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.

FILED
Jun 17 2009, 9:20 am
CLERK
of the supreme court, court of appeals and tax court

ATTORNEY FOR APPELLANT:

JULIE A. SLAUGHTER
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

MONIKA PREKOPA TALBOT
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

RODERIC CHILDRESS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0811-CR-687
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Heather Welch, Judge
Cause No. 49F09-0805-FD-99694

June 17, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Roderic Childress ("Childress") appeals his conviction for theft[1] as a Class D felony and raises the following issue for our review: whether the State's evidence was sufficient to sustain his conviction.[2]

We affirm.

FACTS AND PROCEDURAL HISTORY

Anthony McCullough ("McCullough") invited Childress, his cousin and best man, to stay at his home while McCullough and his wife were away on their honeymoon. McCullough gave Childress permission to drive his 2007 Chevrolet Trailblazer, but expressly prohibited Childress from driving his other car, consuming any of his liquor, opening any wedding gifts, or allowing anyone else to stay at the house. McCullough and his wife have two sets of credit cards belonging to the same account. His wife took her set on the honeymoon, and McCullough left his set at home in a drawer in the master bedroom. McCullough testified at trial that he did not give Childress permission to use the credit cards.

While on their honeymoon, the couple attempted to use the wife's credit cards and learned that the balance on the credit cards had exceeded their limits. The couple returned from their honeymoon to find the house in disarray, McCullough's credit cards missing, and that Childress had violated almost every prohibition given to him by McCullough. Unable to locate Childress or the Trailblazer, McCullough called the police and discovered the police had arrested Childress for driving without a license and had

[1] *See* Ind. Code. § 35-43-4-2.

[2] Childress also raises an issue of due diligence to preempt a cross-appeal from the State. The State does not cross-appeal. Accordingly, we do not address that issue.

impounded the Trailblazer. Upon searching the vehicle, the police officer discovered McCullough's two credit cards.

The State charged Childress with theft as a Class D felony. The trial court found him guilty after a bench trial and sentenced him to 365 days executed. Childress appeals.

DISCUSSION AND DECISION

Our standard of review for sufficiency claims is well settled. We do not reweigh the evidence or judge the credibility of the witnesses. *Williams v. State*, 873 N.E.2d 144, 147 (Ind. Ct. App. 2007). When there is conflicting evidence, we will consider only the evidence most favorable to the judgment together with the reasonable inferences to be drawn therefrom. *Id.*; *Robinson v. State*, 835 N.E.2d 518, 523 (Ind. Ct. App. 2005). We will affirm the conviction if sufficient probative evidence exists from which the fact finder court find the defendant guilty beyond a reasonable doubt. *Williams*, 873 N.E.2d at 147; *Robinson*, 835 N.E.2d at 523.

Childress argues that the State failed to present sufficient evidence to support his conviction for theft of the credit cards. He contends the State failed to offer any substantiated and verifiable evidence that he removed the two credit cards from the vanity drawer in McCullough's master bedroom and caused them to exceed their credit limits. Specifically, he points to the fact that the credit cards, which were found in the Trailblazer, were the only physical evidence admitted at trial. Also, he argues that the State failed to prove that he had the requisite intent to deprive McCullough of use of the credit cards.

Indiana Code section 35-43-4-2(a), in pertinent part, states:

> A person who knowingly or intentionally exerts unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use, commits theft, a Class D felony.

In order to convict Childress, the State was required to prove that he: 1) knowingly exerted unauthorized control; 2) over the credit cards; 3) with intent to deprive McCullough of the cards' value or use. *See Study v. State*, 602 N.E.2d 1062, 1065 (Ind. Ct. App. 1992).

Given the absence of physical evidence presented at trial, the decision of the trial court depended on an evaluation of the credibility of the witnesses and their testimony. McCullough testified at trial that he left the cards in a bedroom drawer and did not give Childress permission to use the credit cards. Both Childress and the police officer testified that the credit cards were in the center console of the Trailblazer at the time of the traffic stop. The police officer who arrested Childress testified that Childress was driving on a suspended license and gave a fake name. Childress testified that McCullough gave him permission to use the credit cards to purchase gasoline and admitted he did in fact use them for that purpose. The trial court found McCullough the more credible witness, noting Childress's prior theft and forgery convictions, and concluded that Childress took the credit cards without permission. *Trial Tr*. at 45.

Childress's argument is merely an invitation to reweigh the evidence and assess the credibility of the witnesses. Since our standard of review prevents us from doing so, we conclude sufficient evidence existed to support Childress's conviction for theft.

Affirmed.

RILEY, J., and MATHIAS, J., concur.