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# IN THE
# COURT OF APPEALS OF INDIANA

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|---|---|---|
| SHAMAR D. SHELTON, | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 02A03-1010-CR-571 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Kenneth R. Scheibenberger, Judge
Cause No. 02D04-1005-FD-446

**July 15, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

Shamar D. Shelton ("Shelton") appeals his conviction after a jury trial of receiving stolen property[1] as a Class D felony. Shelton raises the following issue for our review: whether the evidence was sufficient to support Shelton's conviction.

We affirm.

## FACTS AND PROCEDURAL HISTORY

During the afternoon on May 11, 2010, the home of Iaisha Williams ("Williams") was burglarized. Several items were taken including a fifty-inch plasma television purchased in February 2009 for $1151.91. Williams discovered the crime when she arrived home from work and called the police. Preston Craig ("Craig"), the father of Williams's three sons, put notice out on the street of the burglary after being informed of the incident by Williams. *Appellant's App.* at 110, 119-120.

Later that evening, Craig notified Williams that someone was trying to sell a television from a home just a few blocks away from Williams. The home was rented by Shelton's girlfriend, Rosetta Haywood ("Haywood"). Craig and Williams went to Haywood's home to inquire about the television. There, Craig confirmed the television was the one stolen from Williams, and Williams then called the police. Officer Darrell Caudill ("Officer Caudill") responded, and Shelton told Officer Caudill that he had purchased the television on the street from a drug addict for $100.00. Shelton was charged with Class D felony receiving stolen property. The jury found Shelton guilty of receiving stolen property, and the trial court imposed a two-year sentence. Shelton now appeals.

[1] *See* Ind. Code § 35-43-4-2.

## DISCUSSION AND DECISION

In order to sustain a conviction of receiving stolen property, the State was required to prove that Shelton: 1) knowingly or intentionally; 2) received, retained, or disposed of; 3) the property of another person; 4) that has been the subject of a theft. Ind. Code § 35-43-4-2(b).

Shelton argues that evidence of mere possession of a recently stolen item is insufficient to sustain his conviction for receiving stolen property, and that the State failed to produce evidence that he had knowledge that the television was stolen.

Our standard of review for sufficiency claims is well established. This court will not reweigh the evidence or judge the credibility of the witnesses. *Williams v. State*, 873 N.E.2d 144, 147 (Ind. Ct. App. 2007). When reviewing a conviction for sufficiency of the evidence, we consider only the evidence most favorable to the judgment and all reasonable inferences drawn from such evidence. *Robinson v. State*, 835 N.E.2d 518, 523 (Ind. Ct. App. 2005). This court will affirm the conviction if sufficient probative evidence exists from which the fact finder could find the defendant guilty beyond a reasonable doubt. *Williams*, 873 N.E.2d at 147. A conviction for receiving stolen property may be based solely on circumstantial evidence. *Hayes v. State*, 876 N.E.2d 373, 375 (Ind. Ct. App. 2007). On appeal, the circumstantial evidence is not required to overcome every reasonable hypothesis of innocence; it is enough if an inference drawn from the circumstantial evidence reasonably tends to support the conviction. *Id.*

"Knowledge that the property is stolen may be established by circumstantial evidence; however, knowledge of the stolen character of the property may not be inferred solely from the unexplained possession of recently stolen property." *Barnett v. State*, 834 N.E.2d 169, 172 (Ind. Ct. App. 2005) (quoting *Johnson v. State*, 441 N.E.2d 1015, 1017 (Ind. Ct. App. 1982)). "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." Ind. Code § 35-41-2-2(b).

When determining whether Shelton had knowledge that the property was stolen, the test we use is a subjective one, "asking whether the defendant knew from the circumstances surrounding the possession that the property had been the subject of a theft." *Barnett*, 834 N.E.2d at 172. "[P]ossession 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." *Purifoy v. State*, 821 N.E.2d 409, 414 (Ind. Ct. App. 2005). One factor to be considered in determining knowledge on the part of the defendant is the price paid for the stolen property. As our Supreme Court has observed, "In prosecutions for receiving stolen property for obvious reasons one of the most telling indices of guilt is a low price paid by the receiver." *Fletcher v. State*, 241 Ind. 409, 416, 172 N.E.2d 853, 857 (1961) (quoting Judge Learned Hand in *United States v. Werner*, 160 F.2d 438, 441, 443 (1947)). Recently, our Supreme Court held that "such possession is to be considered along with the other evidence in a case, such as how recent or distant in time was the possession from the moment the item was stolen, and what are the circumstances of

the possession (say, possessing right next door as opposed to many miles away)." *Fortson v. State*, 919 N.E.2d 1136, 1143 (Ind. 2010).

In *Gorman v. State*, 460 N.E.2d 968, 969 (Ind. 1984), our Supreme Court also acknowledged that the character of the items involved can provide a basis to infer knowledge and noted that televisions are included in items naturally targeted by thieves. *Id.*

Here, Shelton bought a fifty-inch plasma television for $100.00 from a known drug addict on the street, and that he planned on reselling the television for $400.00 to $500.00, thereby indicating that he knew the television was worth much more than the $100.00 he paid. This price disparity, the fact that Shelton knew of the disparity and the fact that televisions are one of the items targeted by thieves constitute circumstantial evidence that Shelton was aware that the television was stolen.

In addition, Shelton's purchase occurred shortly after Williams' house was burglarized just blocks away. These circumstances, taken together are sufficient for the jury to find that Shelton had knowledge of the stolen nature of the television.

Affirmed.

VAIDIK, J., and MATHIAS, J., concur.