id. We will affirm the conviction if there exists evidence of probative value from which a reasonable factfinder

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[2] Id.

[3] Specifically, Quiroz admitted that he was previously convicted of auto theft. The trial court took judicial notice of the fact that the jury found Quiroz guilty of auto theft as a class D felony, and Quiroz's counsel indicated that Quiroz was not "admitting to that part of count II." Transcript at 248. The trial court informed Quiroz that he was "giving up the right to appeal anything other than the sentence . . . [o]n this count. Not as to Count I. You still have the right to appeal count I. But as to count II, the enhancement, you're giving up the right to appeal." Id. at 249.

could find the defendant guilty beyond a reasonable doubt. Id. A theft conviction may be sustained by circumstantial evidence. Ward v. State, 439 N.E.2d 156, 159 (Ind. 1982).

The offense of auto theft is governed by Ind. Code § 35-43-4-2.5, which provides that "[a] person who knowingly or intentionally exerts unauthorized control over the motor vehicle of another person, with intent to deprive the owner of . . . the vehicle's value or use . . . commits auto theft, a Class D felony." Thus, to convict Quiroz of auto theft as a class D felony, the State needed to prove that Quiroz knowingly or intentionally exerted unauthorized control over the South Bend Tribune's vehicle with intent to deprive the South Bend Tribune of the vehicle's value or use.

Quiroz argues that the evidence is insufficient to support his conviction because "almost eighteen (18) hours had elapsed between when the vehicle was reported stolen and the traffic stop." Appellant's Brief at 4. Quiroz relies upon Trotter v. State, 838 N.E.2d 553 (Ind. Ct. App. 2005), in which this court held that Indiana law did not permit the inference that the defendant was the person who stole a vehicle when he was not found with the car until five days after it had been stolen. Trotter, 838 N.E.2d at 557. The court also held that there was no additional corroborating evidence sufficient to support the conviction. Id. at 558.

Here, unlike in Trotter, the vehicle was recovered within the same day, and additional evidence exists. The record reveals that between 3:30 and 4:00 a.m., someone approached Gill and ordered him out of his vehicle. Gill stated that the person that stole the vehicle was a black male between nineteen and twenty-two years old. Around 9:45

p.m. that same day, Corporal Graber drove past the stolen vehicle and noticed Quiroz and the passenger "ducking down" as he went past the vehicle. Transcript at 147. After Corporal Graber drove northbound past the vehicle, Quiroz and the passenger "sat up" and Quiroz "t[ook] off" driving south on Portage. Id. at 148, 153. Quiroz told officers that "some dude gave [the vehicle] to him." Id. at 153. Corporal Graber found several South Bend Tribune coin bags and keys in the trunk. The State presented sufficient evidence to show that Quiroz intended to deprive the South Bend Tribune of the use of the car. We conclude that evidence of probative value exists from which the trial court could have found Quiroz guilty of auto theft as a class D felony. See, e.g., Prentice v. State, 474 N.E.2d 496, 500 (Ind. 1985) (holding that the evidence was sufficient to support a conviction of theft where defendant was driving a stolen car within a few days of theft, did not have owner's permission to drive the car, and attempted to flee from the police); J.B. v. State, 748 N.E.2d 914, 918 (Ind. Ct. App. 2001) (holding that the evidence was sufficient to support a conviction of auto theft when the owner of a motor scooter testified that defendant did not have permission to use his scooter, defendant was seen driving the motor scooter the morning after it was stolen, the scooter's license plate was missing, the lock and ignition had been broken, and when the owner confronted the defendant about the scooter, the defendant attempted to flee).

Quiroz also argues that he provided a reasonable explanation for possessing the vehicle, that "the only evidence even linking Quiroz to the crime was he and the passenger seat occupant 'ducking down,' South Bend Tribune markings on the vehicle,

and South Bend Tribune coin bags and keys in the trunk," and that he was thirty-three years old when Gill stated that the male was between nineteen and twenty-two years old. Appellant's Brief at 4. Quiroz merely asks that we reweigh the evidence and judge the credibility of the witnesses, which we cannot do. Stewart, 768 N.E.2d at 435.

For the foregoing reasons, we affirm Quiroz's conviction for auto theft as a class C felony.

Affirmed.

BARNES, J. and VAIDIK, J. concur