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**IN THE
COURT OF APPEALS OF INDIANA**

DEANNA AUSTIN,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A04-0606-CR-326

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Patrick Murphy, Master Commissioner
Cause No. 49G014-051006-FD-168639

February 16, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant Deanna Austin appeals her conviction for Attempting to Obtain a Controlled Substance by Fraud or Deceit, a class D felony.¹ Specifically, Austin contends that her conviction must be reversed because the State failed to present any evidence that she “knowingly attempted to pick up a forged prescription,” and that she “was tricked into retrieving the prescription for the individual named on the prescription.” Appellant’s Br. p. 6. Concluding that the evidence was sufficient, we affirm the judgment of the trial court.

FACTS

On September 29, 2005, Hogla Juanga was working as a pharmacist at the Kroger store in the Lynhurst Square Mall in Indianapolis. At some point, a thin white male approximately fifty to sixty years of age dropped off a prescription for Vicodin for an individual identified on the form as Rhonda Deshazier. The man informed Juanga that the prescription was for a friend who would pick it up at a later time. Juanga became suspicious because the prescription did not contain the correct identification number of Dr. Medhi Tahsini, the physician who allegedly prescribed the Vicodin. As a result, Juanga called the number for the doctor listed on the prescription, and she was informed that Dr. Tahsini did not work there. After Juanga was provided with another telephone number to call, she was able to reach Dr. Tahsini who requested her to fax the prescription to him. Dr. Tahsini subsequently informed Juanga that it was not his signature on the prescription and that he had not written it. In response, Juanga informed

¹ Ind. Code § 35-41-5-1; Ind. Code § 35-48-4-14(c).

the other personnel at the store about the situation and instructed them to contact the police if anyone attempted to pick up the prescription.

Later that afternoon, Austin went to the store to pick up the Vicodin, claiming to be Deshazier's cousin. Juanga notified the police, and while she was talking on the telephone with one of the officers, a vehicle containing a white male and an African American female pulled up to the pharmacy's drive through window. The woman, who claimed to be Deshazier, asked for the prescription. When Juanga informed the woman that Austin was in the store, she responded that Austin could pick up the drugs and drove away.

As Juanga was handing the pills to Austin, Indianapolis Police Officers entered the store. After being informed of the Miranda² warnings, Austin told the officers that one of her neighbors by the name of "Mimi" had been providing her with Vicodin pills and that she was picking up the prescription for her. Id. at 31, 33, 39. Austin was subsequently charged with the above offense, and following a bench trial on May 24, 2006, she was found guilty as charged. Austin now appeals.

DISCUSSION AND DECISION

In reviewing a challenge to the sufficiency of the evidence, this court neither reweighs the evidence nor judges the credibility of the witnesses. Dickenson v. State, 835 N.E.2d 542, 551 (Ind. Ct. App. 2005), trans. denied. We consider only the evidence and the reasonable inferences from the evidence that support the judgment, and we will

² Miranda v. Arizona, 384 U.S. 436 (1966).

affirm the conviction where there is sufficient probative evidence from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt.

Id.

We also note that a conviction may be sustained on circumstantial evidence alone. Hayworth v. State, 798 N.E.2d 503, 507 (Ind. Ct. App. 2003). Moreover, the State is not required to prove a defendant's knowledge or intent by direct and positive evidence. Knowledge and intent are mental states and, absent an admission by defendant, the trier of fact must resort to the reasonable inferences from both the direct and circumstantial evidence to determine whether the defendant had the requisite intent to commit the offense. Johnson v. State, 837 N.E.2d 209, 214 (Ind. Ct. App. 2005), trans. denied. The trier of fact may also consider the defendant's conduct and the natural and usual consequences that might be expected from that conduct in order to determine if an inference of the required intent exists. Moore v. State, 723 N.E.2d 442, 452 (Ind. Ct. App. 2000). So long as the inferences pointing to a defendant's guilt are reasonable, we will not set aside the judgment. McHenry v. State, 820 N.E.2d 124, 126-27 (Ind. 2005). Finally, this court respects "the [fact finder's] exclusive province to weigh conflicting evidence." Id.

The statute under which Austin was charged provides as follows:

A person who knowingly or intentionally acquires possession of a controlled substance by misrepresentation, fraud, forgery, deception, subterfuge, alteration of a prescription order, concealment of a material fact, or use of a false name or false address commits a Class D felony. However, the offense is a Class C felony if the person has a prior conviction of an offense under this subsection.

I. C. § 35-48-4-14(c). Additionally, Indiana Code section 35-41-5-3(a) states that “a person attempts to commit a crime when, acting with the culpability required for commission of the crime, he engages in conduct that constitutes a substantial step toward commission of the crime.”

In this case, the State established that Austin admitted that her neighbor would occasionally provide her with Vicodin and that on September 29, 2005, Austin had asked her for some of the pills. Tr. p. 23-24. While Austin initially testified that she would run errands for her neighbor, including picking up prescriptions for her, she later acknowledged that she asked her neighbor what to do in this particular instance because she had never picked up prescriptions for her in the past. Id. at 48-51. In our view, a reasonable fact finder could conclude that Austin’s story—that she was merely picking up the prescription for Mimi—was not true.

The police believed that the woman who appeared at the pharmacy window was a Caucasian female with red hair. Similarly, Austin claimed that her neighbor matched that description. Id. at 50. However, Juanga testified that the woman in the vehicle was African American. Id. That said, it is apparent that the police had the wrong description and that Austin was fabricating a story that would match what the police said. Moreover, if the neighbor was actually the acquaintance that Austin had portrayed her to be, there was no legitimate reason for Austin to tell Juanga that she was picking up the prescription for her cousin. Id. at 14. This fabrication provided a reasonable inference that Austin knew she was not authorized to pick up the prescription. Thus, the circumstances allowed a reasonable inference to be drawn that Austin knew the prescription was forged,

or at least that she was not authorized to obtain the drugs. In essence, Austin's argument on appeal amounts to a mere request for this court to substitute a different set of inferences for the ones that were found by the trier of fact. Therefore, Austin's challenge to the sufficiency of the evidence fails.

The judgment of the trial court is affirmed.

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