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IN THE
COURT OF APPEALS OF INDIANA

KEVIN S. NEAL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 82A01-0906-CR-303
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Mary Margaret Lloyd, Judge
Cause No. 82D02-0901-FC-5

January 12, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Kevin Neal appeals his conviction for Theft,[1] a class D felony, arguing that that the State presented insufficient evidence to convict him. Finding the evidence sufficient, we affirm.

FACTS

On January 3, 2009, at around 4:05 a.m., Officer Doug Kemmerer of the Evansville Police Department was dispatched to the Frasier Body Shop because the burglary alarm had been activated. Officer Kemmerer was the first to arrive at the scene and observed that a garage panel was missing from an overhead garage door. In addition, Officer Kemmerer found a water jug full of coins in an adjacent alley.

Officer Kemmerer requested additional assistance and a K-9 unit arrived shortly thereafter. Officer Kemmerer searched the perimeter for a suspect while Dennis Frasier, the owner of the body shop, arrived at the scene. Frasier noticed that his office door had been kicked. The door had a dent and a shoeprint next to the knob. An officer told Frasier that the neighboring tavern had a surveillance video that captured part of the incident.

Frasier went to the tavern to watch the surveillance video, which showed an individual climbing a fence onto his property and checking the doors of vehicles. The individual then went out of view for three to four minutes and emerged carrying a water jug full of coins that was kept in plain view in Frasier's office. The individual then threw the jug over the fence.

[1] Ind. Code § 35-43-4-2(a).

As Frasier was walking back to the body shop, he noticed his jug of coins in the alley and asked if he could retrieve it. Frasier went into his office and when he returned to the alley, his jug was gone and he saw someone pulling a trash can down the alley.

During this time, Officer Kemmerer and a civilian who was part of a ride-along were driving the perimeter three blocks from the body shop when the civilian noticed someone running. Officer Kemmerer drove towards the area and saw Neal pulling a large trash can down an alley. Officer Kemmerer discovered Frasier's jug in the trash can and drove Neal back to the body shop. A detective removed Neal's shoe and compared it with the footprint on Frasier's office door. Upon determining that the footprint had the same characteristics as Neal's shoe, Neal was arrested.

On January 5, 2009, Neal was charged with class C felony burglary and class D felony theft. On March 23, 2009, the State filed a habitual offender enhancement. On April 29, 2009, after the conclusion of Neal's trial, the jury found Neal guilty of theft, a class D felony, but was unable to reach a verdict on the burglary count, which was subsequently dismissed by the State. On the same day, Neal pleaded guilty to the habitual offender enhancement. On May 21, 2009, the trial court sentenced Neal to eighteen months, which was enhanced by three years on the habitual offender count, for a total executed term of four and one-half years imprisonment. Neal now appeals.

DISCUSSION AND DECISION

Neal's sole argument on appeal is that there was insufficient evidence to support his conviction for theft. Specifically, Neal contends that the evidence was insufficient to prove that he knowingly exerted unauthorized control over Frasier's property.

Our standard for reviewing claims of insufficient evidence is well settled. We will neither reweigh the evidence nor judge the credibility of the witnesses. Alkhalidi v. State, 753 N.E.2d 625, 627 (Ind. 2001). Rather, this court will affirm the trial court if the probative evidence and the reasonable inferences drawn therefrom could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. Id.

Indiana Code section 35-43-4-2(a) 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." In addition, "[a] person engages in conduct 'knowingly' if, when he engages in the conduct, he is aware of a high probability that he is doing so." Ind. Code § 35-41-2-2(b). Furthermore, knowledge, like intent, is a mental state of the actor; therefore, the trier of fact must resort to reasonable inferences based on the examination of the surrounding circumstances. Jernigan v. State, 612 N.E.2d 609, 613 (Ind. Ct. App. 1993).

Here, the evidence indicates that Frasier kept the jug of coins in plain sight in his office. Prior to this incident, Neal had been inside Frasier's office on two separate occasions. Furthermore, Officer Kemmerer saw Neal pushing a trash can containing Frasier's jug, and Frasier had not given Neal permission to take the jar. See Williams v.

State, 714 N.E.2d 671, 673 (Ind. Ct. App. 1999) (stating that "[t]he unexplained possession of recently stolen items provides support for an inference of guilt of theft of that property"). Under these circumstances, a reasonable jury could conclude that Neal knowingly exerted unauthorized control over Frasier's property, and we affirm the judgment of the trial court.

The judgment of the trial court is affirmed.

BAILEY, J., and ROBB, J., concur.