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IN THE
COURT OF APPEALS OF INDIANA

MARY K. TIPTON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A03-0908-CR-381
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Frances C. Gull, Judge
Cause No. 02D04-0804-FD-342

December 21, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Mary K. Tipton appeals her conviction for Class D felony theft. Her sole contention on appeal is that insufficient evidence exists to sustain her conviction. Finding the evidence sufficient, we affirm.

Facts and Procedural History

Mary served as treasurer of the American Legion Auxiliary Unit 409 ("ALA") for four years until she was elected president. Dara Amstutz, the new treasurer, did not receive the treasurer's books from Mary until two months after Mary became president. Upon discovering significant discrepancies between bank statements and Mary's last treasurer's report, Dara notified Conny Amstutz, ALA vice president and former president, and Beverly Miller, an ALA secretary. Dara ordered bank records, and the three women then compared those records to treasurer's reports, check ledgers, and meeting minutes in an effort to account for expenditures and deposits.

Copies of cancelled checks, which were included in the requested bank records, showed that Mary wrote two checks to her husband, Jeff Tipton, who endorsed the checks. State's Exs. 1, 2. Mary did not have the authority to write these checks to Jeff. Tr. p. 147-48. Copies of these cancelled checks were also maintained by Mary as treasurer and transferred to Dara when she became treasurer. In these copies, "Jeff Tipton" was whited out as the payee on check number 1836 and "Leo Food Bank" was inserted instead in Mary's handwriting. *Compare* State's Ex. 4 *with* State's Ex. 2. For check number 1843, "Jeff Tipton" was whited out as the payee and "Dept. Sec-Treasurer" was inserted instead in Mary's handwriting. *Compare* State's Ex. 3 *with*

State's Ex. 1. In addition to these altered checks, Dara, Conny, and Beverly discovered a deficit of over $3000. State's Ex. 5. When Mary was confronted about the altered checks and missing money, she offered no explanation but said she would pay the money back.

The State charged Mary with Class D felony theft.[1] Mary testified in her own defense that she did not alter the checks or take the missing money. Mary testified that she had written check number 1836 to Jeff to reimburse him for tip board items he had purchased for the ALA. Although she denied altering the check to name "Leo Food Bank" as the payee instead of Jeff, she admitted that she wrote the check ledger entry for check number 1836 naming "Food Bank" as the payee. Tr. p. 218; Defendant's Ex. C.

Mary testified that she had written check number 1843 to Jeff to reimburse him for Christmas gifts he purchased for a family the ALA had adopted for Christmas. Although she denied altering the check to name "Dept. Sec-Treasurer" as the payee instead of Jeff, she admitted that she wrote the check ledger entry for check number 1843 naming "Membership," meaning the Department Secretary-Treasurer, as the payee. Tr. p. 219; Defendant's Ex. A.

The jury found Mary guilty of Class D felony theft. The trial court sentenced her to one and a half years in the Indiana Department of Correction, which was suspended to probation, and ordered her to pay restitution. She now appeals.

[1] Ind. Code § 35-43-4-2(a).

Discussion and Decision

Mary contends that the evidence is insufficient to support her conviction for theft. When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. *Id.* To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider only the evidence most favorable to the trial court's ruling. *Id.* Appellate courts confirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Id*. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. *Id.* at 147. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. *Id*.

To convict Mary of theft as charged here, the State had to prove that she knowingly or intentionally exerted unauthorized control over property of the ALA with intent to deprive the ALA of any part of its value or use. *See* Ind. Code § 35-43-4-2(a). The evidence most favorable to the verdict reveals that Mary wrote two unauthorized checks to her husband, who cashed them at or deposited them with a bank. Once Mary received copies of the cancelled checks from the bank, she altered them so that Jeff was no longer named as the payee. She wrote "Food Bank" and "Membership" into the corresponding entries in the ALA check ledgers, which then matched the altered checks.

When confronted by her fellow ALA members, Mary offered no explanation but said she would pay the money back.

Despite this clear evidence, Mary contends that she wrote the checks to her husband to reimburse him for items he purchased for the ALA. She denies altering the checks and instead contends that too many people were collecting and depositing money without clearing transactions through her. To the extent that witnesses offered conflicting accounts, it was within the province of the jury to decide whom to believe and which details were important. In short, Mary asks us to reweigh the evidence and reassess witness credibility, which we may not do. The evidence is sufficient to sustain Mary's conviction.

Affirmed.

RILEY, J., and CRONE, J., concur.