



## **Case Summary**

Carlene L. Henry appeals her conviction for Class D felony theft.<sup>1</sup> Henry contends that the evidence is insufficient to support her conviction. Concluding that the evidence is sufficient, we affirm.

## **Facts and Procedural History**

In December 2009, Lecia Lee worked as a loss prevention officer at the 10735 Pendleton Pike Walmart in Marion County. Lee was monitoring the store's surveillance cameras in the loss prevention office when she observed Daveon West concealing eating utensils in her tote bag. West was shopping with Henry and Jhenell Taylor. Lee continued observing all three women. West was pushing her own shopping cart while Henry and Taylor shared a shopping cart.

Henry and Taylor selected several bras, panties, and socks and placed them in the child seat portion of their shopping cart. Henry, Taylor, and West went over to the purses. Taylor selected a white purse, looked inside, removed the tag, and placed the purse in the child seat portion of Henry and Taylor's shopping cart on top of the bras, panties, and socks.

Henry and Taylor split from West and headed toward the pet aisle. Henry guided their cart as Taylor was pushing it. Once there, Henry turned to check both ends of the aisle. There were no customers at either end. Taylor then placed all the items underneath the purse inside the purse. When Taylor was done, Henry placed one of their coats on

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<sup>1</sup> Henry testified that her name is Carlana, not Carlene. Tr. p. 35. However, because the documents filed in this case refer to her as Carlene, we do so as well for purposes of consistency.

top of the purse. Henry and Taylor continued shopping and selecting items. At this point, Lee could no longer see the white purse unless she changed camera angles.

Henry and Taylor then proceeded to checkout. Henry removed items from the main compartment of the cart and placed them on the conveyor belt. Neither Henry nor Taylor removed the white purse, which remained underneath the coat in the child seat portion of their cart, throughout the transaction. Henry paid for the items she placed on the conveyor belt. West went through checkout after Henry and Taylor. The women then headed toward the exit.

Lee, along with other store employees, apprehended the three women in the store vestibule and took them to the loss prevention office. Stolen merchandise was recovered from the stolen white purse and West's tote bag. Taylor admitted that she did not pay for the purse and stated that she was the one who placed the stolen items into the purse. Henry maintained her innocence. The police were contacted, and all three women were arrested.

The State charged the women with Class D felony theft. Ind. Code § 35-43-4-2(a). At Henry's bench trial in March 2010, Lee testified for the State, and Henry and Taylor testified for the defense. The surveillance video was admitted into evidence. The trial court found Henry guilty as charged:

[I]f I was with a friend who was carrying a different purse when we entered and we were exiting, I think I would notice that as well. . . . I don't think it was just a matter of overlooking that. From the video, it also appears that . . . Ms. Henry . . . saw Jhenell pick up the purse, so there was no question about whether or not there was even a purse picked up. And after the purse was picked up and items were concealed in the purse, you can tell from the video that . . . it does appear that Ms. Henry is looking both ways to see if anyone saw that happen. . . . [F]inally, in the video, you placed a coat over

the purse. . . . [A]nd for those reasons, I do think that you were . . . aiding or abetting . . . Jhenell. Additionally, . . . when you went to go pay for the items, no one ever looked in the top compartment of the cart. . . . I don't think that was something that was accidentally overlooked. I think it was obvious. . . . [F]or those reasons, the Court does find . . . that the State has met their case by reasonable doubt and finds the Defendant guilty to Theft as a class D felony.

Tr. p. 51-52.

Henry now appeals her conviction.

### **Discussion and Decision**

Henry contends that the evidence is insufficient to support her conviction.

Our standard of review with regard to sufficiency claims is well settled. In reviewing a sufficiency of the evidence claim, we do not reweigh the evidence or judge the credibility of the witnesses. *Fought v. State*, 898 N.E.2d 447, 450 (Ind. Ct. App. 2008). We consider only the evidence most favorable to the judgment and the reasonable inferences drawn therefrom and affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. *Id.* A conviction may be based upon circumstantial evidence alone. *Id.* Reversal is appropriate only when reasonable persons would not be able to form inferences as to each material element of the offense. *Id.*

To convict Henry of theft as charged here, the State had to prove that she knowingly exerted unauthorized control over “a purse and/or clothing and/or a teaspoon” of Walmart with intent to deprive Walmart of any part of the value or use of that property. *See* Appellant's App. p. 15-16; I.C. § 35-43-4-2(a).

A person who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense. Ind. Code § 35-41-2-4. The evidence need not show that the defendant personally participated in the commission of each element of a crime to be convicted of that crime under a theory of accomplice liability. *Bruno v. State*, 774 N.E.2d 880, 882 (Ind. 2002), *reh'g denied*; *Fox v. State*, 497 N.E.2d 221, 227 (Ind. 1986).

In determining whether a person aided another in the commission of a crime, we consider the following factors: (1) presence at the scene of the crime; (2) companionship with another engaged in criminal activity; (3) failure to oppose the crime; and (4) a defendant's conduct before, during, and after the occurrence of the crime. *Vandivier v. State*, 822 N.E.2d 1047, 1054 (Ind. Ct. App. 2005), *trans. denied*. While the defendant's presence during the commission of the crime or failure to oppose the crime is, by itself, insufficient to establish accomplice liability, the factfinder may consider it along with other facts and circumstances tending to show participation. *Id.* In order to sustain a conviction as an accomplice, there must be evidence of the defendant's affirmative conduct, either in the form of acts or words, from which an inference of common design or purpose to effect the commission of a crime may reasonably be drawn. *Id.*

Henry and Taylor selected bras, panties, and socks and placed them in the child seat portion of their shopping cart. Taylor selected a white purse, removed the tag, and placed the purse on top of that clothing. Henry and Taylor then went to the pet aisle. After Henry checked both ends of the aisle, apparently determining that no one was around, Taylor stuffed the clothing into the white purse. Henry then covered the purse

with one of their coats. When Henry and Taylor went through checkout, neither removed the white purse, which remained covered by the coat. Although Henry placed items from the main compartment of the cart onto the conveyor belt, she did not look for the bras, panties, and socks that Henry and Taylor had earlier selected and placed in the child seat portion of the cart.

This evidence shows more than Henry's presence during the commission of the crime or her failure to oppose the crime; rather, a reasonable inference may be drawn from her conduct that she both served as a lookout while Taylor stuffed the clothing into the purse and attempted to hide the purse under the coat. We also find significant that Henry, during checkout, did not look for the bras, panties, and socks that she and Taylor had earlier placed in the cart. Although Henry maintains her innocence on appeal and points to Taylor's testimony that she acted alone, these are merely invitations to reweigh the evidence and reassess witness credibility, which we may not do. The evidence is thus sufficient to sustain Henry's conviction for theft.

Affirmed.

BAKER, C.J., and BARNES, J., concur.