MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

William Foreman,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 30, 2021

Court of Appeals Case No. 21A-CR-769

Appeal from the Tippecanoe Superior Court

The Honorable Kristen E. McVey, Judge

Trial Court Cause No. 79D05-2003-CM-838

Brown, Judge.

[1] William Foreman appeals his conviction and sentence for theft as a class A misdemeanor, claiming that the evidence is insufficient to sustain his conviction and his sentence is inappropriate. We affirm.

Facts and Procedural History

[2] On October 15, 2019, Pamela Hickman, an employee at the Tippecanoe County courthouse, lost her debit card over her lunch hour. When Hickman realized that she had lost her debit card, at around 2:30 or 3:00 p.m. she asked her bank to have the card deactivated. She learned from her bank that someone had attempted to use her debit card "at the Pizza Hut for sixty-four dollars, but they couldn't use it because they didn't have [her] pin." Transcript Volume 2 at 31. At around 4:00 p.m., Hickman reported to Scott Hodson, Tippecanoe County Sheriff's Office Special Deputy in charge of courthouse security, that she lost her debit card and that she thought she had dropped it outside during the lunch hour when she went to a food truck on the courthouse square. Deputy Hodson reviewed a security video recording taken from a camera outside the courthouse and told Hickman that it did not show anything.

[3] The next morning, Hickman told Deputy Hodson that she may have dropped her debit card when she reached into her pocket for the keys to her office when returning from lunch. Deputy Hodson reviewed a security video recording taken from a camera inside the courthouse, and the recording showed that Hickman's debit card fell out of her pocket when she reentered the courthouse after lunch.

[4] The recording further showed a group of people walking from the elevators toward the courthouse exit, and a man in the group who was wearing sunglasses on top of his head bent down and picked up the debit card. The man looked at the card, which had Hickman's name on it, the logo of her bank, and instructions for what to do in the event the card was lost, stolen, or found, showed it to a person next to him, looked at the card again, held the card in his right hand, and left the courthouse.

[5] Deputy Hodson recognized the man on the footage who picked up the debit card and was able to identify him as Foreman, and he was also able to identify the other individuals who were walking with Foreman. Foreman did not attempt to turn the debit card into courthouse security, although he returned to the courthouse later that same day, and he did not tell his wife that he had found a debit card.

[6] After Foreman took the debit card from the courthouse, two successful purchases totaling $665 were made at T-Mobile[1] before Hickman had the card deactivated. Also, after the card was deactivated, there were several attempts to use the card totaling thousands of dollars of attempted unauthorized purchases.

[7] On March 2, 2020, the State charged Foreman with theft as a class A misdemeanor. On March 11, 2021, the court held a jury trial, at which Deputy Hodson, Hickman, and Foreman's wife testified, and the surveillance video

[1] Hickman did not use T-Mobile, and Foreman used Boost Mobile for his cell phone service.

recording from inside the courthouse was admitted into evidence and played for the jury. Deputy Hodson testified that, when Foreman was exiting the courthouse with the debit card, he "walked by the checkpoint [and] there was only one officer working that entrance at the time and he was on the opposite side of the [x]-ray machine" but that when the group exited Foreman "went to the right as they're leaving," which Deputy Hodson viewed as "a p[sych]ological effort to create distance between he and the officer that was working there." *Id.* at 14. He further testified that it "just appeared to me he was creating distance" but acknowledged he did not know if Foreman "even knew he did it." *Id.* at 19. As to whether Foreman benefited from the use of Hickman's debit card, Deputy Hodson testified that he identified each of the individuals who were walking with Foreman that day and reviewed the reports showing who had benefited from the use of the card but that Foreman "was not listed anywhere I saw as benefiting." *Id.* at 27. Deputy Hodson stated, "[t]hat is correct," when asked whether "some of the other names were consistent with some of the other people you identified in the group?" *Id.* Hickman testified she did not know who used or attempted to use the debit card.

[8] Foreman's wife acknowledged that security video recording showed Foreman pick up the card. She also testified that Foreman's eyesight is "[n]ot very good," he wears glasses but was not wearing his glasses the day he picked up the card, and that Foreman is unable to see close up or far away and needs bifocals to read. *Id.* at 47. In response to questions from the jury about Foreman's eyesight, Foreman's wife stated Foreman did not wear contacts

when he was not wearing his glasses, and the sunglasses on top of his head in the video were prescription sunglasses. The jury found Foreman guilty as charged.

[9] The court held a sentencing hearing on March 31, 2021.[2] Foreman's counsel acknowledged that the video recording showed Foreman, who at the time was not wearing his glasses and had his prescription sunglasses on his head, picked up the debit card, left the building with the card, but did not use the card. He argued that the children of Foreman's former spouse are the ones who "ended up committing the crime in my opinion" because it was Foreman's stepdaughter "who pointed [the debit card] out to him initially and said pick it up and he picked it up," and that it was his former spouse's daughter and her husband and brother who used the card to benefit his former spouse's daughter's account. *Id.* at 66. His counsel also acknowledged Foreman had a "somewhat extensive criminal history," but "hasn't been in any trouble in I think eighteen twenty it's been a long time." *Id.* at 67. Foreman's counsel requested that the court place Foreman on probation for six months and order restitution. The prosecutor argued that the instant conviction was Foreman's sixth theft conviction and requested a sentence of 180 days executed on community corrections and 180 days of unsupervised probation.

[2] The record does not include a presentence investigation report or show that one was prepared.

[10] The court stated "whether you want to 1ook at it as just straight theft when you took the card. Or whether you aided, induced, or caused somebody else in your family to benefit it's the same thing." *Id.* The court also stated that Foreman "didn't have an obligation to hand [the debit card] to the bailiffs or to look for the rightful owner, but he did have an obligation not to use [it] improperly and not to permit anyone else to do so." *Id.* at 68-69. The court noted Foreman's criminal history included "[s]ix prior thefts, or six theft, five priors," acknowledged it had "been a while" since he had been in trouble with the law, but it then stated that it was nevertheless "very troubled by [Foreman's] choices" and sentenced him to 180 days with 170 days suspended to unsupervised probation. *Id.*

Discussion

I.

[11] Foreman argues the evidence is insufficient to sustain his conviction for theft as a class A misdemeanor. When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. *Jordan v. State*, 656 N.E.2d 816, 817 (Ind. 1995), *reh'g denied.* Rather, we look to the evidence and the reasonable inferences therefrom that support the verdict. *Id.* We will affirm the conviction if there exists evidence of probative value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. *Id.*

[12] Foreman does not dispute that he took the debit card from the courthouse but challenges the sufficiency of the evidence on the elements of unauthorized control and intent to deprive. He contends that the State failed to rebut the evidence of his poor eyesight, that he did not attempt to hide the debit card after he picked it up because he did not know he had picked up Hickman's card, and that there was no evidence that he used the card or benefited from someone else's use of it.

[13] Ind. Code § 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." Ind. Code § 35-43-4-1(a) defines "exert control over property" as "to obtain, take, carry, drive, lead away, conceal, abandon, sell, convey, encumber, or possess property, or to secure, transfer, or extend a right to property." A person's control is "unauthorized" if "it is exerted . . . without the other person's consent . . . [or] in a manner or to an extent other than that to which the other person has consented." Ind. Code § 35-43-4-1(b)(1)-(2).

[14] "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." Ind. Cod § 35-41-2-2(b). "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). The Indiana Supreme Court has noted that intent is a mental function, and it is well-established that a defendant's intent can be proved by circumstantial evidence. *Phipps v. State*, 90 N.E.3d 1190, 1195 (Ind. 2018). "For example, intent can be

inferred from a defendant's conduct and the natural and usual sequence to which such conduct logically and reasonably points." *Id.* at 1195-1196 (citation and quotations omitted).

[15] The jury was able to view the video recording and consider the testimony presented at trial. To the extent Foreman requests that we judge the credibility of the witnesses and reweigh evidence, we will not do so. *See Jordan*, 656 N.E.2d at 817. Based upon the record, we conclude the State presented evidence of a probative nature from which a reasonable trier of fact could find that Foreman exerted unauthorized control over Hickman's debit card with intent to deprive her of its value or use and committed theft as a class A misdemeanor.

II.

[16] Foreman next argues his sentence of 180 days with 170 days of unsupervised probation is inappropriate in light of the nature of the offense and his character. He requests that his sentence be revised to time-served and that he not be required to serve the remainder of his sentence on probation. He contends that there was no evidence that he used the card or benefited from its use, acknowledges that this conviction is his sixth theft conviction, and urges us to revise his sentence.

[17] Ind. Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character

of the offender." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). Ind. Code § 35-50-3-2 provides that a person who commits a class A misdemeanor shall be imprisoned for a fixed term of not more than one year.

[18] Our review of the nature of the offense reveals that Foreman picked up Hickman's debit card and that the card was later used to make $665 worth of unauthorized purchases at T-Mobile along with additional unsuccessful attempts at using the card. Our review of the character of the offender reveals that Foreman had last been charged criminally in 2003 but his counsel acknowledged that he had a "somewhat extensive criminal history . . . ." Transcript Volume 2 at 67. The court noted that his criminal history included five prior theft convictions, stating that it had "been a while" since Foreman had been in trouble with the law, but it was "very troubled by [Foreman's] choices." *Id.* at 69. After due consideration, we cannot say Foreman has met his burden of establishing that his sentence is inappropriate in light of the nature of the offense and his character.

[19] For the foregoing reasons, we affirm Foreman's conviction and sentence.

[20] Affirmed.

Najam, J., and Riley, J., concur.