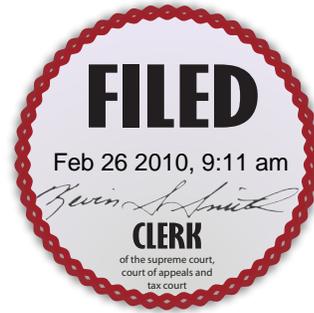


**Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.**



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**IN THE  
COURT OF APPEALS OF INDIANA**

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BRITEYA S. EVANS,  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 20A05-0910-CR-581

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APPEAL FROM THE ELKHART SUPERIOR COURT  
The Honorable Thomas A. Murto, Magistrate  
Cause No. 20D05-0902-FD-53

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**February 26, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BRADFORD, Judge**

Following a jury trial, Appellant-Defendant Briteya Evans was convicted of Class D felony Theft<sup>1</sup> and sentenced to a suspended sentence of eighteen months in the Department of Correction and one year on probation. Upon appeal, Evans challenges the sufficiency of the evidence to support her conviction. We affirm.

### **FACTS AND PROCEDURAL HISTORY**

On February 14, 2009, Deborah Riggs, who works as a loss-prevention officer at the Elkhart J.C. Penney store, observed two females take merchandise, including several articles of clothing, from multiple departments and walk into a single fitting room. Shortly thereafter, one of the females left the fitting room without any of the items she had brought in, purchased an outfit from the children's department, and returned to the fitting room with the bag holding her purchase. Meanwhile, the other female, whom Riggs later identified to be Evans, simply remained in the fitting room. Minutes later, Evans and her companion, who were carrying full J.C. Penney bags and their purses, walked out of the fitting room and left the store. No clothing remained inside the fitting room. In leaving the store, neither Evans nor her companion stopped to pay for their items.

Riggs, who was accompanied by store supervisor Sherry Hochstetler, followed Evans and her companion and requested that they return to the store. Evans and her companion began to struggle with Riggs and Hochstetler. Riggs, who struggled with Evans's companion, sustained a cut to her eye, which bled profusely. Tr. p. 41.

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<sup>1</sup> Ind. Code § 35-43-4-2(a) (2008).

Evans ultimately dropped her bag and purse. Approximately twenty items, totaling approximately \$800 in value, were subsequently recovered. The merchandise in question still contained its ink tags. Apart from the receipt for the children's outfit which Riggs had observed being purchased, there were no receipts for the merchandise. When Riggs later spoke with Evans about the incident for purposes of making a report, Evans stated, "I'm sorry," several times. Tr. p. 45.

On February 18, 2009, the State charged Evans with Class D felony theft. During the May 28, 2009 jury trial, both Evans and her companion testified in Evans's defense that Evans had been unaware that her companion was taking merchandise from J.C. Penney without paying for it. The jury subsequently found Evans guilty as charged. At a July 6, 2009 sentencing hearing, the trial court sentenced Evans to a suspended term of eighteen months in the Department of Correction and imposed one year of probation. This appeal follows.

### **DISCUSSION AND DECISION**

In challenging the sufficiency of the evidence to support her conviction, Evans claims that the record lacks evidence that she intended to deprive J.C. Penney of its merchandise. Our standard of review for sufficiency-of-the-evidence claims is well-settled. We do not reweigh the evidence or judge the credibility of the witnesses. *Kien v. State*, 782 N.E.2d 398, 407 (Ind. Ct. App. 2003), *trans. denied*. We consider only the evidence which supports the conviction and any reasonable inferences which the trier of fact may have drawn from the evidence. *Id.* We will affirm the conviction if there is substantial evidence of probative value from which a reasonable trier of fact could have

drawn the conclusion that the defendant was guilty of the crime charged beyond a reasonable doubt. *Id.* It is the function of the trier of fact to resolve conflicts of testimony and to determine the weight of the evidence and the credibility of the witnesses. *Jones v. State*, 701 N.E.2d 863, 867 (Ind. Ct. App. 1998).

Under Indiana Code section 35-43-4-2(a), 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 Class D felony theft. Under Indiana Code section 35-43-4-4(c) (2008), evidence that a person conceals and removes store merchandise constitutes prima facie evidence of intent to deprive the owner of its value. Circumstantial evidence may be used to prove intent for theft. *Hayworth v. State*, 798 N.E.2d 503, 508 (Ind. Ct. App. 2003). The trier of fact may infer intent from the surrounding circumstances including the defendant's conduct and the natural and usual sequence to which such conduct logically and reasonably points. *Id.*

The surrounding circumstances and natural sequence of conduct establish the requisite "intent to deprive" in the instant case. Here, Evans was seen with her companion taking merchandise from several departments in a store, transporting the merchandise to a single fitting room, waiting while her companion obtained a J.C. Penney store bag, and leaving the fitting room—and the store—with full bags of unpurchased merchandise. Evans argues that the State failed to show "intent to deprive" because her intent may merely have been to use the merchandise for her own benefit. We are unable to see how such personal use somehow undermines, rather than reinforces, the "intent to deprive" element here. Generally, personal use of store merchandise outside

the store deprives the store of the value of the merchandise. The fact-finder was within its discretion to infer that Evans's actions demonstrated her intent to deprive J.C. Penney of the value of its merchandise.

The judgment of the trial court is affirmed.

NAJAM, J., and FRIEDLANDER, J., concur.