MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Laura A. Dowell,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 23, 2023

Court of Appeals Case No. 22A-CR-1637

Appeal from the Marion Superior Court

The Honorable Amy J. Barbar, Senior Judge
The Honorable Charnette D. Garner, Judge

Trial Court Cause No. 49D35-2112-CM-38158

Memorandum Decision by Judge Foley
Judges Robb and Mathias concur.

Foley, Judge.

[1] Laura A. Dowell ("Dowell") appeals her conviction for Class A misdemeanor theft.[1] Dowell argues that the State presented insufficient evidence to support her conviction. We affirm.

Facts and Procedural History

[2] On November 14, 2021, Dowell was shopping at Wal-Mart and went to the self-scan checkout line with several items in her cart. Wal-Mart's asset protection investigator ("Pifer") began watching Dowell, via the security camera, due to the high-value merchandise in her cart and Dowell's behavior at the register. While observing Dowell, Pifer saw Dowell "skip-scan"[2] some items in her cart. Pifer paused the register to give Dowell an opportunity to properly scan the merchandise, but Dowell did not do so. A Wal-Mart associate came to assist Dowell, and Dowell handed the associate some items, but not the merchandise that Dowell skip-scanned. Dowell paid and made her way to the exit door, past all points of sale. Pifer, along with Homecroft Police Officer James Leonard ("Officer Leonard"), stopped Dowell and brought her into the asset protection office. Pifer compared the merchandise in Dowell's cart to the items on the receipt that Dowell generated at self-checkout and determined that a remote-control car and a personal care item in Dowell's cart had not been purchased and were not listed on Dowell's receipt.

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[1] Ind. Code § 35-43-4-2(a).

[2] "Skip scanning is when an item at a self-checkout register is not properly scanned and is bagged." Tr. Vol. II p. 27.

[3] On December 17, 2021, the State charged Dowell with Class A misdemeanor theft. On June 27, 2022, a bench trial was held. Pifer testified regarding his observations of Dowell via the security camera and the trial court admitted into evidence the security footage of the incident. The trial court found Dowell guilty and sentenced her to 365 days suspended to supervised probation. Dowell now appeals.

Discussion and Decision

[4] Dowell claims that her conviction for theft was not supported by sufficient evidence. 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.* at 263. 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)).

[5] Dowell was convicted of theft as a Class A misdemeanor. Indiana Code Section 35-43-4-2(a) provides that "[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 A misdemeanor." "A person engages in conduct 'intentionally' if, when he engages in the conduct, it is his conscious objective to do so." Ind. Code § 35-41-2-2(a). "A person engages in conduct 'knowingly' if, when he engages in the conduct, he is aware of a high probability that he is doing so." I.C. § 35-41-2-2(b).

> Knowledge and intent are both mental states and, absent an admission by the defendant, the [fact finder] must resort to the reasonable inferences from both direct and circumstantial evidence to determine whether the defendant has the requisite knowledge or intent to commit the offense in question . . . . Knowledge or intent may be proven by the defendant's conduct and the natural and usual sequence of to which such conduct logically and reasonably points.

Stubbers v. State, 190 N.E.2d 424, 432 (Ind. Ct. App. 2022) (internal citations omitted).

[6] Dowell contends that insufficient evidence was presented to support her theft conviction because "it is possible that [she] believed that the items in the [ ] bag had been accurately scanned and that she had paid for all items she had selected." Appellant's Br. p. 9. Further, Dowell maintains that "Pifer did not testify that he saw [her] conceal any items on her person." *Id.* Dowell's assertions ask us to reweigh evidence and judge witness credibility which we

will not do. *See Powell*, 151 N.E.3d at 262 (citing *Perry*, 638 N.E.2d at 1242). We consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. *Id.* (citing *Brantley*, 91 N.E.3d at 570).

[7] During the bench trial, Pifer testified that based on his theft and shoplifting prevention training, he began paying attention to Dowell on the security camera due to "her behavior at the register as well as the large- or high-value merchandise in her cart." Tr. Vol. II p. 28. Because Dowell "was scanning the merchandise in a way that was very unorganized[,]" Pifer "continue[d] to observe her [ ]" and noticed that Dowell skip-scanned some merchandise. *Id.* at 42. Pifer "paused the register" in order to give Dowell "an opportunity to scan the merchandise that was not properly scanned." *Id.* at 41. An associate came to assist Dowell "twice," and Dowell "handed her some things [that she] decided to not get." *Id.* at 49. However, Dowell did not properly scan the skip-scanned merchandise in her cart. Dowell paid and was on "her way out [of] the door[,] past all registers [ ]" when Pifer—along with an officer—"stopped her and brought her in to [the] asset protection office." *Id.* at 30. When they got into the office, Pifer compared the items in Dowell's cart to the receipt that Dowell generated at self-checkout and determined that some merchandise, namely a remote-control car and a personal care item, in Dowell's cart were not on the receipt.

[8] In viewing the security footage admitted into evidence, the trial court stated that:

> the Court saw the Defendant [ ] leave with at least three items . . . that were not scanned, and between all the fumbling and dropping things and the delays that she did in making this transaction, uh, including putting a handheld [ ] scanner inside the blaze buggy box – I assume to make it look like she had scanned it . . . . There was at least one toy and at least two other items that the Court saw the Defendant either put in a bag or not scan at all . . . .

Tr. Vol. II pp. 54–55. A reasonable factfinder could conclude, based on Dowell's distracted behavior at self-checkout, the skip-scanned merchandise in her cart, and the reasonable inferences that may be drawn therefrom, that Dowell "intentionally exert[ed] unauthorized control over" the merchandise "with intent to deprive [Wal-Mart] of any part of its value or use." I.C. § 35-43-4-2(a). Therefore, we conclude that Dowell's conviction for Class A misdemeanor theft was supported by sufficient evidence.

[9] Affirmed.

Robb, J., and Mathias, J., concur.