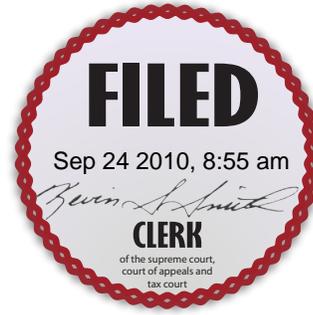


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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ADAM O. BROWN, )  
 )  
Appellant-Defendant, )  
 )  
vs. )  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

No. 25A03-1004-CR-235

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APPEAL FROM THE FULTON SUPERIOR COURT  
The Honorable Wayne E. Steele, Judge  
Cause No. 25D01-0809-FD-468

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**September 24, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## Case Summary

Adam O. Brown (“Brown”) appeals his conviction for Nonsupport of a Dependent Child,<sup>1</sup> as a Class D felony.

We affirm.

## Issue

Brown raises two issues for review, which we consolidate and restate as whether there was sufficient evidence that he knowingly failed to support his dependent children.<sup>2</sup>

## Facts and Procedural History

Brown and his ex-wife, Cari Brown (“Cari”), were divorced in February 2003. On March 13, 2003, the Fulton Circuit Court entered a Supplemental Decree of Dissolution, ordering Brown to pay \$141 per week in child support to Cari and to place a wage withholding order upon any income he might receive. Brown remained current on his obligations until February 2007. On May 4, 2007, Brown was held in contempt of court for failure to pay support.

From September 17, 2007, to September 20, 2008, Cari continued to have difficulty obtaining support payments from Brown. In that period, Cari received a few checks directly from Brown, and also received the value of Brown’s income tax refunds from income tax

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<sup>1</sup> Ind. Code § 35-46-1-5(a).

<sup>2</sup> Brown raises as a second issue “[w]hether the reasonableness of a support payor’s reliance upon circumstances surrounding child support payment mechanisms may negate the State’s attempts to show the payor knowingly failed to support dependent children.” (Appellant’s Br. 1.) Because he does so in reliance upon Hudson v. State, which relates to the application of the willfulness standard in a prior version of Section 35-46-1-5 (then Section 35-14-4-1 (1971)), we do not reach this argument here. See Hudson v. State, 175 Ind. App. 237, 238-39, 370 N.E.2d 983, 984-85 (1977).

interception orders, but did not receive any other payments. Several of the checks Brown did provide directly to Cari were drafted in 2008 by Reality Builders, Inc., a business owned by Brown's new wife and another individual. At least some of this money was borrowed from Reality Builders.

Cari complained several times to Brown that she was not receiving any money for child support from the wage withholding order. Brown told Cari that the money was being taken out of his check, but said that:

Child support is something I will fight the system until the day I die and eventually I will win. I do not feel like I have to pay you child support directly. If the kids need something, you need to call me and I will get it. But I have no control over where the money goes, so I do not feel like I have to pay you.

(Trial Tr. 11.)

Brown was charged with Nonsupport of a Dependent Child. A bench trial was held on February 25, 2010, and Brown was found guilty. On March 31, 2010, judgment was entered against Brown and he was sentenced to two years of imprisonment, all of which was suspended to probation, and was ordered to pay his court-ordered child support plus \$50 weekly to compensate for the arrearage. This appeal followed.

### **Discussion and Decision**

When reviewing the sufficiency of the evidence, we consider only the probative evidence and reasonable inferences therefrom that support the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). We do not assess the credibility of witnesses or reweigh evidence. Id. We will affirm the conviction unless “no reasonable fact-finder could find the

elements of the crime proven beyond a reasonable doubt.” Id. (quoting Jenkins v. State, 726 N.E.2d 268, 270 (Ind. 2000)). “The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.” Id. (quoting Pickens v. State, 751 N.E.2d 331, 334 (Ind. Ct. App. 2001)).

In order to convict Brown of Nonsupport of a Dependent Child as charged, the State was required to prove beyond a reasonable doubt that Brown knowingly failed to provide support for his dependent children. Brown challenges only the sufficiency of the evidence as to his knowing failure to provide support.<sup>3</sup> An individual engages in conduct “‘knowingly’ if, when he engages in the conduct, he is aware of a high probability that he is doing so.” I.C. § 35-41-2-2(b). The test is thus whether Brown failed to pay child support with awareness that there was a high probability that his conduct was such a failure.

On this test, there is sufficient evidence to support the verdict. The prosecution introduced as evidence the 2007 finding of contempt of court, noting in response to Brown’s objection that there had been prior efforts to obtain Brown’s compliance with the 2003 support order. Both Cari and Brown testified that Cari had complained about the failure of wage withholding to provide Cari with court-ordered child support payments. Cari had previously received Brown’s income tax refunds because of income tax refund interception orders entered against Brown. Brown testified and produced documentary evidence that he had given checks directly to Cari and had borrowed money to make support payments.

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<sup>3</sup> An affirmative defense exists to a charge of Nonsupport of a Dependent Child when a defendant can establish that he or she is unable to pay the court-ordered support. I.C. § 35-46-1-5(d). Brown did not raise this defense at trial and does not raise this issue on appeal. We therefore do not consider it here.

Finally, Cari's testimony that Brown had told her he would fight child support, did not want to pay her directly because he could not control where the money went, and did "not feel like [he] had to pay," (Trial Tr. 11) supports the trial court's conclusion that Brown was aware that his failure to pay Cari directly or to inquire with his employers about their compliance with the wage withholding order was highly probable to constitute a failure to pay support.

There was thus sufficient evidence from which the fact-finder could conclude beyond a reasonable doubt that Brown knowingly failed to support a dependent child.

Affirmed.

RILEY, J., and KIRSCH, J., concur.