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**IN THE
COURT OF APPEALS OF INDIANA**

NATHANIEL DAWN,)
)
Appellant-Defendant,)
)
vs.) No. 49A02-0601-CR-83
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Rueben Hill, Judge
Cause No. 49F18-0509-FD-175248

NOVEMBER 6, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBERTSON, Senior Judge

Defendant-Appellant Nathaniel Dawn appeals his conviction of theft, a Class D felony, Ind. Code § 35-43-4-2.

We affirm.

Dawn presents one issue for our review, which we restate as: whether there was sufficient evidence to sustain Dawn's conviction of theft.

The facts most favorable to the verdict are as follows. Dawn's car over-heated, so he left his car and began walking. He walked to a nearby softball stadium where he saw several gas cans. He picked up one of the gas cans and began walking with it. Alan Davis, the owner of the softball stadium, saw Dawn take the gas can from the truck of one of his employees, Steve Foster. Davis began to follow Dawn and to say something to him, but Dawn began running away. Davis gave chase. Dawn threw the gas can toward Davis and continued running. While chasing Dawn, Davis saw a police car coming toward him on the street and flagged it down for help. After being informed by Davis as to what was happening, the officer found Dawn and ordered him to stop, but Dawn ran around a building. The officer stopped his car and released his police dog to track Dawn. The dog tracked Dawn to a densely weeded area, where the officer again told Dawn to stop; however, Dawn began running again. The officer gave one final warning before he released the dog to attack, but Dawn refused to stop. The dog caught Dawn and bit him, and Dawn began punching and choking the dog. The officer, with the help of another officer who arrived on the scene, was finally able to take Dawn into custody.

Based upon this incident, the State charged Dawn with theft, mistreatment of a law enforcement dog, and three counts of resisting law enforcement. Following a bench trial,

Dawn was convicted of theft and two counts of resisting law enforcement. Dawn appeals only his conviction of theft.

Dawn contends that the evidence is insufficient to support his conviction of theft. Our standard of review with regard to sufficiency claims is well settled. We neither weigh the evidence nor judge the credibility of the witnesses, and we consider only the evidence favorable to the verdict and all reasonable inferences which can be drawn therefrom. *Newman v. State*, 677 N.E.2d 590, 593 (Ind. Ct. App. 1997). If there is substantial evidence of probative value from which a trier of fact could find guilt beyond a reasonable doubt, we will affirm the conviction. *Id.* Moreover, we are mindful that the trier of fact is entitled to determine which version of the incident to credit. *Barton v. State*, 490 N.E.2d 317, 318 (Ind. 1986), *reh'g denied*.

To convict Dawn of theft, the State had to prove that Dawn (1) knowingly or intentionally (2) exerted unauthorized control over the property of another person, specifically Foster's gas can, (3) with the intent to deprive Foster of any part of the property's value or use. *See* Ind. Code § 35-43-4-2(a). Dawn specifically claims that the State failed to prove that he had the intent to deprive Foster of any part of the value or use of the gas can.

Intent is a mental function and, absent a confession, it must be determined from a consideration of the defendant's conduct and the natural and usual consequences of that conduct. *West v. State*, 805 N.E.2d 909, 915 (Ind. Ct. App. 2004), *trans. denied*, 812 N.E.2d 808. Thus, the trier of fact is entitled to infer intent from the surrounding

circumstances. *E.H. v. State*, 764 N.E.2d 681, 683 (Ind. Ct. App. 2002), *reh'g denied*, *trans. denied*.

In the present case, Dawn went onto another's property and took a gas can. Although Dawn argues that he was intending only to borrow the gas can, he took the can before he approached anyone to ask permission to borrow it. The evidence shows that Dawn took the gas can and began walking with it. When Davis attempted to say something to Dawn, he ran with the gas can and later threw it back at Davis. Dawn was told to stop by the police officer at the corner of the building and again when the police dog tracked him to the weeded area. Subsequently, Dawn was given a third chance to stop before the officer released the dog, and Dawn continued to run. The owner of the gas can, Foster, testified at trial that he did not give Dawn permission to take the gas can.

Dawn asserts that he set the gas can down and left when Davis tried to talk to him. He further claims that he ran only when he saw the police officer because his parole officer warned him not to have any contact with the police, and that he was never told to stop by the officer. The trier of fact is free to reject a defendant's explanation. *Brown v. State*, 827 N.E.2d 149, 153 (Ind. Ct. App. 2005). In light of Dawn's conduct and the natural consequences of that conduct, the trial court properly inferred that Dawn intended to deprive Foster of the use and value of his gas can. Thus, we conclude that the evidence supports the inference that Dawn had the requisite intent to commit theft.

Affirmed.

BARNES, J., and VAIDIK, J., concur.