



Appellant-defendant Dexter Young appeals his conviction for Theft,<sup>1</sup> a class D felony. Young contends that his rights under the Confrontation Clause of the Sixth Amendment to the United States Constitution were violated because surveillance video of the theft was unavailable and that the evidence is insufficient to support the conviction. Finding no error, we affirm.

### FACTS

On September 11, 2007, Melissa Davis was the manager of a convenience store in Indianapolis. Davis was working in her office when another employee alerted her to the suspicious behavior of a customer in the store. Davis observed the public area of the store through the store's video surveillance system, which also made a video record of what could be seen through the camera. Davis observed a man—later revealed to be Young—“putting some [Slim] Jims in his pocket . . . .” Tr. p. 5-6.

Davis left her office and confronted Young, who had Slim Jims protruding from one of his pockets. After Davis asked him to put the merchandise back, Young walked to the cash register and grabbed a bag of potato chips. Davis asked whether Young was going to pay for the items. In response, Young turned and ran toward the front door, running into Davis and knocking her into the door in the process. Young was unable to complete his escape because a store employee had locked the door.

The police arrived and found Young inside the door, holding a bag of chips in his hands, carrying Slim Jims in his pocket, and shouting at Davis and other customers in the

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<sup>1</sup> Ind. Code § 35-43-4-2(a).

store. The police were unable to play the videotape made by the store's surveillance system. Later, the officers could not recall whether Young had money in his pockets.

On September 12, 2007, the State charged Young with class D felony theft. At Young's October 6, 2008, bench trial, the videotape made by the store's surveillance system was no longer available. Young objected to Davis's testimony on the grounds that the videotape was not placed into evidence, violating his Sixth Amendment right to confrontation under the United States Constitution. The trial court overruled the objection, reasoning that Davis was competent to testify about her personal observations of Young's actions. Young testified that he was waiting to pay for the items when Davis attacked him and he denied having any Slim Jims in his possession in the store. At the close of the trial, the trial court found Davis guilty, explaining that "I must decide which witnesses I'm going to believe and which I'm not. And what part of their testimony I will believe and what not. And that's the decision I have to make as the trier of fact." Tr. p. 26-27. The trial court sentenced Young to 545 days, with 365 days suspended to probation, with the balance to be served on home detention. Young now appeals.

## DISCUSSION AND DECISION

### I. Davis's Testimony

Young argues that the trial court erred by permitting Davis to testify given that the videotape created by the store's surveillance system was unavailable. The admission and exclusion of evidence lies within the trial court's sound discretion; therefore, we review the admission of testimony for an abuse of that discretion. State v. Lloyd, 800 N.E.2d

196, 198 (Ind. Ct. App. 2003). Such an abuse occurs when the decision is clearly against the logic and effect of the facts and circumstances. Id.

In Crawford v. Washington, 541 U.S. 36, 53-54 (2004) the United States Supreme Court held that under the Sixth Amendment to the United States Constitution, “the admission of a hearsay statement made by a declarant who does not testify at trial violates the Sixth Amendment if (1) the statement was testimonial and (2) the declarant is unavailable and the defendant lacked a prior opportunity for cross-examination.” Howard v. State, 853 N.E.2d 461, 456 (Ind. 2006) (analyzing Crawford).

Young turns Crawford on its head and essentially argues that his constitutional rights were violated because he was not allowed to “confront and cross-examine” the videotape—an inanimate object. Appellant’s Br. p. 7. Crawford has been applied to hearsay statements memorialized in inanimate objects, such as the out-of-court statements of a laboratory technician memorialized on a lab report. E.g., Jackson v. State, 891 N.E.2d 657, 661 (Ind. Ct. App. 2008). In such cases, the court has recognized the right to confront and cross-examine the laboratory technician whose statements were memorialized, but no analogous right to confront and cross-examine the technician’s equipment has been upheld.

Here, Davis testified—and was fully cross-examined—about her personal observations that she made through a camera that allowed her to see the store’s public area. As aptly put by the State, “[h]er testimony is no more objectionable . . . than the testimony of a police officer[] about what he observed through binoculars would be objectionable on the grounds that the defendant could not cross-examine the binoculars’

lenses and focal apparatus.” Appellee’s Br. p. 6-7. We agree, and find that the admission of Davis’s testimony did not violate Young’s rights under the Sixth Amendment to the United States Constitution.<sup>2</sup>

## II. Sufficiency

Young also argues that the evidence supporting his conviction is insufficient. When reviewing the sufficiency of the evidence supporting a conviction, we neither reweigh evidence nor assess witness credibility. Dillard v. State, 755 N.E.2d 1085, 1089 (Ind. 2001). We will only reverse if, having considered only the evidence and inferences supporting the conviction and resolving all discrepancies and conflicts in favor of the verdict, we find that no rational person could have found the defendant guilty beyond a reasonable doubt. Hyppolite v. State, 774 N.E.2d 584, 598 (Ind. Ct. App. 2002).

To convict Young of class D felony theft, the State was required to prove beyond a reasonable doubt that he knowingly or intentionally exerted unauthorized control over the convenience store’s property with the intent to deprive the person of any part of the property’s value or use. I.C. § 35-43-4-2(a). Here, the State offered evidence that, while watching the store’s video surveillance system, Davis observed Young placing Slim Jims

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<sup>2</sup> To the extent that Young also raises an argument under the Indiana Constitution, we observe that he has waived the argument, inasmuch as he raises it for the first time on appeal. See Grace v. State, 731 N.E.2d 442, 444 (Ind. 2000) (holding that “[g]rounds for objection must be specific and any grounds not raised in the trial court are not available on appeal”). In any event, his argument under the Indiana Constitution would face the same problems already described—there is no cognizable right to confront and cross-examine an inanimate object.

Young also argues for the first time on appeal that Davis’s testimony was inadmissible under Indiana Rule of Evidence 612, which governs the use of records or items to refresh the memory of a witness. Young has also waived this argument. Grace, 731 N.E.2d at 444. Waiver notwithstanding, we observe that there is no evidence in the record that Davis, in fact, used the videotape to refresh her memory before trial. Thus, Rule 612 does not apply.

in his pocket. Davis left her office and approached Young, noticing Slim Jims protruding from his pocket. She asked him to put the merchandise back, but instead of complying, he walked to the cash register and grabbed a bag of potato chips. Davis asked Young if he was going to pay for the items. Rather than answering, he turned away from the cash register and ran toward the exit, knocking Davis down in the process. Young directs our attention to evidence supporting his own version of events, but this is an invitation to reweigh the evidence and assess witness credibility—a practice in which we do not engage when evaluating the sufficiency of the evidence supporting a conviction. We find this evidence sufficient to support Young’s conviction.

The judgment of the trial court is affirmed.

MAY, J., and BARNES, J., concur.