

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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Andres L. Jimenez,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

June 29, 2022

Court of Appeals Case No.  
21A-CR-2363

Appeal from the Marion Superior  
Court

The Honorable Elizabeth A.  
Christ, Judge

The Honorable Ronnie Huerta,  
Magistrate

Trial Court Cause No.  
49D36-2011-CM-34475

**Tavitas, Judge.**

## **Case Summary**

- [1] Andres L. Jimenez appeals his conviction for theft, a Class A misdemeanor. Jimenez argues that the State failed to provide sufficient evidence to prove his identity as the culprit of the theft beyond a reasonable doubt. Jimenez argues that he was wrongfully identified by the three witnesses at trial because he was wearing a face covering obscuring part of his face during the in-court identification. Jimenez also contends that he could not have been accurately identified by the witnesses as the suspect in a Ring doorbell video. Finding the evidence sufficient, we affirm.

## **Issue**

- [2] Jimenez raises one issue, which we restate as whether the State produced sufficient evidence to support his conviction.

## **Facts**

- [3] On November 12, 2020, a FedEx package was delivered to the residence of Anthony Leath in Indianapolis. A Ring video doorbell detected the motion and recorded the delivery at approximately 10:10 a.m. About five minutes later, the Ring doorbell again detected motion, and a second video was recorded, which depicted a white man, whose face was partially visible, wearing a brown coat, approach Leath's residence, grab the package on his front porch, and then walk away with it. After Leath received both notifications of the video recordings on his phone, he left work, flagged down the FedEx delivery driver, and reported to the delivery driver that the package had been stolen. Leath gave the delivery

driver a description of the man, shown in the video, as “a white male wearing a brown coat.” Tr. Vol. II p. 35.

[4] Soon after, the delivery driver informed Leath that he found the man who stole the package and called the police. Indianapolis Metropolitan Police Department (“IMPD”) Officers Kenneth Owens and John Fankboner were dispatched to prepare a report of the package’s theft. The officers were provided with a description of the man in the video as a “white male wearing a brown coat.” *Id.* at 41. Police dispatch updated the officers of a possible suspect at the intersection of Walker and Keystone, which was “within a few blocks” from Leath’s address. *Id.* at 42.

[5] Officer Owens and Officer Fankboner stopped the suspect, Jimenez, who matched the description of a white male wearing a brown coat at the intersection of Walker and Keystone. The officers informed Jimenez that they were investigating a reported theft of a package, to which Jimenez responded that “he had no part of it.” *Id.* at 43. At this point, Officer Fankboner went to speak with Leath near his home, where Officer Fankboner reviewed the video recording of the man taking the package. After observing Jimenez and reviewing the video, Officer Fankboner was able to identify Jimenez by his clothing and face—specifically his eyes—as the man in the video. Officer Fankboner shared the video with Officer Owens, who also used the video footage to identify Jimenez as the suspected thief.

- [6] Jimenez was arrested, advised of his *Miranda* rights, and questioned by both officers. Jimenez denied taking the package and did not have the package on his person. Jimenez said, “would it help if I knew where the package was?” *Id.* at 56. The package, however, was never recovered.
- [7] The State charged Jimenez with theft, a Class A misdemeanor. During the bench trial, Jimenez wore a mask over the lower part of his face due to concerns about the Covid-19 pandemic. Leath, Officer Owen, and Officer Fankboner identified Jimenez at trial as the man in the video who took the package. Each witness identified Jimenez without Jimenez removing his face mask. The trial court found Jimenez guilty of theft, a class A misdemeanor, and sentenced Jimenez to one year, with two days executed, and the remaining time suspended to probation. Jimenez now appeals.

## Analysis

- [8] Jimenez argues that the State failed to present sufficient evidence of identity to support his conviction. Sufficiency of evidence claims, “warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility.” *Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020) (citing *Perry v. State*, 638 N.E.2d 1236, 1242 (Ind. 1994)). We consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. *Id.* (citing *Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018), *cert. denied*). “We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the

defendant was guilty beyond a reasonable doubt.” *Id.* We affirm the conviction “unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.” *Sutton v. State*, 167 N.E.3d 800, 801 (Ind. Ct. App. 2021) (quoting *Drane v. State*, 867 N.E.2d 144, 146-47 (Ind. 2007)).

[9] To be convicted of theft, a person must knowingly or intentionally exert unauthorized control over property of another person, with the intent to deprive the other person of any part of its value or use. Ind. Code § 35-43-4-2(a). In *Hughes v. State*, 446 N.E.2d 1017, 1019 (Ind. Ct. App. 1983)), the Court reiterated, “a person ‘exerts control over property’ of another by taking or concealing and such control is ‘unauthorized’ when it is exerted without the other’s consent or in a manner other than that to which the other consented.” *Id.*

[10] On appeal, Jimenez argues that the evidence is insufficient to support his theft conviction because of flawed identifications. Jimenez first contends that the video recording from the Ring doorbell is not clear and, second, that the witnesses improperly identified him as the thief in open court without the removal of his face mask.

[11] Our Supreme Court has held that “[t]he identity of an accused is a question of fact, not law.” *Whitt v. State*, 499 N.E.2d 748, 750 (Ind. 1986) (citing *Jones v.*

*State*, 472 N.E.2d 1255, 1260 (Ind. 1985)). Thus, “the weight to be given identification evidence, and any determination of whether it is satisfactory and trustworthy, is a function of the trier of fact.” *Id.* The unequivocal identification of a perpetrator by more than one witness in court is sufficient to support a conviction. *Emerson v. State*, 724 N.E.2d 605, 609-10 (Ind. 2000).

[12] Here, we conclude the State provided sufficient evidence to support the conviction. The Ring video was clear and revealed a large portion of the suspect’s face, evidencing that he was a white male with some facial hair. The Ring video also clearly portrayed the suspect wearing a brown coat with a hood. Jimenez was located in the immediate area of the crime soon after the crime was committed, wearing clothing that matched the description of the suspect in the video. At the time of Jimenez’s arrest, two officers identified Jimenez as the man in the Ring video. At trial, despite the fact that Jimenez was wearing a facial mask in court, three witness identified Jimenez as the same man that appeared in the Ring video.<sup>1</sup>

[13] The Ring video, the testimony of the witnesses, and the reasonable inferences drawn from this evidence are sufficient to prove beyond a reasonable doubt that Jimenez was the man depicted in the Ring video. Jimenez is essentially arguing that we should reweigh the evidence. On appeal, we do not reweigh the evidence or resolve questions of credibility when determining whether the

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<sup>1</sup> The better practice would be for a prosecuting attorney to ask the trial court to have a defendant lower his or her mask for identification purposes when being identified by a witness during trial.

evidence is sufficient to sustain the conviction. *Brown v. State*, 160 N.E.3d 205, 215 (Ind. Ct. App. 2020). The evidence presented by the State was sufficient to identify Jimenez as the perpetrator of the theft. *See, e.g., Wright v. State*, 828 N.E.2d 904, 906 (Ind. 2005) (holding that the evidence was sufficient to sustain a conviction for theft where, in part, the defendant was wearing the same clothes when apprehended as the suspect in a video recording); *McBride v. State*, 992 N.E.2d 912, 919 (Ind. Ct. App. 2013) (rejecting a challenge to the identification of the defendant where the robbers were identified by witnesses despite the fact that they were wearing masks, which did not completely hide their facial features because the masks were thin).

## **Conclusion**

[14] The State presented sufficient evidence to support Jimenez’s conviction. Accordingly, we affirm.

[15] Affirmed.

Riley, J., and May, J., concur.