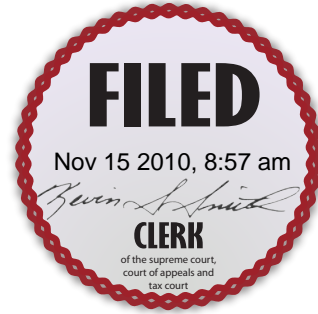


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

RONALD FISHER,)
)
 Appellant/Defendant,)
)
 vs.) No. 49A02-1004-CR-411
)
 STATE OF INDIANA,)
)
 Appellee/Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable James B. Osborn, Judge
Cause No. 49F15-0911-FD-92826

November 15, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Defendant Ronald Fisher appeals following his conviction for Class D felony theft.¹ Fisher contends that the evidence presented by the State at trial was insufficient to support his conviction. We affirm.

FACTS AND PROCEDURAL HISTORY

On November 4, 2009, Fisher entered the Kroger store at the intersection of Thompson and Emerson Roads in Indianapolis. While Fisher was in the store, Jesse Jones, a loss prevention officer employed by Kroger, noticed Fisher had cheese and a loaf of bread in the child seat of his shopping cart as he exited the dairy aisle. After Fisher left the dairy aisle, however, Jones noticed that the cheese was no longer in Fisher's shopping cart. Jones checked the aisle to determine if Fisher placed the cheese on an aisle shelf, but did not find the cheese. Jones then became suspicious of Fisher and went upstairs to the video surveillance room to further observe Fisher.

While observing Fisher from the video surveillance room, Jones noticed that Fisher placed a package of Kit Kat candy bars, a "flea and tick" dog collar, and a "doggie bone" in the child seat area of his shopping cart. Tr. pp. 32, 53. Jones watched as Fisher made his way to the cereal aisle, which did not have any surveillance cameras installed. After Fisher entered the cereal aisle, Jones immediately left the surveillance room and within ten seconds continued observing Fisher on the store floor.

Jones observed Fisher conceal the dog bone and the Kit Kat candy in his jacket, and observed Fisher open the packaging to the dog collar, discard the empty packaging, and

¹ Ind. Code § 35-43-4-2 (2009).

conceal the collar. After concealing the merchandise, Fisher abandoned the shopping cart, which still had the loaf of bread in it, and exited the store. Jones did not find any of the items that had previously been in Fisher's cart on any of the cereal aisle shelves. Fisher did not pay for any of the merchandise before leaving the store.

Jones followed Fisher as he left the store and walked toward his vehicle. Jones confronted Fisher as Fisher approached his vehicle. Jones did not see any Kroger bags or receipts from a prior purchase in Fisher's vehicle. Jones then escorted Fisher back into the store and into Jones's office where he questioned Fisher about the items that he had watched Fisher conceal in his clothing. Fisher removed the dog collar, the dog bone, the Kit Kat candy bars from his jacket and the cheese from his pants. Fisher did not have any method of payment on his person and did not allege that he had purchased any of the items on a prior occasion. While in Jones's office, Fisher signed a number of documents, including a "civil demand notice" in which he admitted that he stole merchandise from the store. State's Ex. 4.

On November 4, 2009, the State charged Fisher with Class D felony theft. Fisher was found guilty as charged at the conclusion of a jury trial on February 17, 2010. On March 15, 2010, the trial court sentenced Fisher to 545 days of incarceration with ninety days executed on home detention, 365 days on probation, and 160 hours of community service. Fisher now appeals.

DISCUSSION AND DECISION

Fisher contends that the evidence presented at trial was insufficient to support his Class D felony theft conviction.

The standard for reviewing sufficiency of the evidence claims is well settled. We do not reweigh the evidence or assess the credibility of the witnesses. Rather, we look to the evidence and reasonable inferences drawn therefrom that support the verdict and will affirm the conviction if there is probative evidence from which a reasonable jury could have found the defendant guilty beyond a reasonable doubt.

Stewart v. State, 768 N.E.2d 433, 435 (Ind. 2002). “[I]t is for the trier of fact to reject a defendant’s version of what happened, to determine all inferences arising from the evidence, and to decide which witnesses to believe.” *Holeton v. State*, 853 N.E.2d 539, 541 (Ind. Ct. App. 2006).

In order to convict Fisher of Class D felony theft, the State was required to prove that Fisher: (1) knowingly and intentionally; (2) exerted unauthorized control; (3) over the property; (4) of another person; (5) with the intent to deprive the other person of any part of its value or use. Ind. Code § 35-43-4-2. Here, Jesse Jones, a loss prevention officer at the Kroger store in question, testified that he saw Fisher place certain merchandise in his shopping cart, conceal the merchandise in his jacket pockets and pants, and walk out of the store without paying for the items. Jones also testified that Fisher signed a document admitting that he intended to steal the merchandise. We conclude that this testimony establishes that Fisher knowingly and intentionally exerted unauthorized control over certain Kroger property with the intent to deprive Kroger of the merchandise’s value or use. *See* Ind. Code § 35-43-4-2. To the extent that Fisher argues that the evidence is somehow insufficient merely because Jones allegedly broke Kroger protocol by failing to maintain constant surveillance of Fisher while Fisher was in the Kroger, Fisher’s argument effectively amounts

to an invitation to reweigh the evidence, which we will not do. *See Stewart*, 768 N.E.2d at 435.

The judgment of the trial court is affirmed.

DARDEN, J., and BROWN, J., concur.