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

VICTOR BREWER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0603-CR-111
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Evan Goodman, Judge
Cause No. 49F15-0401-FD-1192

February 26, 2007

MEMORANDUM DECISION ON REHEARING - NOT FOR PUBLICATION

NAJAM, Judge

Victor Brewer has filed a petition for rehearing asking that we address an alleged error in our memorandum decision. See Brewer v. State, No. 49A05-0603-CR-111 (Ind. Ct. App. Nov. 17, 2006). We grant Brewer's petition for rehearing for the limited purpose of addressing one previously omitted issue, namely, whether the trial court abused its discretion when it entered judgment of conviction in light of the trial court's error in refusing a proper jury instruction. On another issue, namely, the sufficiency of evidence to support the habitual offender determination, Brewer also requests that this court address on rehearing two cases cited by him in his original briefing.

We revise our decision by vacating the conviction for theft and remand to the trial court for further proceedings. In all other respects, we reaffirm our decision.

Brewer first argues that this court erred when it failed to vacate his conviction for theft. Specifically, he argues that the error we found to have occurred in the habitual offender phase also occurred in the guilt phase and, therefore, that we should have also vacated his conviction for theft. Upon review of Brewer's appellate brief, we acknowledge that we did not address his request for relief regarding the guilt phase of the trial.

In our memorandum decision, we held that the trial court committed reversible error when it refused Brewer's request to instruct the jury that they had the right to determine the law and the facts, as provided under Article I, Section 19 of the Indiana Constitution. The State conceded the error. Following Warren v. State, 725 N.E.2d 828 (Ind. 2000), we vacated the habitual offender determination and remanded to the trial court for further proceedings consistent with our opinion. On rehearing, we conclude that

the trial court also erred when it refused to give the requested instruction at the guilt phase of the trial. Thus, we vacate Brewer's conviction for theft and remand to the trial court for further proceedings consistent with our memorandum decision and this decision on rehearing.

Brewer also contends that, when addressing the sufficiency of evidence to support Brewer's habitual offender determination, this court should have addressed two cases that Brewer had cited in his appellate brief. We cannot agree. Our memorandum decision adequately explains, with citation to relevant case law, the reasoning to support our conclusion that the evidence was sufficient to show Brewer's prior felony convictions. Application of the cases that Brewer asks us to address on rehearing would not change our conclusion on the sufficiency of evidence issue. Thus, discussion of those cases is not necessary.

We vacate the theft conviction and remand for further proceedings consistent with this opinion. In all other respects, we reaffirm our decision.

KIRSCH, C.J., and DARDEN, J., concur.