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**IN THE
COURT OF APPEALS OF INDIANA**

FRANK HENNIGER,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A04-0605-CR-279
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Scott Devries, Commissioner
Cause No. 49F09-0507-FD-114230

January 10, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant Frank Henniger appeals his conviction for Theft,¹ a class D felony, challenging the sufficiency of the evidence. Specifically, Henniger argues that the State failed to prove beyond a reasonable doubt that he had the requisite intent to steal a bottle of soda pop from a grocery store. Finding no error, we affirm the judgment of the trial court.

FACTS

On July 3, 2005, Henniger entered a Village Pantry convenience store in Indianapolis. He walked over to a cooler, selected a bottle of Pepsi, and placed it in his pants pocket. When Henniger left the store without paying for the Pepsi, a security guard stopped him. Henniger attempted to flee, but one of the security guards was able to handcuff him after a brief struggle.

As a result of the incident, Henniger was charged with trespassing and theft. The State ultimately moved to dismiss the trespass charge, which the trial court granted. Following a bench trial on April 26, 2006, Henniger was found guilty of theft. Thereafter, Henniger was sentenced to 365 days in jail with all time suspended and to probation. He now appeals.

DISCUSSION AND DECISION

Our standard of review for claims challenging the sufficiency of the evidence is well settled. We will not reweigh the evidence nor judge the credibility of the witnesses, and we will respect the fact finder's exclusive province to weigh conflicting evidence. McHenry v.

¹ Ind. Code § 35-43-4-2.

State, 820 N.E.2d 124 (Ind. 2005). Considering only the evidence and the reasonable inferences supporting the verdict, our task is to decide whether there is substantial evidence of probative value from which a reasonable fact finder could find the defendant guilty beyond a reasonable doubt. Id. Additionally, because intent is a mental function, absent a confession, the only way to determine intent is to consider the defendant's actions and the natural and consequential ramifications of those actions. Moore v. State, 723 N.E.2d 442, 452 (Ind. Ct. App. 2000).

Our theft statute, Indiana Code section 35-43-4-2, provides that “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.” Thus, in order to convict Henniger of theft, the State was required to prove beyond a reasonable doubt that Henniger knowingly or intentionally exerted the unauthorized control over the bottle of Pepsi with the intent to permanently deprive Village Pantry of its use or value.

In this case, Blade Shaw, one of the security guards on duty at the Village Pantry, was acquainted with Henniger from a previous theft incident. Tr. p. 9. Shaw testified that on July 3, 2005, he observed Henniger select a bottle of Pepsi from the store's cooler, place it in his pants pocket, and attempt to leave the store without paying for it. Id. at 9-11. Henniger then attempted to flee when Shaw approached him. Id. at 11. In our view, this evidence established beyond a reasonable doubt that Henniger placed the bottle in his pocket in an

effort to smuggle the item out of the store. Hence, the trial court—as the fact finder—could reasonably conclude that Henniger possessed the requisite intent to deprive Village Pantry of the item’s use or value. See, e.g., Chambliss v. State, 746 N.E.2d 73, 78 (Ind. 2001) (holding that the defendant’s statement and the concealment of the lunch meat was sufficient evidence from which a jury could infer “unauthorized control,” and therefore theft).

Finally, we note that Henniger attempted to offer his own account of what had occurred at the Village Pantry at the sentencing hearing. Moreover, his argument on appeal is based only on the statements that were offered at sentencing. On the other hand, the evidence offered by the State at trial was uncontradicted. In essence, Henniger’s arguments amount to an invitation to reweigh the evidence—an invitation that we decline. As a result, we conclude that the evidence established beyond a reasonable doubt that Henniger committed theft.

The judgment of the trial court is affirmed.

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