

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 20, 2002

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See WIS. STAT. § 808.10 and RULE 809.62.*

Appeal No. 02-0748-CR

Cir. Ct. No. 01 CM 606

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DANE G. HACKER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: CHARLES F. KAHN, JR., Judge. *Affirmed.*

¶1 WEDEMEYER, P.J.¹ Dane G. Hacker appeals from a judgment entered after the trial court found him guilty of retail theft, contrary to WIS. STAT. § 943.50(1m)(b) (1999-2000).² He claims there was insufficient evidence to

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (1999-2000).

² All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

support the conviction. Because there was sufficient evidence to support the conviction, this court affirms.

BACKGROUND

¶2 On January 8, 2001, Charles Milsap, an undercover security guard at a Menards store, started observing Hacker, who had a Dewalt radio charger in his shopping cart. Milsap started the observation because the charger is a high theft item. He watched Hacker push the cart to a closed register and then exit the store. Shortly thereafter, Hacker came back for the cart and pushed it to the rear of the store. Hacker then went to the paint department where there is an exit to the lumberyard. After this, the charger was no longer in Hacker's cart.

¶3 Milsap found the charger in the lumber rack outside the door to the lumberyard. Milsap then hid in the lumberyard to see if Hacker would come back for the charger. Shortly thereafter, Hacker pulled his van into the lumberyard and back to where the charger was placed. Hacker exited the van, shut his door, opened the side door, and walked to the area where the charger was. At this point, Milsap was not in a position to see what Hacker was doing. When Milsap moved around the van so that he could see, he caught Hacker with the charger in his hands. Milsap told Hacker to place the charger on the ground, identified himself as store security, and told Hacker he was being detained for shoplifting.

¶4 Hacker was charged with one count of retail theft and his case was tried to the court. The court found Hacker guilty. Hacker now appeals.

DISCUSSION

¶5 Hacker contends that there was insufficient evidence to support the first element of the retail theft charge—that he intentionally took and carried away

the charger. He concedes that there was sufficient evidence on the remaining elements of the charge. This court rejects Hacker's contention.

¶6 The standard for reviewing a challenge to the sufficiency of the evidence is stated in *State v. Blaisdell*, 85 Wis. 2d 172, 180-81, 270 N.W.2d 69 (1978):

When the defendant challenges the sufficiency of the evidence, the test is whether the evidence adduced, believed, and rationally considered by the jury was sufficient to prove the defendant's guilt beyond a reasonable doubt. Conversely stated, the test is whether when considered most favorably to the state and the conviction, the evidence is so insufficient in probative value and force that it can be said as a matter of law that no trier of facts acting reasonably could be convinced to that degree of certitude which the law defines as "beyond a reasonable doubt." Furthermore, it is not necessary that this court be convinced of the defendant's guilt but only that the court is satisfied the jury acting reasonably could be so convinced.

(Citations omitted.) Under such a standard, this court cannot conclude that the evidence was insufficient. Hacker claims that Milsap intervened too soon—that is, before he actually "took and carried away" the charger. Hacker argues that would not occur until he left the actual grounds of Menards with the charger in his van. This court cannot agree.

¶7 The evidence produced at trial demonstrated that Hacker concealed the charger in the lumberyard outside the store. Milsap apprehended Hacker while he was attempting to load the charger into his van. There was no way to pay for merchandise at the outside portion of the store. Hacker had paid at the cash register inside the store for other merchandise located in the lumberyard so that he would be allowed to enter the lumberyard. Further, Milsap had observed Hacker

place the charger in the lumberyard without paying for it, then obtain access to the lumberyard by buying other merchandise, and then pull his van up to where the charger was located. Hacker then attempted to load the charger into his van. Clearly, under these circumstances, the trier of fact could reasonably conclude that Hacker was guilty of taking and carrying away the charger.

¶8 This court is not persuaded by Hacker's argument that Milsap did not know for sure that Hacker was going to place the charger in his van or whether Hacker was going to return it to the store, or place it somewhere else. The evidence is sufficient to demonstrate that Hacker took and carried away the charger without paying for it. He intentionally removed it from the store via a carefully crafted plan to avoid the only place where customers can pay for merchandise. There was sufficient evidence presented to sustain this conviction.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

