

STATEMENT OF THE CASE

Jeremy Culp appeals from his conviction after a jury trial for class D felony theft.¹

We affirm.

ISSUE

Whether sufficient evidence supports Culp's conviction.

FACTS

T.R. Property Management LLC and Arrow Construction LLC ("Arrow") are jointly-owned by general manager Tony Ragucci. Arrow "is a spinoff from T.R. Property," and hires independent contractors to "rehab investment properties" by caulking, painting, tiling, and installing drywall. (Tr. 57). Before entering into written "labor only" contracts with independent contractors, (tr. 68), Arrow also orally informs them that although contractors are permitted to charge "[a]ny supplies having to do with the rehabilitation of the property they [a]re working on" to Arrow's corporate charge accounts at local hardware stores, contractors "can't purchase tools" on Arrow's corporate charge accounts. (Tr. 66, 82).

Arrow does not issue credit cards to its independent contractors. Rather, only Ragucci and Arrow's Director of Maintenance Operations, William Curry, hold Arrow's corporate credit cards; thus, they "are the only two people that Lowe's will call" to authorize purchases charged to Arrow's Lowe's charge account. (Tr. 39).

¹ Ind. Code § 35-43-4-2.

The record is unclear as to when Arrow first hired Culp as an independent contractor. However, it is undisputed that before contracting with Culp, Ragucci orally informed him that charging tools to Arrow's corporate account was "not allowed," (tr. 65), and that Culp signed a written contract which contained said clause. By the time of the underlying incident, Culp "had done a number of other jobs for [Arrow]," and on each occasion, he provided his own tools. "[N]o purchase of any tools" on Arrow's Lowe's account was ever attributed to Culp prior to the underlying incident. (Tr. 64).

On May 27, 2008, Culp and his workers went to a Lowe's hardware store in Beech Grove, Marion County. The Beech Grove store was not the Lowe's location most frequented² by Arrow's independent contractors. Nor was the Beech Grove Lowe's store located closest to Culp's jobsite. Lowe's video surveillance system captured Culp's transaction as follows: Culp examining the packaging of a Milwaukee 18-volt 3-Tool Combo Kit ("toolkit") and later presenting the toolkit to the cashier. The cashier scans the product's bar code, appears to make a telephone call, and processes the transaction. Culp then signs the electronic receipt and exits the store, carrying the toolkit.

Subsequently, during a routine review of Arrow's monthly account statement from Lowe's, Curry discovered the purchase of the toolkit and notified Ragucci. Ragucci reviewed Arrow's online account summary as well as the receipt identifying the purchaser. He notified Lowe's loss prevention and safety officials. Curry then went to the West 29th Street jobsite in Indianapolis to confront Culp.

² At trial, Curry testified that "90% of [Arrow's] purchases are made from the Lowe's on [Rural Street] and the other 10% are made at the 23rd Street store on Post Road." (Tr. 31).

When Curry “walked in the front door[,] the combo kit was sitting in the living room.” (Tr. 32). Within mere minutes of his arrival, however, the toolkit had disappeared.³ Curry exited the property without discussing the matter with Culp and “left to go talk to [Ragucci].” (Tr. 33). Subsequently, Curry and Ragucci reported the incident to the Beech Grove Police Department (“BGPD”). A BGPD investigator obtained the surveillance video from Lowe’s. After reviewing the recording, both Ragucci and Curry positively identified Culp as the person who had charged the toolkit to Arrow’s account.

On August 21, 2008, the State charged Culp with class D felony theft. He was tried to a jury on October 20, 2009. He stipulated that he “is in the video and he is seen carrying [the toolkit] out of the store.” (Tr. 72). He also stipulated that his signature appears on the Lowe’s receipt. Ragucci and Curry testified to the foregoing facts. In addition, Ragucci testified that “at the time [independent contractors] are hired,” they are told that Arrow “will pay for labor only,” and that they “can’t purchase tools” with Arrow’s funds. (Tr. 82). They also sign a written contract to that effect.

Curry testified that Arrow “furnish[es] labor and we furnish materials but tools are absolutely forbidden to be purchased,” because Arrow’s expectation is that “[t]he contractor should supply their [sic] own tools and need to have their [sic] own tools.” (Tr. 29). He also testified as follows regarding his discovery of Culp’s purchase of the toolkit:

³ Curry later testified, “As [Culp and I] walked back through to go outside . . . the toolkit was no longer in the living room. And I had just walked past it two minutes before that.” (Tr. 33).

Knowing the particular job that we were working on at the time . . . going through the costing I noticed that there was a purchase that wasn't authorized and a purchase that wasn't allowed by any of my subcontractors and it was a three piece tool kit.

(Tr. 29). Lastly, Curry testified that after Arrow reported the incident to police on May 27, 2008, Culp had left him a voicemail message on September 10, 2008. The State introduced the voicemail into evidence. Therein, Culp denies involvement in the purchase of the toolkit stating,

I did not realize (inaudible) that the tool kit got charged to your guy's [sic] account. (inaudible) . . . I don't know. How it got approved (inaudible) . . . but just wanted to let you know that I need to talk to you or [Ragucci] or (inaudible) to try to straighten this mess out

(Tr. 37-38). The jury found Culp guilty as charged.

On December 2, 2009, the trial court sentenced Culp to 730 days with 545 days suspended, 60 days executed in the Department of Correction, followed by 365 days on home detention/work release on probation. He now appeals.

Additional facts will be provided as necessary.

DECISION

Culp argues that the evidence is insufficient to support his conviction because “it cannot be said that [he] made unauthorized purchases on the [Arrow] account, as charged.” Culp’s Br. at 9. Specifically, he argues that because the cashier observed Arrow’s “elaborate purchasing safeguards” and processed the transaction, Curry necessarily must have authorized Culp’s acquisition of the toolkit with Arrow’s funds. *Id.* We disagree.

In reviewing sufficiency of the evidence claims, it is well-settled that

appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations and citations omitted).

In order to convict Culp of theft as a class D felony, the State was required to prove that he knowingly or intentionally exerted unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use. Ind. Code § 35-42-4-2. Indiana Code section 35-43-4-1 provides that “a person's control over property of another person is ‘unauthorized’ if it is exerted: (1) without the other person's consent; [or] (2) in a manner or to an extent other than that to which the other person has consented[.]” I.C. § 35-43-4-1(b).

Culp asserts that the instant case is much akin to *Breining v. Harkness*, 872 N.E.2d 155 (Ind. Ct. App. 2007), wherein we found the evidence insufficient to prove that appellant's step-brother had exercised unauthorized control over appellant's mother's money where the record revealed that appellant's mother had voluntarily transferred funds from her checking account to the step-brother. Unlike *Breining*, however, the

instant facts support the finding that Culp obtained property by unauthorized use of Arrow's Lowe's corporate charge account.

First, the record reveals that Culp was given oral and written notice of Arrow's prohibition against independent contractors' purchasing tools on Arrow's corporate account(s). Curry and Ragucci each testified that independent contractors were prohibited from charging tools to Arrow's corporate account(s). Ragucci also testified that when he initially hired Culp, he personally advised Culp of Arrow's policy.

Next, Culp's recorded statements and conduct not only indicate that he was aware of Arrow's policy, but also support the reasonable inference that he knowingly or intentionally violated said policy in this case.⁴ In Culp's voicemail message (State's Exhibit 2) to Curry more than three months after the underlying transaction, he admits that the toolkit was wrongfully charged to Arrow's corporate account but denies knowing involvement in the transaction. *See* Tr. 37 (“I did not realize . . . that the tool kit got charged to your guy's [sic] account. (inaudible) . . . I don't know. How it got approved.”).

Culp's conduct surrounding the transaction, however, is at odds with his claim of mistake and cannot reasonably be characterized as unintended. On the Lowe's surveillance video recording (State's Exhibit 4), Culp is seen inspecting the toolkit before carrying it to the checkout area; he places it on the cashier's counter and examines the

⁴ We also observe that a reasonable inference may be drawn that Culp was aware of Arrow's policy from the fact that he had never previously purchased tools on Arrow's corporate account(s) for any of his prior jobs with Arrow.

box in an apparent attempt to locate the UPC bar code; he ultimately shows the bar code to the cashier, who then scans the item into her register. Culp then stands by as the cashier appears to telephone for authorization before completing the transaction. Culp then signs the receipt and exits, carrying the toolkit.

Lastly, the fact that the Lowe's receipt (State's Exhibit 3) names Curry as the Arrow official who authorized Culp's use of Arrow's corporate account, conflicts with Curry's testimony at trial that Culp's purchase was "not authorized." (Tr. 29). We reject Culp's contention that the cashier's completion of the transaction *per se* establishes that Curry authorized the transaction. Rather, we regard this contention as an invitation that we invade the exclusive province of the trier of fact to resolve conflict(s) in the evidence and to determine issues of credibility; this we cannot do. *See McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005) (Considering only the probative evidence and reasonable inferences supporting the judgment, we must affirm if the probative evidence and reasonable inferences drawn therefrom could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.).

Based upon the foregoing, we find that the State presented sufficient evidence from which a rational jury could conclude that Culp was guilty of class D felony theft, beyond a reasonable doubt.

Affirmed.

BRADFORD, J., and BROWN, J., concur.