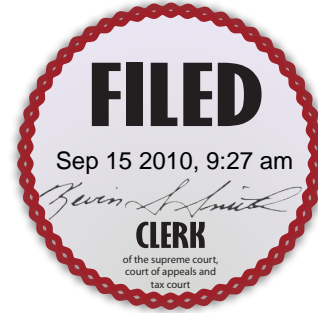


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

SEAN P. HILGENDORF
South Bend, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

MICHAEL GENE WORDEN
Deputy Attorney General
Indianapolis, Indiana

COURT OF APPEALS OF INDIANA

QUENTIN A. SPENCER,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 20A04-1002-CR-62

APPEAL FROM THE ELKHART SUPERIOR COURT
The Honorable Olga H. Stickel, Judge
Cause No. 20D04-0712-FD-390

September 15, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Quentin A. Spencer appeals his convictions for Fraud,¹ a class D felony, and Theft,² a class D felony, arguing that the evidence is insufficient to support the convictions. Finding sufficient evidence, we affirm.

FACTS

At some point in the past, Spencer, Charles Kinnison, and Ty Garton worked together at an RV manufacturing facility. During that time, Kinnison worked in the mechanic's bay and during work hours, would put his wallet, including a credit card, on top of his large tool box because it was impractical to keep his wallet in his back pocket while working. Spencer was a "runner" at the facility and, consequently, was in and out of the building frequently.

On October 8, 2007, Kinnison learned that there was a discrepancy in his credit card statement. Specifically, he learned that there were two transactions of \$200 apiece that had been made on his credit card at Martin's Supermarket in Elkhart. Kinnison had not authorized those transactions.

Kinnison contacted Garton, who had begun working as a loss prevention officer for the supermarket. Garton reviewed the store's security video and discovered that Spencer was involved in the unauthorized transactions.

During interviews about the transactions, supermarket employee Dorothy Hochstetler explained that on the morning of October 5, 2007, she had received a

¹ Ind. Code § 35-43-5-4(1)(C).

² I.C. § 35-43-4-2(a).

telephone call from a man requesting to purchase a store gift card. She obtained the man's credit card information and completed the transaction. Later that morning, a man came into the store to pick up the gift card. A store manager later identified Spencer as the man who had picked up the gift card. Tr. p. 250.

Susan Bollenbacager, who worked as a manager at the supermarket, explained that on the evening of October 5, 2007, she had received a telephone call from a woman with an out-of-town address, requesting to purchase a store gift card in the amount of \$200. The woman on the phone told Bollenbacager that her son would come by the store to pick up the card. Later that evening, Spencer, using a fictitious name, picked up the gift card. On October 6, 2007, Spencer used one of the gift cards to purchase a prepaid phone card.

On December 10, 2007, the State charged Spencer with class D felony theft, and on June 22, 2009, the State amended the charging information to add one count of class D felony fraud. At the conclusion of Spencer's July 7, 2009, jury trial, the jury found Spencer guilty as charged. On November 4, 2009, the trial court sentenced Spencer to two concurrent sentences of eighteen months imprisonment, fully suspended to probation, and imposed a fine of \$1500, with \$1250 suspended. Spencer now appeals.

DISCUSSION AND DECISION

Spencer's sole argument on appeal is that the evidence is insufficient to support the convictions. In reviewing the evidence supporting a conviction, we neither reweigh the evidence nor assess witness credibility, focusing instead upon the evidence most favorable to the judgment and all reasonable inferences that may be drawn therefrom.

Alvies v. State, 905 N.E.2d 57, 61 (Ind. Ct. App. 2009). The evidence need not overcome every reasonable hypothesis of innocence, and a conviction may be based on circumstantial evidence alone. Dallaly v. State, 916 N.E.2d 945, 950 (Ind. Ct. App. 2009); Brink v. State, 837 N.E.2d 192, 194 (Ind. Ct. App. 2005) (holding that a conviction may be sustained on circumstantial evidence alone so long as there are reasonable inferences enabling the factfinder to find the defendant guilty beyond a reasonable doubt).

To convict Spencer of class D felony theft, the State was required to prove beyond a reasonable doubt that he knowingly or intentionally exerted unauthorized control over Kinnison's property, with the intent to deprive Kinnison of any part of its value or use. I.C. § 35-43-4-2(a). To convict Spencer of class D felony fraud, the State was required to prove beyond a reasonable doubt that he used Kinnison's credit card, without Kinnison's consent and with the intent to defraud. I.C. § 35-43-5-4(1)(C); see also Robinson v. State, 780 N.E.2d 849, 851-52 (Ind. Ct. App. 2002) (holding that the use of credit card numbers falls within the parameters of this statute).

The record herein reveals that on the morning of October 5, 2007, a male individual placed an order for a \$200 store gift card over the telephone. Shortly thereafter, a man subsequently identified as Spencer came to the store and picked up the gift card. Later that same evening, a female individual placed an order for a \$200 store gift card over the telephone, indicating that her son would pick up the card. Shortly thereafter, a man subsequently identified as Spencer came to the store and retrieved the

gift card. Spencer later used one of those same gift cards to purchase a prepaid phone card from the supermarket. The credit card used to make these two transactions belonged to Kinnison, who did not authorize the transactions. Kinnison and Spencer used to work together, and the work environment was such that Spencer had access to Kinnison's wallet and the credit card inside the wallet.

We find that it was reasonable for the jury to infer from this evidence that Spencer himself, or in cooperation with another, intentionally exerted unauthorized control over Kinnison's credit card numbers, with the intent of depriving Kinnison of the value of his credit line. Additionally, we find that it was reasonable for the jury to infer that Spencer himself, or with the cooperation with another, acted with the intent to defraud Kinnison and used Kinnison's credit card without his consent. This evidence is admittedly circumstantial and does not overcome every hypothesis of innocence—but it need not do so. We find that there are reasonable inferences from this evidence that enabled the jury to find Spencer guilty beyond a reasonable doubt on both counts. In other words, given our standard of review, we find the evidence sufficient to support Spencer's convictions.

The judgment of the trial court is affirmed.

NAJAM, J., and MATHIAS, J., concur.