

Cherrice Avant (“Avant”) appeals her conviction for theft¹ as a Class D felony following a jury trial. Avant raises the following issue on appeal: whether the evidence presented at trial was sufficient to support her conviction.

We affirm.

FACTS AND PROCEDURAL HISTORY

On August 30, 2008, Avant entered a Hamilton County Meijer store and returned a comforter and a flatware set. The return was made without a receipt, and the store record of the return, in the days following the incident, drew the attention of Paula Watson, a Meijer Loss Prevention Officer. Watson reviewed video surveillance that showed Avant entering the store with, what Watson identified as, a comforter and a flatware set. Shortly thereafter, the two items were recorded as returned at approximately 6:00 p.m. Watson then viewed a portion of the video, which showed Avant exiting the store at approximately 6:20pm with items in her cart through a closed checkout lane without paying. Watson identified the items in Avant’s cart as two white comforters.

On September 4, 2008, Watson examined the shelf in the store where the white comforters are located and noticed “an obvious gap” on the shelf. *Tr.* at 100. She then ran an item report, which indicated that the store should have four comforters in stock, yet Watson only found two on the shelf. After checking the store’s storage area she did not find the two missing comforters.

The State charged Avant with Class D felony theft. A jury found Avant guilty as charged, and now she appeals.

¹ See Ind. Code § 35-43-4-2.

DISCUSSION AND DECISION

Avant contends that the State failed to present sufficient evidence to support her theft conviction. Our standard of review for sufficiency claims is well settled. We do not reweigh the evidence or judge the credibility of the witnesses. *Gomez v. State*, 907 N.E.2d 607, 611 (Ind. Ct. App 2009), *trans. denied*. We will consider only the evidence most favorable to the judgment together with the reasonable inferences to be drawn therefrom. *Id.*; *Williams v. State*, 873 N.E.2d 144, 147 (Ind. Ct. App. 2007). We will affirm the conviction if sufficient probative evidence exists from which the fact finder could find the defendant guilty beyond a reasonable doubt. *Gomez*, 907 N.E.2d at 611; *Williams*, 873 N.E.2d at 147.

To convict Avant of theft, the State was required to prove that she: (1) knowingly; (2) exerted unauthorized control over the property of another person; (3) with the intent to deprive the other person of any part of its value or use. *See* Ind. Code § 35-43-4-2(a). To “exert control over property” means, in part, to obtain, take, possess, or carry the property. Ind. Code § 35-43-4-1(a).

Avant contends that the evidence presented at trial was insufficient to demonstrate that she “exerted control” over the two comforters because the identification of the items by Watson was mere speculation based on surveillance video that is unclear. However, Watson’s testimony included a detailed description of how the investigation unfolded and her reasoning for concluding that Avant took the comforters. After viewing the video of Avant exiting the store, Watson testified that her initial determination was that Avant’s cart contained two comforters. *Tr.* at 95. She then continued her investigation by

searching the actual shelf and running an item report. *Id.* at 100. This additional investigation resulted in Watson finding that two comforters were missing from the store. The surveillance video and still photographs were admitted into evidence and viewed by the jury.

Avant's argument on appeal essentially asks us to do that which we cannot do, reweigh evidence and judge witness credibility. *Gomez*, 907 N.E.2d at 611. It was up to the jury to weigh the evidence and determine credibility. Watson's testimony, the video surveillance, and Meijer's record of the item report provide enough evidence to allow a jury to reasonably conclude that Avant exerted unauthorized control over the two comforters. The evidence was sufficient to support Avant's conviction for theft as a Class D felony.

Affirmed.

FRIEDLANDER, J., and ROBB, J., concur.