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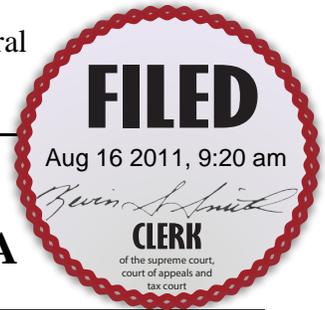
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**IN THE  
COURT OF APPEALS OF INDIANA**

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STEVEN YOUNG, )  
 )  
Appellant-Defendant, )  
 )  
vs. )  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

No. 49A02-1012-CR-1326

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable James B. Osborn, Judge  
Cause No. 49F15-1005-FD-34645

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**August 16, 2011**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**BAKER, Judge**

Appellant-defendant Steven Young appeals his convictions for Theft,<sup>1</sup> a class D felony, and Pointing a Firearm,<sup>2</sup> a class D felony, arguing that the evidence is insufficient. Finding sufficient evidence, we affirm.

### FACTS

At approximately 2:00 a.m. on April 30, 2010, Young entered a cab driven by Hashim Ahmed. Young was intoxicated and instructed Ahmed to take him to his residence in Marion County. After arriving at Young's residence, Ahmed requested the \$18.70 cab fare. Young responded by asking if there were any other bars open at that time. Ahmed replied that he believed so, and Young said, "[t]ake me back." Tr. p. 53. Ahmed stated that Young had to pay him the money that he already owed before he would drive him to another location.

An argument ensued, and Young testified that he "wadded [a \$20 bill] up and threw it up front." Id. at 146. Conversely, Ahmed testified that he warned Young that he would contact the police if Young did not pay him and that Young responded, "[d]o what you want," and exited the cab without paying. Id. at 54. Young then entered his residence, and Ahmed called the police.

Indianapolis Police Officer Brian McEwen arrived within one minute of receiving the dispatch, and after speaking with Ahmed, approached Young's residence. Officer McEwen knocked on Young's door using the end of his flashlight and announced that he

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<sup>1</sup> Ind. Code § 35-43-4-2(a).

<sup>2</sup> Ind. Code § 35-47-4-3(b).

was with the police department. Officer McEwen became “progressively louder” with his knock and announcement, yelling in a loud voice, “[p]olice department, come to the door.” Tr. p. 109. Officer McEwen knocked on Young’s door and announced police presence for approximately two minutes when Officer Ryan Anders arrived. Officer Anders heard Officer McEwen “banging on the door” and announcing police presence from approximately one hundred feet away. Id. at 90.

Officer McEwen then looked through a window next to the door and observed Young in a “tactical bladed stance.” Id. at 111-12. Young was pointing a shotgun “directly at the door” at eye level. Id. at 112. Officer McEwen yelled, “gun,” ran off of the porch, drew his weapon, and took cover behind the corner of the house. Id. at 116. Officer Anders took cover behind a vehicle and continued to announce police presence.

Young opened the main door; however, Officer Anders could not see his hands as he stood behind the screen door. Officer Anders ordered Young to raise his hands, but Young refused to comply. Instead, Young stood there for a brief period of time before stepping back and partially closing the door. Young leaned over and appeared to place something down; he then exited his house with his hands up. Officer Anders placed Young in handcuffs while Officer McEwen entered the residence where he observed a loaded shotgun leaning against a chair next to the door.

On May 6, 2010, the State charged Young with class D felony theft and class D felony pointing a firearm. Following a one-day jury trial, Young was found guilty as charged on October 27, 2010.

On November 18, 2010, the trial court held a sentencing hearing, during which it sentenced Young to 545 days, with four days executed, four days credit, and 541 suspended to probation on each count to be served concurrently.<sup>3</sup> Young now appeals.

### DISCUSSION AND DECISION

Young challenges the sufficiency of the evidence to sustain his convictions for theft and pointing a firearm, each as a class D felony. When considering a sufficiency challenge, we will neither reweigh the evidence nor judge the credibility of witnesses. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). Rather, a reviewing court considers “only the probative evidence and reasonable inferences supporting the verdict.” Id. (quoting McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005)). The conviction will be affirmed “unless ‘no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.’” Id. at 146-47 (quoting Jenkins v. State, 726 N.E.2d 268, 270 (Ind. 2000)).

To convict Young of class D felony theft, the State was required to prove that Young “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(a). Here, as stated above, Ahmed testified that Young entered his cab and instructed him to take him to his residence but refused to pay him after they had

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<sup>3</sup> Although the chronological case summary and abstract of judgment seem to indicate that Young was sentenced to consecutive terms, the trial court’s oral sentencing statement and the judgment of conviction reveal that Young’s sentences are to be served concurrently with each other. Appellant’s App. p. 14-15; Tr. p. 205. Accordingly, we note that there is a clerical error in the chronological case summary and the abstract of judgment, insofar as they indicate that Young was sentenced to consecutive terms. Appellant’s App. p. 9, 12.

arrived. Tr. p. 47-48, 51-54. When Ahmed informed Young that he would contact the police if Young did not pay him, Young responded, “[d]o what you want.” Id. at 54. Young then entered his residence. From these facts and circumstances, a reasonable jury could have found Young guilty of theft beyond a reasonable doubt.

Notwithstanding this conclusion, Young points to his testimony that he wadded up a \$20 bill and threw it in the front seat of the cab. Young maintains that he is not asking us to judge witness credibility, inasmuch as Ahmed testified truthfully but was unaware that Young had paid him. Even assuming solely for argument’s sake that Young is not asking us to judge witness credibility, he is requesting that we reweigh the evidence, which we will not do.

Moving forward, to convict Young of class D felony pointing a firearm, the State was required to prove that Young “knowingly or intentionally point[ed] a firearm at another person.” Ind. Code § 35-47-4-3(b). In this case, Officer McEwen testified that he was “banging” on Young’s door and loudly announcing police presence for approximately two minutes when he observed Young pointing a shotgun directly at the door. Tr. p. 109-112. Officer McEwen was standing at the door only “a second earlier.” Id. at 113. When Officer McEwen entered Young’s residence, he discovered that the shotgun was loaded. Id. at 124. From this evidence, a jury could reasonably find Young guilty of class D felony pointing a firearm.

Nevertheless, Young asserts that he was not pointing his shotgun at another person, but rather was pointing “the gun at the front door in case someone came through

it.” Appellant’s Br. p. 7-8. However, from Officer McEwen’s testimony, the jury could have reasonably inferred that from his persistent knocking and announcing of police presence, Young was aware that a police officer was on the other side of the door. And if Young knew that a police officer was on the other side of the door, then by assuming a “tactical bladed stance,” and pointing a shotgun “directly at the door,” he pointed a firearm at another person. Tr. p. 112, 123. Moreover, Young does not claim that he was justified in using reasonable force against another person under subsection (a)<sup>4</sup> of the statute. Consequently, this argument fails, and we affirm the decision of the trial court.

The judgment of the trial court is affirmed.

MAY, J., and BRADFORD, J. concur.

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<sup>4</sup> Subsection (a) provides that “[t]his section does not apply . . . to a person who is justified in using reasonable force against another person under” Indiana Code sections 35-41-3-2 and -3. I.C. § 35-47-4-3.