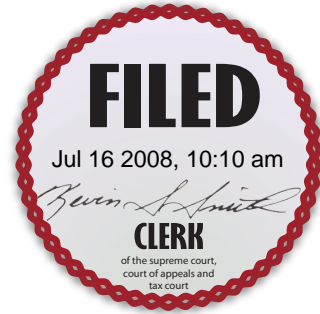


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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WILLIAM L. HENRY II, )  
 )  
Appellant-Defendant, )  
 )  
vs. ) No. 89A01-0801-CR-7  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

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APPEAL FROM THE WAYNE SUPERIOR COURT  
The Honorable P. Thomas Snow, Judge  
Cause No. 89D01-0708-FD-103

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**JULY 16, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**SHARPBACK, Senior Judge**

William L. Henry II appeals his conviction after a jury trial of theft as a class D felony, as well as his adjudication as a habitual offender.

We affirm.

The dispositive issue is whether Officer Edwards had probable cause to arrest Henry.

The facts most favorable to the verdict reveal that at approximately 10:00 p.m. on August 17, 2007, Meijer loss prevention employee Jeremy Smith observed Henry in the liquor aisle of the store. Henry stared at the liquor bottles, looked up at the camera on the ceiling of the store, and acted “really nervous.” Tr. p. 83. Henry was subsequently joined by David Ashcroft, who grabbed two bottles of vodka off of the shelf. Ashcroft handed one bottle to Henry and reached back up on the shelf for a third bottle. Henry turned and made a motion as if he was concealing something in his pants. When he turned back around, Henry had nothing in his hands, and Smith noticed a bulge in Henry’s pants. Henry and Ashcroft walked out of the store together without paying for the vodka.

Smith contacted the Richmond Police Department as he followed Henry and Ashcroft out of the store. The two men met up with another man in the parking lot, and the three men walked between a bank and a Subway, and proceeded southbound along Chester Boulevard. Smith lost reception on his cordless phone, and returned to the Subway where he called 911. Smith gave the dispatcher a description of Henry and Ashcroft. Specifically, Smith described Henry as having blond hair and glasses and

wearing a black Jagermeister shirt and blue jeans, and Ashcroft as having a ponytail and multiple tattoos and wearing blue jeans.

Richmond Police Department Officer James Edwards received a dispatch that a theft had occurred at Meijer and that Smith was pursuing the suspects south on Chester Boulevard. Officer Edwards, who was given the specific descriptions of the suspects, proceeded directly to Chester Boulevard. Within minutes, the officer observed the three men walking quickly along the road. Henry and Ashcraft both matched the descriptions that Smith had given the dispatcher. Officer Edwards shined his spotlight on the men, and they threw the bottles through the air. The officer ordered the men to the ground and handcuffed them. Smith arrived at the scene shortly thereafter and identified Henry and Ashcroft as the men who had taken the vodka from Meijer without paying for it. Officer Edwards arrested Henry and recovered the three bottles of vodka.

The State charged Henry with theft as a class D felony and alleged that he was an habitual offender. At trial, defense counsel did not object when Smith identified Henry in court or when Officer Edwards testified that Smith had identified Henry at the scene. The jury convicted Henry as charged, and he now appeals his conviction.

Henry contends that the “in-court identification and the out-of-court identification of Henry were the result of an illegal seizure of Henry by Richmond Police Officer Edwards [who] did not have Probable Cause to seize Henry to a ‘degree associated with a formal arrest.’” Appellant’s Br. at 8. According to Henry, “[a]s there was no Probable Cause to authorize Edwards to take action to the degree associated with formal arrest, the evidence that the State of Indiana acquired must be suppressed.” Appellant’s Br. at 10.

The Fourth Amendment of the United States Constitution and Article I, Section 11 of the Indiana Constitution require that an arrest or detention for more than a short period of time can be justified with probable cause. *VanWinkle v. State*, 764 N.E.2d 258, 264 (Ind. Ct. App. 2002), *trans. denied*. Probable cause to arrest exists where the facts and circumstances within the knowledge of an officer are sufficient to warrant a belief by a person of reasonable caution that an offense has been committed and that the person to be arrested committed it. *Id.* at 264-65. Whether evidence is sufficient to meet the probable cause requirement is determined on a case-by-case basis. *Id.* at 265.

Here, our review of the evidence reveals that Smith contacted 911 about a theft in progress at Meijer and gave the dispatcher specific descriptions of two of the three suspects. Smith told the dispatcher the suspects were walking south on Chester Boulevard. The dispatcher gave the descriptions to Officer Edwards, who proceeded to Chester Boulevard. Within minutes, the officer observed the suspects. When he shined his spotlight on them, they threw bottles through the air. These facts and circumstances within the knowledge of Officer Edwards were sufficient to warrant a belief by a person of reasonable caution that an offense had been committed and that the person to be arrested committed it. *See id.* Officer Edwards therefore had probable cause to arrest Henry, and we find no error.<sup>1</sup>

Affirmed.

NAJAM, J., and KIRSCH, J. concur.

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<sup>1</sup> Because of our resolution of this issue, we need not address Henry's arguments that trial counsel was ineffective for failing to object to the identification evidence and that there was insufficient other evidence to support Henry's conviction.