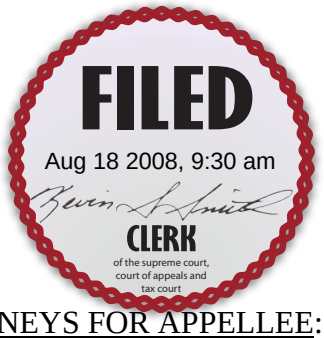

ATTORNEY FOR APPELLANT:

HILLARY BOWE RICKS
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ARTHUR THADDEUS PERRY
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

RICHARD WHITLOCK,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0801-CR-13
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven Rubick, Commissioner
The Honorable Patricia Gifford, Judge
Cause No. 49G04-0501-FC-1896

August 18, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Richard Whitlock appeals his convictions for Class C felony forgery and Class D felony theft arguing that the evidence is insufficient to support them. Concluding that the evidence is sufficient, we affirm his convictions.

Facts and Procedural History

On September 10, 2004, John Bradshaw, owner of Food Specialties, Inc., a sauce manufacturing business located in Indianapolis, reported a theft of eighty of his business's payroll checks to the Marion County Sheriff's Department ("MCSD"). Tr. p. 7-8.

On September 14, 2004, Whitlock gave a check to Robert Lappin, owner of Sedona Apartments in Indianapolis, in order to make a rental payment for his niece. The check was a Food Specialties payroll check made out to Whitlock for $862.13 and bearing the stamped signature of Susan Scott. State's Ex. 1. Whitlock answered affirmatively when Lappin asked if he worked at Food Specialties. Tr. p. 16. Lappin noticed an inked thumbprint on the check, and when he asked Whitlock why it was there, Whitlock responded that he tried to cash the check at a check cashing business but was unable to because it was late in the evening and the check cashing business did not have enough money. *Id.* at 29. Lappin accepted the check and put $415 toward Whitlock's niece's deposit and rent and gave $447.13 back to Whitlock in cash.

Thereafter, Lappin deposited the check in his business account. When he received the check back with "PAYMENT STOPPED" stamped across the front, State's Ex. 1, he contacted Food Specialties and the police. Detective Clifton Johnson of the MCSD met

with Lappin and took the check to have it processed by MCSD's latent print examiner. The thumbprint was identified as Whitlock's. When Detective Johnson showed Lappin a photo array, Lappin identified Whitlock as the person who presented him with the check.

The State charged Whitlock with Count I, Class C felony forgery,[1] and Count II, Class D felony theft.[2] Following a jury trial, Whitlock was convicted of both counts. The trial court sentenced Whitlock to four years executed at the Department of Correction for Count I and a concurrent executed sentence of 545 days for Count II. The trial court also ordered Whitlock to pay Lappin $862 in restitution. Whitlock now appeals.

Discussion and Decision

Whitlock contends that the evidence is insufficient to support his convictions for forgery and theft. When reviewing a challenge to the sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). We must consider only the probative evidence and reasonable inferences supporting the verdict. *Id.* We must affirm if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. *Id.* When a conviction is based on circumstantial evidence, we will not disturb the verdict if the fact-finder could reasonably infer from the evidence presented that the defendant is guilty beyond a reasonable doubt. *Brown v. State*, 827 N.E.2d 149, 152 (Ind. Ct. App. 2005). Additionally, the circumstantial evidence need not overcome every reasonable hypothesis

[1] Ind. Code. § 35-43-5-2(b)(4).

[2] Ind. Code. § 35-43-4-2(a).

of innocence; the evidence is sufficient if an inference may reasonably be drawn to support the verdict. *Id.*

In order to convict Whitlock of forgery as charged in this case, the State must have proved that Whitlock, with intent to defraud, uttered a written instrument in such a manner that it purported to have been made by authority of one who did not give authority. Ind. Code § 35-43-5-2(b)(4). Intent to defraud may be proven by circumstantial evidence. *Sanders v. State*, 782 N.E.2d 1036, 1039 (Ind. Ct. App. 2003). Intent is a mental function; absent an admission, it must be determined by the fact-finder from a consideration of the defendant's conduct when presenting the instrument for acceptance and the natural and usual consequences of such conduct. *Id.*; *see also Lush v. State*, 783 N.E.2d 1191, 1196 (Ind. Ct. App. 2003). To convict Whitlock of theft, the State must have proved that he knowingly or intentionally exerted unauthorized control over property of another person with intent to deprive the other person of any part of its value or use. Ind. Code § 35-43-4-2(a); *see also Beeks v. State*, 839 N.E.2d 1271, 1275 (Ind. Ct. App. 2005), *trans. denied*.

The evidence shows that Whitlock presented a Food Specialties payroll check, with the stamped signature of Susan Scott, to Lappin and answered affirmatively when asked if he was employed at Food Specialties. Bradshaw has never employed anyone by the name of either Richard Whitlock or Susan Scott. When Lappin asked about the inked thumbprint on the check, Whitlock responded that he tried to cash it at a cash checking business that had run out of cash. Whitlock applied $415 of the proceeds towards his niece's deposit and rent and received the remaining $447.13 in cash. The circumstantial

evidence is sufficient to prove Whitlock's intent to defraud and knowledge that he exerted unauthorized control over property of another person.

Although Whitlock testified that he did not recall Lappin asking him if he worked at Food Specialties and that he did not attempt to cash the check, but instead told Lappin he received the check in exchange for installing a hot water heater and that Lappin had asked him to put his thumbprint on the check after signing the back, the jury was entitled to disbelieve Whitlock. As such, Whitlock's arguments are merely an invitation for us to reweigh the evidence, which we will not do. We therefore affirm Whitlock's convictions for forgery and theft.

Affirmed.

KIRSCH, J., and CRONE, J., concur.