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**IN THE
COURT OF APPEALS OF INDIANA**

MICHAEL HARDIN,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A04-0609-CR-505

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Reuben B. Hill, Judge
Cause No. 49F18-0412-FD-220935

June 29, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Michael Hardin (Hardin), appeals his conviction for Count I, theft, a Class D felony, Ind. Code § 35-43-4-2; and Count III, resisting law enforcement, a Class A misdemeanor, I.C. § 35-44-3-3.

We affirm.

ISSUES

Hardin raises two issues on appeal, which we restate as follows:

- (1) Whether the State presented sufficient evidence to sustain Hardin's conviction for theft, and
- (2) Whether the State presented sufficient evidence to sustain Hardin's conviction for resisting law enforcement.

FACTS AND PROCEDUAL HISTORY

On December 6, 2004, undercover Indianapolis Police Department Sergeant Mark Gregory (Sergeant Gregory) and Officer Sean Winger (Officer Winger) drove around the area of 22nd Street and Carrollton Avenue in Indianapolis in an unmarked vehicle after receiving reports of open-air narcotic dealing. As they drove by Hardin, who was walking eastbound on the north side of 22nd Street, wearing a black leather, brightly colored "M&M" jacket, they pulled over and Hardin approached the passenger side where Officer Winger sat. Hardin asked the officers what they were looking for. Sergeant Gregory indicated he was trying to purchase \$20.00 worth of crack cocaine. As Sergeant Gregory displayed a \$20.00 bill, Hardin reached in the car, over Officer Winger, grabbed the bill and then walked away. At this point, Officer Winger exited

the vehicle and yelled, “Stop, police,” but Hardin ran. Officer Wininger chased after Hardin, but lost sight of him in an alley. However, Officer Wininger found Hardin’s stocking cap on the ground. He searched further and saw Hardin sitting on the porch of a nearby house. Officer Wininger approached Hardin and identified himself. He ordered Hardin to get onto the ground, but Hardin refused and remained seated. When Officer Wininger, with the assistance of uniformed Officers Christopher Duckworth (Officer Duckworth) and Kent Meyer, grabbed onto Hardin, Hardin turned his body and pulled away. Hardin was ultimately handcuffed; however, the twenty-dollar bill was not found in his possession. The “M&M” jacket was found nearby on the porch.

On December 7, 2004, the State charged Hardin with Count I, theft, a Class D felony, Count II, resisting law enforcement (flight), a Class A misdemeanor, and Count III, resisting law enforcement (force), a Class A misdemeanor. On June 14th, 2006, a bench trial was conducted. At trial, Hardin admitted to Count II and Count III. A motion was granted for the State to dismiss charges with regard to Count II. At the close of the bench trial, the trial court found Hardin guilty of Count I, theft and Count III, resisting law enforcement (force). Thereafter, on August 16, 2006, the trial court sentenced Hardin to 730 days, with 365 days executed and 365 days suspended to probation, for theft, and 180 days executed for resisting law enforcement, with sentences to run consecutively.

Hardin now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. Resisting Law Enforcement

Hardin first contends that the State did not present sufficient evidence to prove he forcibly resisted Officer Duckworth by turning his body and pulling away when Officer Winger tried to handcuff him. However, this issue is not available for our review. Under the doctrine of invited error, “a party may not take advantage of an error [he] commits, invites, or which is the natural consequence of [his] own neglect or misconduct.” *Wright v. State*, 828 N.E. 2d 904, 907 (Ind. 2005). At trial, the defense counsel stated:

Judge, first of all I wanted to remind the court that when we were here last for the pretrial on May 10th and my client communicated to the Court that he admitted Count [II] and [III] which were the resisting charges and he denied the allegations of Count [I], so that was the Count that we were going forward on today.

(Transcript P. 5). Accordingly, at the end of the trial, the trial court stated:

“[t]he [c]ourt has accepted the stipulation of the parties with regard to Count III,” (Tr. P. 40). Having invited the State to rely on his stipulation, Hardin may not now take advantage of the State’s decision not to present additional evidence to prove resisting law enforcement charges.

II. Theft

Hardin next contends that the state presented insufficient evidence to support Hardin’s conviction for theft.

Our standard of review for a sufficiency of the evidence claim is well-settled. In reviewing sufficiency of the evidence claims, we will not reweigh the evidence or assess

the credibility of the witnesses. *White v. State*, 846 N.E.2d 1026, 1030 (Ind. Ct. App. 2006), *trans. denied*. We will consider only the evidence most favorable to the judgment, together with all reasonable and logical inferences to be drawn therefrom. *Id.* The conviction will be affirmed if there is substantial evidence of probative value to support the conviction of the trier of fact. *Id.*

Theft, as a Class D felony, is defined by I.C. § 35-43-4-2(a) as “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, a Class D felony.” In order to convict Hardin of theft, the State had to prove that Hardin knowingly or intentionally exerted unauthorized control over the twenty-dollar bill of the Indianapolis Police Department, with intent to deprive the Indianapolis Police Department of any part of its value or use. I.C. § 35-43-4-2. Hardin seems to argue that because he testified (1) he did not take the twenty-dollar bill, (2) the twenty-dollar bill was not found on his possession when he was arrested, and (3) two other individuals were in the area when the theft occurred, the State did not prove beyond a reasonable doubt he committed theft.

At trial, both Sergeant Gregory and Officer Winger identified Hardin as the person who approached them, talked with them, reached into the vehicle, then grabbed the twenty-dollar bill and ran away. Officer Winger also testified that he found Hardin sitting on the porch of a house after finding the stocking cap Hardin left behind, and immediately identified Hardin as the person who took the twenty-dollar bill, even though Hardin was not wearing the black “M&M” jacket, which was found later nearby

on the same porch. Thus, sufficient evidence was presented at trial to establish Hardin was the person who took the twenty-dollar bill and ran away. Consequently, the State proved beyond a reasonable doubt that Hardin knowingly or intentionally exerted unauthorized control over the twenty-dollar bill of the Indianapolis Police Department, with intent to deprive the Indianapolis Police Department of any part of its value or use, and thus committed theft. Therefore, we affirm the trial court's judgment.

CONCLUSION

Based on the foregoing, we find that the State presented sufficient evidence to sustain Hardin's conviction for theft beyond a reasonable doubt, and Hardin's argument with regard to resisting law enforcement is not available for our review.

Affirmed.

NAJAM, J., and BARNES, J., concur.