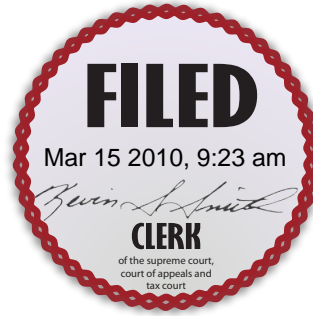


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

TIMOTHY J. BURNS
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ANN L. GOODWIN
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

PETER MUDD,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)

No. 49A02-0908-CR-762

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Linda E. Brown, Judge
Cause No. 49F10-0903-CM-032861

March 15, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Peter Mudd appeals his conviction for Class A misdemeanor conversion. Finding sufficient evidence to sustain his conviction, we affirm.

Facts and Procedural History

In March 2009 Mark Faussett, a store detective for the Pike Plaza Meijer store in Indianapolis, saw Mudd pushing a shopping cart containing some food items. Faussett then observed Mudd select some batteries from an aisle near the grocery area, walk to the hardware department in the back of the store, remove the batteries from their packaging, and conceal them in his pockets. Mudd also selected some glow sticks and a flashlight, removed their packaging, and placed them in his back pockets. Mudd then walked out of the hardware department, abandoned his shopping cart in the children's department, proceeded past all points of sale, and exited the first of two sets of doors leading out of the store. Faussett stopped Mudd before he exited the second set of doors.

The State charged Mudd with Class A misdemeanor conversion,¹ alleging that he “did knowingly exert unauthorized control over the property, to wit: glow sticks, batteries, flashlight, of another person, to wit: Meijer.” Appellant’s App. p. 14. Mudd was tried to the bench in July 2009. The trial court found him guilty as charged and sentenced him to 365 days, with 345 days suspended. Mudd now appeals.

Discussion and Decision

Mudd contends that the evidence is insufficient to support his conviction for Class A misdemeanor conversion. When reviewing the sufficiency of the evidence to support a

¹ Ind. Code § 35-43-4-3(a).

conviction, we consider only the probative evidence and reasonable inferences supporting the judgment. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). It is the factfinder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. *Id.* To preserve this structure, when we are confronted with conflicting evidence, we consider only the evidence most favorable to the trial court's ruling. *Id.* We affirm the conviction unless no reasonable factfinder could find the elements of the crime proven beyond a reasonable doubt. *Id.* It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. *Id.* at 147. The evidence is sufficient if an inference may reasonably be drawn from it to support the judgment. *Id.*

To convict Mudd of conversion as charged here, the State had to prove that he knowingly exerted unauthorized control over Meijer's batteries, glow sticks, and flashlight. *See* Appellant's App. p. 14; Ind. Code § 35-43-4-3(a).

Mudd essentially argues that the State failed to prove the knowledge element. Knowledge is a mental state; therefore, absent admission, the factfinder must resort to reasonable inferences based on an examination of the surrounding circumstances to determine whether there is a showing or inference of the requisite knowledge. *Slone v. State*, 912 N.E.2d 875, 880 (Ind. Ct. App. 2009), *trans. denied*. "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). Here, Mudd selected batteries, glow sticks, and a flashlight from the Meijer store, removed their packaging, placed them in his pockets, abandoned his shopping cart, and proceeded past all points of sale. It is

reasonable to infer from these actions that Mudd was aware of a high probability that he was exerting unauthorized control over Meijer's batteries, glow sticks, and flashlight.

Despite this clear evidence, Mudd insists that he realized he had been in the store longer than he had anticipated, rushed out of the store to check on the welfare of his seven-year-old son, whom he had left in his truck, and intended to return to the store to pay for the items. After hearing all of the testimony, the trial court stated that Mudd's "story just doesn't have a ring of truth to me at all." Tr. p. 31. Mudd asks us to reweigh the evidence and reassess witness credibility, which we may not do. We find the evidence sufficient to sustain Mudd's conviction.

Affirmed.

RILEY, J., and CRONE, J., concur.