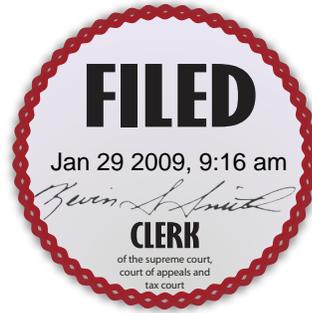


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

SHERMAN HARRIS,)
)
 Appellant-Defendant,)
)
 vs.) No. 49A05-0807-CR-415
)
 STATE OF INDIANA,)
)
 Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Reuben B. Hill, Judge
Cause No. 49F18-0708-FD-165104

January 29, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Sherman Harris appeals from his conviction for Theft, as a Class D felony, following a bench trial. Harris raises a single issue for our review, namely, whether the State presented sufficient evidence to support his conviction.

We affirm.

FACTS AND PROCEDURAL HISTORY

On the morning of August 10, 2007, Karl Miller observed Harris walking down Hillside Avenue in Marion County carrying a coil of copper tubing. Harris then placed the copper tubing in a trash bag Miller had placed in front of his home for collection and then continued down Hillside Avenue with the trash. Miller, suspicious, called the police. Miller then observed Harris leave the street and proceed to an area between two houses. Moments later, Harris re-entered the street riding a bicycle.

Shortly thereafter, the police arrived at Miller's residence and asked Miller to accompany them a few blocks south on Hillside Avenue. Miller agreed and, once there, identified Harris as the man about whom Miller had informed the police. The police then called Troy Hawkins, another Hillside Avenue resident, who arrived and identified the bicycle in Harris' possession as belonging to Hawkins' son, Aaron. Aaron also identified the bicycle as his and informed the police that Harris was not authorized to possess the bicycle.

On August 16, the State charged Harris with theft, as a Class D felony. Harris waived his right to a jury trial, and on June 11, 2008, the court held a bench trial. At that

trial, Aaron testified that he had left his bike on the side of his house “20 feet from [the] garbage.” Transcript at 39. The court then found Harris guilty as charged, stating:

If he’s going to go through someone’s trash, then he’s got to make sure that it is the trash. Twenty feet, no. You know the Court can—and it’s—anyone in this room can assume that when people put their trash out, it’s pretty much piled out. They’re almost touching each other, the barrels, and the pieces, and stuff is on top; it’s not 20 feet away. And, Mr. Harris is like so many people who support themselves by collecting trash. And, truthfully, you may say it’s not a desirable way, but it’s a living. A lot of people make a living doing that. And no person should apologize for working for a living, but it is a dangerous occupation in that sometimes people make a mistake and it happens to be criminal. Maybe in your business you can make a mistake that is not criminal, but maybe—maybe we could argue that, but . . . in this particular business, a lot of people do. They say, ‘I think that might be thrown away, but I’m not sure, but it’s valuable.’ And it’s close. And they pick it up and they find out someone’s yelling to the police because it wasn’t. And I think that’s the category that you fall in in this; either knew or should have known, and I believe you did. And I believe you knew that that bicycle was not thrown away, so there’ll be a finding of guilty

Id. at 64-65 (emphases added). The court then sentenced Harris to 614 days executed.

This appeal ensued.

DISCUSSION AND DECISION

The only issue raised by Harris on appeal is whether the State presented sufficient evidence to demonstrate that he knowingly or intentionally committed the act of theft. When reviewing a 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 judgment and the reasonable inferences that may be drawn from that evidence 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 that Harris committed theft, as a Class D felony, the State was required to prove beyond a reasonable doubt that he knowingly or intentionally exerted unauthorized control over the property of another person, with intent to deprive the other person of any part of its value or use. See Ind. Code § 35-43-4-2(a) (2004). Harris argues that the State failed to prove that he acted with the proper mens rea for that crime and that the trial court acknowledged as much when it stated that “sometimes people make a mistake and it happens to be criminal.” See Transcript at 65. The State responds that Harris has misunderstood the trial court’s statements. We agree with the State.

During the June bench trial, Aaron testified that he had left the bicycle twenty feet from his family’s trash. The trial court expressly relied on that testimony when it determined that, given that distance, Harris could not have reasonably mistaken the bicycle for trash. While the court did acknowledge that rummaging through others’ trash can lead to mistakes in taking nonabandoned property, the court stated that Harris made no such mistake: “I believe you knew that that bicycle was not thrown away.” Id. Harris’ argument on appeal is merely a request for this court to reweigh the evidence, which we will not do. See Jones, 783 N.E.2d at 1139. Harris’ conviction for theft, as a Class D felony, is supported by sufficient evidence.

Affirmed.

BAKER, C.J., and KIRSCH, J., concur.