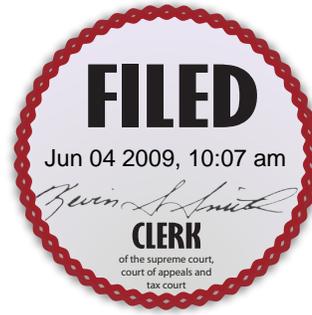


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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D.C., )  
 )  
Appellant-Defendant, )  
 )  
vs. ) No. 49A02-0811-JV-982  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Beth Jansen, Magistrate  
Cause No. 49D09-0806-JD-001969

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**JUNE 4, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**SHARPBACK, Senior Judge**

## STATEMENT OF THE CASE

Defendant-Appellant D.C. appeals the trial court's true finding of theft, a Class D felony if committed by an adult. We affirm.

### ISSUE

D.C. raises one issue for our review, which we restate as: Whether the State presented sufficient evidence to support the true finding.

### FACTS

During the early evening of June 17, 2008, Dawn Marie Turner noticed one of her cell phones was missing from her truck. Although she had seen the cell phone approximately ten minutes before she noticed its absence, Turner was not sure whether someone had reached through an open window and had taken the phone while she was in a local business or whether it had fallen out of the truck.

Turner searched for the phone but could not find it. She also began calling the number, but no one answered that night. The next morning, however, Turner called the number and spoke with a number of people. In response to what she was told by the people who had her phone, she agreed to meet them at a local Speedway station and "give them the money" that they had "mentioned" to her. (Tr. at 8).

Turner, who had alerted the Indianapolis police, and who was on another cell phone with the police, went to the Speedway. D.C. and a woman entered the Speedway parking lot and began yelling, "Are you looking for the phone? Are you looking for the

phone?” (Tr. at 9). At that time, the police arrived and removed the phone from D.C.’s pocket. D.C. was subsequently arrested.

### DISCUSSION AND DECISION

In reviewing a challenge to the sufficiency of the evidence in a juvenile adjudication, this court will not reweigh the evidence or judge the credibility of witnesses. *J.B. v. State*, 748 N.E.2d 914, 916 (Ind. Ct. App. 2001). We will consider only the evidence most favorable to the judgment and will affirm where there is substantial evidence of probative value from which a reasonable fact finder could find the juvenile guilty. *Id.* To prove that D.C. committed the act of theft, the State was required to show beyond a reasonable doubt that D.C. “knowingly or intentionally exert[ed] unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use.” Ind. Code § 35-43-4-2.

The thrust of D.C.’s allegation is that the State failed to show that he had the intent to deprive Turner of the use or value of her phone. He argues that the evidence must lead to the sole conclusion that he had found the phone and was merely trying to return it to her.

In the charging information, the State alleged that D.C. “did knowingly or intentionally exert unauthorized control over the property of Marie Turner, that is: a cell phone, without the consent of and with the intent to deprive the owner of any part of its value or use.” (Appellant’s App. at 16). The State was not required to prove that D.C. was the person who actually took the phone from Turner’s truck. *See Gibson v. State*,

643 N.E.2d 885, 891 n.12 (Ind. 1994) (holding that the language of the theft statute does not logically require proof that one convicted of theft actually took the property, and the burden only arises if required by the actual language of the charging instrument); *Atkins v. State*, 499 N.E.2d 1180, 1183 (Ind. Ct. App. 1986) (holding that the theft statute does not require the State to prove the defendant was the person who took the property “in the first instance”).

There is no dispute that D.C. had possession and control of the phone at the time of the arrest and that Turner had not given him permission to exercise either right. The issue, then, is whether D.C. intended to deprive Turner of the use or value of the phone. Intent may be proven by circumstantial evidence, and it may be inferred from a defendant’s conduct and “the natural and usual sequence to which such conduct logically and reasonably points.” *Long v. State*, 867 N.E.2d 606, 614 (Ind. Ct. App. 2007).

On the morning of June 18, 2008, Turner talked with a number of people who said they would return her phone to her if she paid the money they “mentioned” to her. Turner arranged to meet with the people at the Speedway gas station. D.C. and another person showed up, asking for the phone’s owner. The phone was found in D.C.’s pocket. From these circumstances, it was reasonable for the trial court to determine beyond a reasonable doubt that D.C. and his accomplices were attempting to deprive Turner of the use or value of her phone until the “mentioned” money was paid. More specifically, it was reasonable for the court to determine that D.C. and others intended to deprive Turner of the use of her phone until its value or some other amount was paid.

The State presented sufficient evidence to support the true finding, and the trial court did not err in making that finding.

Affirmed.

VAIDIK, J., and CRONE, J., concur.