

**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.**

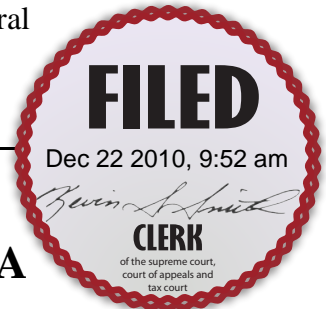
ATTORNEY FOR APPELLANT:

**JANE H. CONLEY**  
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

**GREGORY F. ZOELLER**  
Attorney General of Indiana

**HENRY A. FLORES, JR.**  
Deputy Attorney General  
Indianapolis, Indiana



---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

JERRY BUNTON, )

Appellant-Defendant, )

vs. )

No. 49A02-1006-CR-600

STATE OF INDIANA, )

Appellee-Plaintiff. )

---

APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Allan W. Reid, Judge Pro Tempore  
Cause No. 49F18-0901-FD-19308

---

**December 22, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**NAJAM, Judge**

## **STATEMENT OF THE CASE**

Jerry Bunton appeals his conviction for theft, as a Class D felony, following a jury trial. Bunton presents a single issue for review, namely, whether the evidence is sufficient to support the jury verdict.

We affirm.

## **FACTS AND PROCEDURAL HISTORY**

On January 21, 2009, at approximately 5:00 p.m., Teresa Russell was working at the gift shop at St. Francis Hospital in Indianapolis. In the shop was a revolving jewelry case that held three gold chain necklaces on one side and earrings on the other. Bunton and another man entered the shop, and Bunton asked to see the earrings that were in the locked case. Russell unlocked the case and showed the earrings to Bunton. Bunton then asked Russell to set one pair of earrings back for him because he did not have any money with him.

In response to Bunton's request, Russell turned her back to Bunton and his friend to put the earrings by the cash register a few feet away. Stop action photographs from a surveillance camera show that Bunton reached into the jewelry case with his right hand and then put his right hand near his pocket while Russell had her back to him. As she returned, Bunton attempted to turn the jewelry case. Upon reaching Bunton and the other man again, Russell locked the revolving jewelry case. Bunton and the other man then left.

Fifteen minutes after Bunton and the other man left, Russell noticed that the three necklaces from the revolving jewelry case were missing. She had seen the necklaces in

the case before Bunton had entered the shop. Russell reported the theft and described Bunton and the other man that had been in the shop. Days later, Russell identified Bunton from a photographic lineup as the man who had asked to see the earrings.

The State charged Bunton with theft, as a Class D felony, and with being an habitual offender. Following a trial, the jury found Bunton guilty of theft as charged. Bunton then pleaded guilty to the habitual offender charge. The court sentenced him to three years for theft and three years for being an habitual offender, to be served consecutively. Bunton now appeals.

### **DISCUSSION AND DECISION**

Bunton contends that the State presented insufficient evidence to support his conviction for theft. When reviewing the claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the 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.

To prove the offense of theft, as a Class D felony, the State was required to show that Bunton knowingly exerted unauthorized control over the property of another with intent to deprive the other person of any part of its value or use. See Indiana Code Section 35-43-4-2. Here, Russell had seen three gold chain necklaces in the revolving jewelry case earlier in the afternoon. When Bunton came into the shop, he asked Russell

to unlock the case so he could look at some earrings. The earrings hung on the opposite side of the case from the necklaces. When Russell turned her back on Bunton to set aside a pair of earrings for his later purchase, surveillance photographs show that Bunton reached into the unlocked case with his right hand, then put his right hand near his pocket, and attempted to rotate the case as Russell returned. Russell then locked the case. Fifteen minutes after Bunton left the store, Russell noticed that the three necklaces from the jewelry case were missing.

The evidence shows that the necklaces were in the locked case earlier in the afternoon, that Russell unlocked the case to show earrings to Bunton, that Bunton reached into the case and then to his pocket while the case was still unlocked, and that Russell noticed the necklaces were missing fifteen minutes after Bunton had left the store. Although the stop action surveillance photographs do not show Bunton actually removing and pocketing the necklaces, the circumstantial evidence was sufficient to allow the jury to conclude that Bunton took the necklaces. See Camm v. State, 908 N.E.2d 215, 229 (Ind. 2009).

Bunton contends that the evidence of his mere proximity and opportunity to commit the offense are insufficient to support his conviction. But Bunton's argument ignores the photographic evidence. Moreover, his argument is merely a request that we reweigh the evidence, which we will not do. Jones, 783 N.E.2d at 1139. We conclude that the evidence is sufficient to support Bunton's conviction.

Affirmed.

DARDEN, J., and BAILEY, J., concur.