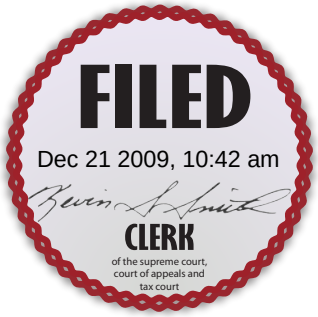

ATTORNEY FOR APPELLANT:

JULIE ANN SLAUGHTER
Marion County Public Defender Agency
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

NICOLE DONGIEUX WIGGINS
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

SHANICA DENTON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No.49A05-0904-CR-210
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Rueben Hill, Judge
Cause No. 49F18-0601-FD-015473

December 21, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Shanica Denton ("Denton") was convicted in Marion Superior Court of Class D felony theft. The trial court sentenced Denton to time served and placed her on probation for 499 days. Denton appeals and argues that the trial court abused its discretion when it admitted four pieces of evidence and that the evidence was insufficient to support her conviction for Class D felony theft.

We affirm.

Facts and Procedural History

Between July and October of 2005, Denton worked as a cashier at the Liquor Cabinet, a liquor store located in Indianapolis, Indiana. During this time period, Denton processed phone cards and failed to remit the proceeds from these sales to the store's cash register. Robert Anderson ("Anderson"), CFO of the store's parent company, viewed the video surveillance tape ("Exhibit 7") and noticed that Denton processed phone cards yet failed to submit the proceeds as required.

On October 21, 2005, Anderson and the store's manager confronted Denton about the theft. They then presented Denton with two documents, an "Employee Counseling Statement" ("Exhibit 4") and a "Mutual Employee and Employer Agreement" ("Exhibit 5"). Denton read the documents, indicated that she understood them, and signed them. Under the statement and agreement, Denton was informed that she was being terminated for misappropriating phone cards and that she was required to repay $12,889 that the store had lost as a result of her actions. Denton stated that a police officer was present when she signed the documents. Three months later, Denton failed to repay the $12,889.

On January 31, 2006, Denton was charged with Class D felony theft. On December 8, 2008, following a bench trial, Denton was found guilty of Class D felony theft. On March 24, 2009, the trial court sentenced Denton to 180 days executed and to one year on probation. On March 30, 2009, Denton filed a motion to reconsider her sentence. On April 3, 2009, the trial court modified her sentence by sentencing her to time served and placing her on probation for 499 days. Denton appeals.

I. Admission of Evidence

Denton argues that the trial court abused its discretion in the admission of evidence. The admission and exclusion of evidence lies within the sound discretion of the trial court; therefore we review admission of testimony for abuse of that discretion. State v. Lloyd, 800 N.E.2d 196, 198 (Ind. Ct. App. 2003). Such an abuse occurs when the "decision is clearly against the logic and effect of the facts and circumstances." Id.

1. Admission of Exhibit 4 - Employer Counseling Statement and Exhibit 5 - Mutual Employee and Employer Agreement

Denton contends that the trial court should not have allowed the admission of the "Employer Counseling Statement" and the "Mutual Employee and Employer Agreement" because she claims that they were signed while under threat of prosecution in the presence of a police officer without being advised of her Miranda rights. A defendant is entitled to the procedural safeguards of Miranda only if he is subject to custodial police interrogation. See White v. State, 772 N.E.2d 408, 412 (Ind. 2002). "To determine whether a defendant is in custody we apply an objective test asking whether a reasonable person under the same circumstances would believe themselves to be under arrest or not

free to resist the entreaties of the police." Kubsch v. State, 784 N.E.2d 905, 917 (Ind. 2003) (quotation omitted). "Further, a person is not in custody where he is unrestrained and ha[s] no reason to believe he could not leave." Id. (quotation omitted).

Denton stated, during the trial, that a police officer was present when she signed these documents and that she believed that she would be taken to jail if she did not sign the documents. However, she did not testify that this officer spoke with her or had any interaction with her. Denton was unrestrained by a police officer. Because of this, Denton's belief that she could not leave is unreasonable and her employer was not required to inform her of her Miranda rights prior to her signing the statements.

2. Admission of Exhibit 3 – Sales Invoice Details and Exhibit 7 - Video Surveillance Tape

Denton also argues that the third-party phone card vendor's Sales Invoice Details printout ("Exhibit 3") is inadmissible hearsay under Indiana Evidence Rule 801(c) and that the video surveillance tape ("Exhibit 7") and supporting testimony was inadmissible under Indiana Evidence Rule 1002 (2009). If the trial court has erred in the admission of evidence, we will not reverse the conviction if that error was harmless. Cooley v. State, 682 N.E.2d 1277, 1282 (Ind. 1997). Generally, errors in the admission of evidence are to be disregarded unless they affect the substantial rights of a party. Montgomery v. State, 694 N.E.2d 1137, 1140 (Ind. 1998). In viewing the effect of the evidentiary ruling on a defendant's substantial rights, we look to the probable impact on the factfinder. Id. The improper admission of evidence is harmless error if the conviction is supported by substantial independent evidence of guilt satisfying the reviewing court that there is no

substantial likelihood the challenged evidence contributed to the conviction. Pavey v. State, 764 N.E.2d 692, 703 (Ind. Ct. App. 2002), trans. denied. The erroneous admission of evidence that is merely cumulative of other evidence in the record is not reversible error. Id.

Denton admitted her misappropriation of nearly $13,000 through her sale of phone cards without deposit of the sale proceeds in the store's cash register. Clearly the admission of Exhibit 3 and 7 is cumulative of Denton's admissions contained in Exhibits 4 and 5, and Denton's conviction was supported by such quantity of evidence of guilt as to satisfy us that any error in the admission of the challenged evidence was harmless.

II. Sufficiency of the Evidence

Denton argues that the evidence presented at trial was insufficient to support her conviction for Class D felony theft, specifically that the State did not show that Denton exercised unauthorized control over her employer's currency. When we review a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the verdict and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id. If inferences may be reasonably drawn that enable the trier of fact to find the defendant guilty beyond a reasonable doubt then circumstantial evidence will be sufficient. Id.

Under Indiana Code section 35-43-4-2 (2004), "[a] person who knowingly or intentionally exerts unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use, commits theft, a Class D felony." A theft conviction may be sustained by circumstantial evidence. Duren v. State, 720 N.E.2d 1198, 1202 (Ind. Ct. App. 1999), trans. denied. In this case, Denton signed a statement that acknowledged her role in misappropriating through her sale of phone cards without deposit of the sale proceeds in the store's cash register Exh. Vol., Exhibit 4. The evidence presented was sufficient to support Denton's conviction of Class D felony theft.

Conclusion

The trial court did not abuse its discretion by admitting Exhibits 4 and 5 and the admission of Exhibits 3 and 7 were harmless error. The evidence presented at trial was sufficient to support Denton's conviction for Class D felony theft.

Affirmed.

DARDEN, J., and ROBB, J., concur.