

Case Summary

McKenna T. Groves (“Groves”) appeals her conviction for Conversion, as a Class A misdemeanor.¹ Groves raises one issue for our review, whether there was sufficient evidence to sustain her conviction.

We affirm.

Facts and Procedural History

On January 17, 2009, Groves, her mother, her daughter, and her daughter’s friend were shopping at a Burlington Coat Factory store in Evansville. The store used a shoplifting alarm system to prevent theft. Groves had a bathing suit in her handbag for which she had not paid, passed the cash registers at the point of sale, and proceeded toward the front door.

The shoplifting alarm system detected the bathing suit in Groves’s handbag, and an alarm began to sound. An employee alerted the store’s manager, Wallace Hooper (“Hooper”), who came to the scene. Hooper asked Groves if she had any unpaid merchandise, and Groves produced the bathing suit. The Evansville Police Department was called, and Groves was placed into custody.

On January 20, 2009, Groves was charged with Conversion, as a Class A misdemeanor. On December 14, 2010, a bench trial was conducted, at the conclusion of which the trial court found Groves guilty of Conversion, entered judgment, and sentenced her

¹ Ind. Code § 35-43-4-3.

to a suspended sentence of ninety days imprisonment.²

This appeal followed.

Discussion and Decision

Groves challenges her conviction in part on the basis that the trial court improperly admitted evidence that, had it been excluded, would have left the State with insufficient evidence to support her conviction. Specifically, Groves contends that the trial court improperly admitted Hooper's statement that the shoplifting alarm had begun to sound, because Hooper received that information from an employee at the store and was not present at the time the event occurred. Groves also contends that, even with that statement in evidence, there was nevertheless insufficient evidence to sustain her conviction.

Our standard of review on a claim of insufficient evidence after a bench trial is well settled.

This court will not reweigh the evidence or assess the credibility of witnesses. Cox v. State, 774 N.E.2d 1025, 1028 (Ind. Ct. App. 2002). Only the evidence most favorable to the judgment, together with all reasonable inferences that can be drawn therefrom will be considered. Id. If a reasonable trier of fact could have found the defendant guilty based on the probative evidence and reasonable inferences drawn therefrom, then a conviction will be affirmed. Id. at 1028–29.

Sargent v. State, 875 N.E.2d 762, 767 (Ind. Ct. App. 2007).

We review a trial court's evidentiary rulings for an abuse of discretion. An abuse of

² Groves has failed to provide us with an Appellant's Brief that complies with Appellate Rule 46. Specifically, Groves's brief lacks a copy of the appealed judgment, which is required under Appellate Rule 46(A)(10), and instead provides us with a copy of the Chronological Case Summary ("CCS"). We remind counsel of the importance of complying with our Appellate Rules.

discretion occurs when the trial court's ruling is clearly against the logic and effect of the facts and circumstances before it. Hape v. State, 903 N.E.2d 977, 991 (Ind. Ct. App. 2009), trans. denied. Even where there has been an abuse of discretion, we will not reverse the trial court's judgment where that error is harmless, that is, where there is other evidence sufficient to support the conviction. Id. Where, as here, a bench trial is conducted, "we presume that the court disregarded inadmissible evidence and rendered its decision solely on the basis of relevant and probative evidence." Berry v. State, 725 N.E.2d 939, 943 (Ind. Ct. App. 2000).

Hearsay, which is an out-of-court statement introduced to prove the truth of the matter asserted by that statement, is generally inadmissible at trial. Ind. Evidence Rules 801(c) & 802. Trial courts may, however, admit into evidence statements that would otherwise be hearsay where those statements are introduced to explain a witness's actions, rather than for their probative value. Goldsworthy v. State, 582 N.E.2d 921, 922 (Ind. Ct. App. 1991). When hearsay is admitted for such purposes, "we require a reasonable level of assurance that the testimony was not received by the jury as evidence of the truth of the recited statement." Id. at 922-23 (citing Williams v. State, 544 N.E.2d 161, 162-63 (Ind. 1989)).

Here, Hooper testified that "[a]t approximately 1:20 ... a customer attempted to leave the building through the Sensormatic." (Tr. 8.) Groves and the State both asked preliminary questions about whether Hooper saw the customer (Groves) trying to leave the building and whether he heard the alarm. Hooper conceded he neither saw Groves attempt to leave nor heard the alarm, and that he was informed of both events by an employee. Groves objected "to any testimony that ... [Hooper] was not personally involved in ... as being hearsay and

not giving us the opportunity to cross-examine that witness.” (Tr. 9.) The trial court overruled Groves’s objection, allowing the testimony but stating that “the Court will not consider that as being offered for the truth of the matter asserted, but just to show what this person did as a result of something that happened.” (Tr. 10.)

Hooper testified that he did not personally hear the alarm sounding at the front of the store, and did not personally see Groves walk past the cash registers toward the front doors. Nevertheless, Hooper’s statement explained why he came to the front of the store to talk with Groves about any unpaid merchandise she may have been carrying. This falls squarely within the exception to the hearsay rule for the effect of a statement upon a listener. Moreover, the trial court admitted this evidence solely for its value in explaining why Hooper encountered Groves, rather than for its probative value, and we presume that the trial court considered the evidence solely for that purpose. Cf. Goldworthy, 582 N.E.2d at 922-23. We therefore conclude that the trial court did not abuse its discretion when it admitted Hooper’s statement about the alarm sounding when Groves reached the front of the store.

We turn now to Groves’s contention that there was insufficient evidence to support her conviction. In order to convict Groves of Conversion, as a Class A misdemeanor, the State was required to prove that on January 17, 2009, Groves knowingly or intentionally exerted unauthorized control over the property of Burlington Coat Factory. See I.C. § 35-43-4-3(a). Evidence that a defendant concealed property for sale and removed it from a place in a business at which it was displayed or offered for sale “to a point beyond that at which payment should be made” is prima facie evidence of the intentional exertion of unauthorized

control over that property. I.C. § 35-43-4-4(c). So too is transferring property displayed for sale from “the package, bag, or container in or on which the property was displayed ... to another package, bag, or container.” I.C. § 35-43-4-4(b).

Hooper testified that he responded to a page from one of his employees, who told him that the store’s shoplifting alarm had been activated. When he reached the front of the store, he found Groves speaking with a customer service supervisor. Hooper testified that he asked Groves if she had any unpaid merchandise, and she drew a bathing suit from her handbag, which she brought with her as she moved past the cash registers toward the store’s front door. Groves testified that she informed a store clerk that she would be purchasing a bathing suit as she headed toward the door, but this testimony includes no indication that the clerk or any other store employee gave permission for Groves to take merchandise with her past the cash registers.

Simply put, Groves’s actions meet the requirements for prima facie evidence of conversion under subsections 35-43-4-4(b) and (c). Thus, even if the trial court had excluded from evidence Hooper’s testimony about an employee alerting him to the shoplifting alarm having activated, we conclude that the evidence and reasonable inferences therefrom favoring the verdict are sufficient to support Groves’s conviction for conversion. Cf. Sargent, 875 N.E.2d at 767.

Affirmed.

MATHIAS, J., and CRONE, J., concur.