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ATTORNEY FOR APPELLANT:

LAWRENCE M. HANSEN
Hansen Law Firm, LLC
Noblesville, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ANGELA N. SANCHEZ
Deputy Attorney General
Indianapolis, Indiana

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IN THE
COURT OF APPEALS OF INDIANA

ANTHONY R. HELTON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 29A02-1002-CR-183
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable Daniel J. Pfleging, Judge
Cause No. 29D02-0807-FD-67

October 28, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Anthony R. Helton appeals his convictions for eight counts of Theft,[1] all as class D felonies. Helton presents as the sole issue on appeal the sufficiency of the evidence supporting his convictions.

We affirm.

The facts favorable to the convictions are that for a number of years leading up to July 10, 2006, Helton was the manager of a self-storage facility in Hamilton County (the facility). He lived onsite in an apartment located directly over the facility's business office. James Schram, a retiree in his seventies, worked part-time as an assistant manager, performing duties similar to Helton, until Schram's sudden death in June 2006. Helton and Schram were the only employees that regularly worked at the facility. Helton's direct supervisor was Scott McLaughlin, who in turn reported to Mark Purvis.

In June 2006, McLaughlin and Purvis began investigating the records of the facility and discovered an unusual number of discounts being improperly applied to accounts. Purvis contacted the facility's bank and obtained copies of checks and deposit slips from previous deposits. Purvis discovered that on at least seven different occasions an employee had manipulated the books, altered bank deposit slips, and pocketed cash received from customers. The scheme is set forth in detail below.

The facility's normal business hours were between 8:00 a.m. and 5:00 p.m. Monday through Saturday. Upon receiving payments from customers, an employee was to log into the computer using his unique, self-selected password and enter the transaction in the company's accounting software. The software marked each transaction with the initials of

[1] Ind. Code Ann. § 35-43-4-2 (West, Westlaw through 2010 2nd Regular Sess.).

the employee who had logged into the system to perform the transaction, as well as recorded the date and time of the entry. At the end of each business day, a bank deposit summary was produced by the software listing all of the cash, check, and credit card transactions. The employee was then required to complete a daily deposit balance sheet comparing the payments entered into the system to the amount being deposited into the bank. The actual bank deposit, however, was not taken to the bank until the following business day. Following the deposit, the employee was to fax a copy of the bank deposit slip, as well as other reports, to the company's corporate office.

On January 28, 2006, Helton had the day off, and Schram worked from 9:00 a.m. to 5:00 p.m. During those hours, Schram accepted $244.03 in cash payments and entered those transactions into the computer. He also accepted check and credit card payments that he entered during business hours. Between 9:30 and 10:30 that night, someone logged into the system using Helton's password and entered a large number of check payments. The entries contained numerous inaccuracies, which were revealed by records from the bank. For example, several checks were entered and accounts credited for less than the amount actually paid.[2] Also, check payments were entered for which no check was received. The collective effect of the discrepancies was that the accounting software reflected less money received from check payments than had actually been received -- $244 less. After all entries were made, a bank deposit summary was printed at 10:37 p.m. and a daily deposit balance sheet was completed, reflecting cash deposits of $244.03.

The following business day fell on Monday, January 30. Helton reported on a mileage

reimbursement form that he drove to the bank that day. Bank records reveal that only $.03 in cash was deposited, $244 less than the cash payments received on January 28. After this deposit was made but before the deposit slip was faxed to the corporate office, someone altered the deposit slip to show that $244 in currency had been deposited in addition to the $.03 that had actually been deposited.

This scheme was repeated on March 2 and 29 and April 5, 7, 15, and 29. Each of these days, cash transactions were received and entered into the computer by Schram during normal business hours.[3] After business hours each evening, someone using Helton's password entered some combination of inaccurate check payments. Collectively, the discrepancies made it appear that less money had been received by check than had actually been received, and the amount of the discrepancy was always equal to the dollar amount of cash payments recorded that day, less the remaining cents. The next business day, a bank deposit would be made including the full amount of the check payments actually received (as opposed to the amount entered into the computer) but not including the cash, except cents, received. After the deposit was made and before a fax was sent to the corporate office, the deposit slip would then be altered to indicate that all the cash had been deposited. Finally, on each of the days in question, Helton's mileage reimbursement forms indicated that he had driven to the bank.

On July 10, 2006, Helton accepted a cash payment in the amount of $64.68 from a new customer. The transaction occurred shortly after 11:00 a.m. and was recorded on the

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[2] To make up for the payment disparity, discounts were applied to these customers' accounts.
[3] Schram died suddenly in June 2006.

facility's security camera. Although he sat at the computer for several minutes after the customer left and worked several additional hours that day, Helton did not enter the payment transaction into the computer. At 4:45 p.m. that day, Purvis and McLaughlin came to the facility with the police, and Helton was fired.

On October 12, 2007, the State charged Helton with eight counts of class D felony theft. The first seven counts involved the scheme set out above. The eighth count involved the incident on July 10, 2006. A jury found Helton guilty as charged on October 16, 2009, and the trial court subsequently sentenced him to eight concurrent one and one-half-year sentences, all suspended to probation. Helton now appeals, challenging the sufficiency of the evidence supporting his convictions.

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)).

With respect to his conviction on the first seven counts, Helton argues that the State failed to establish that he was the one who perpetrated the theft scheme. He claims that the evidence against him was purely circumstantial and that someone else (i.e., Schram) might have known his password and been able to access the computer system after hours. Helton

complains that the criminal investigation focused solely on him, ignoring other possible suspects.[4]

We reject Helton's invitation to reweigh the evidence. All of these arguments were presented to and rejected by the jury. The evidence favorable to the verdict reveals that Helton had ready access to the facility's computer after hours. Furthermore, all of the questionable entries were made using Helton's self-selected password and sometimes as late as 10:30 p.m. Finally, Helton's mileage reimbursement forms indicate that he was the employee that drove to the bank on the days the deposits in question were made. In fact, on five of the seven days deposits were made, Schram did not even work. In light of this evidence, the jury could reasonably conclude that Helton committed these thefts.

Finally, Helton challenges his conviction for the alleged theft on July 10, 2006. In this regard, he claims the State failed to establish that he exerted unauthorized control over the cash with the intent to deprive his employer of the money. *See* I.C. § 35-43-4-2(a) ("[a] person who knowingly or intentionally exerts unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use, commits theft").

The State presented sufficient evidence for the jury to infer that Helton exercised unauthorized control over a cash payment received from a customer on July 10, 2006, with the intent to deprive the company of those funds. Specifically, during the late morning,

[4] Though not set out as a separate issue, Helton also argues that McLaughlin was improperly allowed to testify that, in his opinion, Helton's handwriting appeared on several relevant documents. He claims that inadequate foundation was laid by the State for such lay-witness testimony. We observe that although Helton initially objected, he did not renew his objection after the State solicited additional foundational testimony from McLaughlin upon the trial court's request. Helton, rather, sought to discredit McLaughlin's opinion testimony on cross-examination. Further, even if said evidence was improperly admitted, we are confident that it played little to no part in Helton's conviction.

Helton was videotaped accepting a cash payment from a customer. After taking the cash, Helton reached toward the cash drawer (which was out of view of the video camera) and then provided the customer with change. Although he worked at or near the computer for several minutes after the customer left and continued working until 4:45 p.m., he never entered the cash payment into the computer system. Further, McClaughlin testified that the cash drawer balanced at the end of the day, indicating that the cash in question was not in the drawer. In sum, the evidence reveals that Helton took a cash payment from a customer, made no record of the transaction, and did not leave the money in the cash drawer. From this evidence, the jury could reasonably conclude that Helton committed theft.

Judgment affirmed.

BARNES, J., and CRONE, J., concur.