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 29 2011, 9:21 am
CLERK
of the supreme court, court of appeals and tax court

ATTORNEY FOR APPELLANT:

T. FEJIRO KALU
Kalu Law Firm
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

KATHERINE M. COOPER
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

JAMES DELONEY, JR.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 29A02-1010-CR-1227
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable Wayne A. Sturtevant, Judge
Cause No. 29D05-0911-FD-6710

June 29, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Following a jury trial, James Deloney, Jr. was convicted of Theft[1] as a class D felony. Deloney challenges the sufficiency of the evidence as the sole issue on appeal.

We affirm.

The facts most favorable to the conviction follow. On November 24, 2009, the Fishers Police Department received a call at 1:10 a.m. regarding a possible theft at Deerbrook Apartments. The complainant stated that he observed three men dressed in dark clothing loading roofing shingles into a white van. Deerbrook had contracted Holt Construction Group (Holt) to replace the roofs of the buildings in the apartment complex and construction was underway. Deerbrook only permitted Holt to work from 8:00 a.m. to 6:00 p.m. to minimize disturbance to its tenants.

Officer Graham was dispatched to Deerbrook at 1:12 a.m., and by 1:14 a.m. he had arrived at the scene. By the time Officer Graham arrived, the three men had already left. Officer Graham went to Allisonville Road and travelled south. At the intersection of Allisonville Road and 96th Street (a short distance from Deerbrook), Officer Graham observed a white van sitting low to the ground with bundles of shingles covering the back windows. Officer Graham stopped the van and was soon joined by other officers responding to the call.

The officers found three men in the vehicle: Charles Sims, James W. Deloney (James), and James J. Deloney, Jr. (Deloney). Sims, James, and Deloney were all wearing dark clothing and were sweating, as if they had been laboring. The officers confirmed that the

[1] Ind. Code Ann. § 35-43-4-2 (West, Westlaw through 2011 Pub. Laws approved and effective through 06/28/2011).

shingles in the van were of the same make, style, color, and lot number as those at Deerbrook. Officer Graham then read Deloney his Miranda rights. Deloney indicated that he understood his rights, so Officer Graham began questioning him. Deloney told Officer Graham that his vehicle had broken down further north on Allisonville Road and they had to transfer the shingles to the van. Later, Sergeant Pappaioanou interviewed Deloney at the Fishers Police Department. During the interview at the station, Deloney stated that a friend called him and he went with Sims and James to transfer the items from his friend's truck to the van.

Subsequent investigation revealed that three skids of shingles were missing from Deerbrook. There are 39 bundles of shingles in a skid, and thus 107 bundles in three skids. Officers removed 108 bundles of shingles from the van. Neither Holt nor Deerbrook gave Sims, James, or Deloney permission to remove any roofing shingles from the construction site.

On December 1, 2009, the State charged Deloney with theft. A jury trial was held on June 17, 2010, at the conclusion of which the jury found Deloney guilty. On September 14, 2010, the trial court sentenced Deloney to two years imprisonment.

Deloney contends that the evidence is insufficient to sustain his conviction for theft. Specifically, Deloney argues that there was no evidence linking him to Deerbrook and that the State failed to establish the shingles in the van could only have come from Deerbrook.

When considering a challenge to the sufficiency of evidence to support a conviction, we respect the fact-finder's exclusive province to weigh the evidence and therefore neither reweigh the evidence nor judge witness credibility. *McHenry v. State*, 820 N.E.2d 124 (Ind.

2005). We consider only the probative evidence and reasonable inferences supporting the conviction, and "must affirm 'if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.'" *Id*. at 126 (quoting *Tobar v. State*, 740 N.E.2d 109, 111–12 (Ind. 2000)).

In order to convict Deloney of theft, the State was required to prove that Deloney did knowingly exert unauthorized control over the property of Holt or Deerbrook with the intent to deprive Holt or Deerbrook of any part of the use or value of the property. *See* I.C. § 35-43-4-2.

Although the complainant did not identify Deloney, Deloney fit the description given to the police. Deloney was found a short distance from Deerbrook with two other individuals, wearing the same color clothes, riding in the same style of van, and in possession of shingles of the same make, style, color, and lot number of those missing from Deerbrook. Deloney provided inconsistent statements to the police when questioned regarding the shingles in the van. Additionally, Holt determined that three skids of shingles were missing, which would amount to 107 bundles and the police counted 108 bundles in the van occupied by Deloney. From this evidence, the jury could have reasonably concluded that Delony took the property from Holt or Deerbrook with the intent to deprive Holt or Deerbrook of its use. Deloney's arguments on appeal are simply requests that this court reweigh the evidence, a task which we will not do. The evidence was sufficient to support Deloney's theft conviction.

Judgment affirmed.

BAILEY, J., and BROWN, J., concur.