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**IN THE
COURT OF APPEALS OF INDIANA**

ATHENA JACKSON,)
)
 Appellant-Defendant,)
)
 vs.) No. 49A02-1006-CR-767
)
 STATE OF INDIANA,)
)
 Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
Criminal Division 18
The Honorable Reuben B. Hill, Judge
The Honorable Teresa A. Hall, Commissioner
Cause No. 49F18-1002-FD-012893

APRIL 4, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

SULLIVAN, Senior Judge

Following a bench trial, Athena Jackson was convicted of theft, a Class D felony. Ind. Code § 35-43-4-2(a) (1985). She appeals that conviction and we affirm.

On the morning of June 5, 2009, Jackson entered the Faith Boutique located in the mall at Keystone at the Crossing in Indianapolis. While there, she took clothing items and stuffed them into her purse. She then left the store without paying for the items. Darron Daniels, the owner of the store, pursued Jackson and confronted her as she was attempting to leave in her vehicle. Jackson ignored Daniels' request for the return of the items from his store and drove away. In doing so, she grazed Daniels' knee with her vehicle.

Later, Daniels identified Jackson from a photo array as the person who stole the items from his store. Based upon this incident, Jackson was charged with theft. The information was subsequently amended to include a habitual offender charge. The court found Jackson guilty of the theft charge. She was also found to be a habitual offender in a bifurcated proceeding. The instant appeal involves only Jackson's theft conviction.

Jackson presents one issue for our review: whether the State presented sufficient evidence to sustain her conviction.

When reviewing claims of insufficiency of the evidence, we neither weigh the evidence nor judge the credibility of the witnesses. Caruthers v. State, 926 N.E.2d 1016, 1022 (Ind. 2010). If there is substantial evidence of probative value from which a

reasonable trier of fact could find guilt beyond a reasonable doubt, we will affirm the conviction. Id.

In order to obtain a conviction of theft in this case, the State must have proved beyond a reasonable doubt that (1) Jackson (2) knowingly or intentionally (3) exerted unauthorized control over (4) the property (5) of Faith Boutique¹ (6) with the intent to deprive Faith Boutique of any part of its value or use. See Ind. Code § 35-43-4-2(a).

The evidence at trial discloses that a young woman entered the Faith Boutique and went to the left front of the store where some denim items were displayed. Daniels was on the phone, but he attempted to look at the woman and what she was doing; however, a beam obscured his view. When he attempted to look around the beam to see the woman, she moved further around the beam out of his line of sight. A few minutes later, she exited the store. Daniels immediately went to the front of the store where he noticed jeans missing and then went to the back of the store and viewed the footage from the store's surveillance cameras. The surveillance footage showed the woman stuffing clothing items into her purse, so Daniels exited the store and pursued her. While the woman was attempting to leave in her vehicle, Daniels confronted her and demanded the return of the clothing items from his store. The woman ignored Daniels and left in her vehicle, grazing Daniels' knee with her vehicle as she did so.

¹ Faith Boutique is a business entity selling women's clothing. Tr. p. 6. As such it is a "person" within the meaning of the theft statute. See Malone v. State, 547 N.E.2d 1101, 1103 (Ind. Ct. App. 1989), trans. denied.

Daniels also testified that when he confronted the woman in the parking lot, he was approximately one foot away from her. He stated that he could see her eyes and the tattoos on her arm. Daniels later identified Jackson from a photo array, as well as providing an in-court identification of her at trial. He also testified that he and his staff perform a walk-through inventory of the store each night after closing and each morning before opening. He stated that this walk-through was performed on June 5, 2009, prior to the woman entering the store, and that no inventory was missing.

The evidence presented at trial is sufficient to support Jackson's conviction. Her theories contained in her appellate brief that the "individual on the videotape could have been re-arranging items of her own in the bag," or that "she might have placed store items in the bag, but removed them and left them someplace [sic] else in the store prior to her departure," or that "[t]he items might have turned up missing on some inventory because the items were missing the night before," Appellant's Br. p. 10, are all merely invitations for this Court to judge the credibility of witnesses and reweigh the evidence, which we cannot do. See Caruthers, 926 N.E.2d at 1022. Moreover, we are mindful that the trier of fact is entitled to determine which version of the incident to credit. Barton v. State, 490 N.E.2d 317, 318 (Ind. 1986).

Jackson further states in her brief that the "videotape was inaccurate as to time or date." Appellant's Br. p. 10. This fact was discussed at trial, yet Jackson made no objection to the admission of the store's surveillance videotape. A defendant must make a timely objection to the allegedly erroneous admission of evidence to preserve the error

for appeal. O'Neal v. State, 716 N.E.2d 82, 86 (Ind. Ct. App. 1999), trans. denied. Thus, any error Jackson is attempting to raise with regard to the videotape is waived. In addition, her argument is a further invitation for us to reweigh the evidence, which, as previously noted, we cannot do. See Caruthers, 926 N.E.2d at 1022.

Thus, we conclude that the State presented evidence sufficient to support Jackson's conviction of theft.

The judgment is affirmed.

BAILEY, J., and VAIDIK, J., concur.