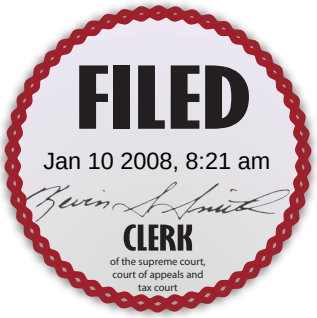

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IN THE
COURT OF APPEALS OF INDIANA

ROGER A. BROWN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0706-CR-476
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Heather A. Welch, Judge
Cause No. 49F09-0609-FD-179830

January 10, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Roger A. Brown ("Brown") appeals his conviction for theft, as a Class D felony.[1] We affirm.

Issue

Brown raises one issue of whether there was sufficient evidence to support his conviction of theft.

Facts and Procedural History

On September 21, 2006, Brown and a man known as Devo arrived at a Meijer store in Marion County. Brown pushed a shopping cart as the two headed to the liquor aisle. Devo placed four bottles of vodka into the cart. Two boxes of Hamburger Helper were also placed in the cart. The two then exited the store without paying for the items. Pascal Cardwell ("Cardwell"), a Meijer loss prevention officer, approached Brown and Devo because he believed that they had not paid for the items in the cart. When Brown noticed Cardwell approaching, Brown ran while Devo entered a car and drove away. Cardwell called the police. The police eventually found Brown hiding behind a dumpster near Meijer.

The State charged Brown with theft, as a Class D felony. At trial, the store surveillance video was entered into evidence. The video in part depicted Devo exiting the store first, followed at a distance by Brown pushing the shopping cart. Brown testified that he committed the crime because he owed Devo money and that he feared being hurt by Devo if he did not steal the items. At the close of the bench trial on March 15, 2007, Brown was found guilty as charged. The trial court sentenced Brown to five hundred and forty-five

days, suspending the entire sentence with one year to be served on probation.

Brown now appeals.

Discussion and Decision

Brown contends that the State failed to sufficiently prove that he committed theft. In addressing a claim of insufficient evidence, we consider only the probative evidence and reasonable inferences supporting the judgment to assess whether a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. Brown v. State, 868 N.E.2d 464, 470 (Ind. 2007). It is the role of the fact-finder, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). 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)).

Indiana Code Section 35-43-4-2(a) provides, "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." Therefore, the State had the burden of proving that Brown knowingly or intentionally exerted unauthorized control over Meijer's property with the intent to deprive Meijer of any part of its value or use. Brown argues that the State failed to prove that Brown intended to deprive the store of the value of the items in the cart, because, according to Brown's testimony, he was under duress in that Devo had forced him to steal the items to pay for drugs Devo had given him. Pursuant to Indiana Code Section 35-41-3-8, duress may be a defense to what

[1] Ind. Code § 35-43-4-2(a).

otherwise would be a crime only if the defendant was compelled by threat of imminent serious bodily injury to himself or another person.

Brown testified at trial that Devo was a drug dealer to whom Brown owed money. Brown admitted that he left the store without paying for the liquor and food in the grocery cart. Implying that Devo forced him to commit the theft, Brown said he was scared that if he did not pay Devo that Devo would hurt him. This testimony was the only evidence supporting Brown's claim of duress.

The trier of fact, here the trial court, was not obligated to believe Brown's testimony. Brown essentially requests this Court to reassess his credibility and reweigh the evidence. We decline this invitation because these are not the functions of this Court, but rather the trier of fact. From Brown's admission to taking the items in question without paying for them and the store surveillance video depicting Brown walking out of the store at a distance behind Devo, a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt.

Affirmed.

NAJAM, J., and CRONE, J., concur.