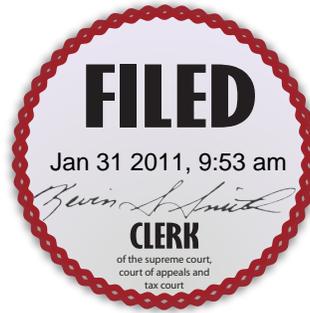


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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DAVID FARMER II, )  
 )  
Appellant-Defendant, )  
 )  
vs. )  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

No. 55A05-1008-CR-512

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APPEAL FROM THE MORGAN SUPERIOR COURT  
The Honorable Christopher L. Burnham, Judge  
Cause No. 55D02-0908-FB-306

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**January 31, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BROWN, Judge**

David Farmer II appeals his convictions for burglary as a class B felony<sup>1</sup> and theft as a class D felony.<sup>2</sup> Farmer raises two issues, which we revise and restate as:

- I. Whether the trial court improperly denied his motion for discharge under Ind. Criminal Rule 4(B); and
- II. Whether the evidence was sufficient to support his convictions for burglary and theft.

We affirm.

The relevant facts follow. In February 2009, Farmer asked his ex-wife Connie for a vehicle to “get back and forth to work and to start his life,” and she provided him with a 1991 blue Buick LeSabre, which is a “four-door big car.” Transcript at 66-67.

In July 2009, Jennifer and Carl Woods and their two children lived together in a house in Monrovia, Indiana in Morgan County. On a typical work day, there would be no cars in the driveway during the day, and there would be two cars in the driveway at 8:00 p.m.

On July 24, 2009, Carl left the house about 5:30 a.m. Jennifer and the children left the house about 7:00 a.m., and Jennifer left “everything locked up.” Id. at 7. Specifically, the back door to the house was “locked and deadbolted,” the front door was locked, and the garage door was closed. Id.

Sarah Leisher, who lives “two streets over” from the Woodses, drove by the Woodses’ home and noticed a different car in the driveway and the garage door going

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<sup>1</sup> Ind. Code § 35-43-2-1 (2004).

<sup>2</sup> Ind. Code § 35-43-4-2 (Supp. 2009).

down at “about 5 to 10:00 in the morning.” Id. at 60-61. Leisher later described the car as an “older, four-door car.” Id. at 61.

That same day, Farmer pawned jewelry and other items at a pawn shop in Indianapolis that were later identified as belonging to the Woodses. The pawn tickets displayed a time of receipt of 10:00 a.m. Farmer also pawned a coin set at the same shop later in the day, and the pawn ticket displayed the time of receipt as 2:15 p.m.

Carl arrived home around 4:30 p.m. Carl entered his house and noticed that the back door was broken. Specifically, the door frame was broken and the door sill was shattered. Carl called Jennifer and told her that they had been robbed, and Jennifer called the police. The Woodses’ house had been ransacked and numerous items were missing including: a video camera, a digital camera, phone chargers, jewelry, a GPS unit, coin sets, a drill, an air compressor, a game console, games, and accessories.

At some point, Connie noticed that the vehicle she lent Farmer was “loaded down with a bunch of stuff” and that some of the items did not belong to Farmer. Id. at 70. Connie brought the car and the items inside to Beech Grove Police Detective Matt Hickey. Detective Hickey recovered a number of items from the car including cell phone chargers and a digital camera which contained a picture of a “pop-up style camper trailer.” Id. at 128. Detective Hickey could read the license plate on the trailer and searched BMV records which led him to contact Jennifer Woods. The Woodses later identified some of the items that were recovered including jewelry, the GPS unit, a camera, a video camera, coin sets, a drill, and an air compressor.

On August 26, 2009, the State charged Farmer with burglary as a class B felony and theft as a class D felony. On February 17, 2010, Farmer filed a *pro se* Motion for Fast and Speedy Trial requesting “an early trial within 70 days pursuant to Criminal Rule 4(B)(1) . . . .” Appellant’s Appendix at 12A. That same day, the court issued an order to transport Farmer. On February 25, 2010, the court attempted to hold an initial hearing. A chronological case summary entry dated the same day, states: “PER MORGAN COUNTY JAIL, MARION COUNTY JAIL PICKED DEFENDANT UP FROM IDOC FOR HEARING IN MARION COUNTY ON 2/25/10. COURT WILL HAVE TO WAIT UNTIL DEFT IS BACK IN IDOC TO RESET HEARING.” Id. at 2. On March 12, 2010, the court issued an order to transport Farmer and scheduled an initial hearing for March 25, 2010. A CCS entry dated March 12, 2010, states: “DEFT TO BE TRANSPORTED[ ] BY SHERIFF FROM PLAINFIELD CORRECTIONAL FACILITY.” Id. An entry dated March 25, 2010, states: “INITIAL HEARING NOT HELD. MARION COUNTY WOULD NOT RELEASE DEFT TO OUR CUSTODY FOR INITIAL HEARING AT THIS TIME.” Id.

On April 8, 2010, the court held an initial hearing, and Farmer appeared in person. The court appointed counsel for Farmer and scheduled an omnibus date of May 20, 2010, and a pretrial conference for July 1, 2010. On April 15, 2010, the attorney appointed by the court on April 8, 2010, filed an appearance.

On May 5, 2010, Farmer by counsel filed a motion for discharge pursuant to Ind. Criminal Rule 4(B). On May 6, 2010, the court denied Farmer’s motion. The court’s

order stated in part: “The Defendant is not entitled to discharge ‘as the delay is otherwise caused by his act.’ C.R. 4(B)(1). The delay has been caused by the Defendant’s numerous other pending felony charges, court proceedings and sentencing delays in Marion County.” Id. at 18. That same day, the court scheduled a jury trial for July 20, 2010.

On May 18, 2010, Farmer filed a Motion to Reconsider Ruling on Motion for Discharge / Alternative Motion to Certify Matter for Interlocutory Appeal. Farmer alleged that Ind. Criminal Rule 4 applied and that “problems with Marion County refusing to allow defendant to be transported” was not “one of the justifications for delay CR4(B) recognizes as validly extending the 70 day rule.” Id. at 20. On May 26, 2010, the court denied Farmer’s motion. The court also rescheduled the trial for July 6, 2010. On June 21, 2010, Farmer filed a waiver of trial by jury.

On July 6, 2010, the court held a bench trial. After the State rested, Farmer moved for a directed verdict on both charges. With respect to the theft charge, Farmer’s attorney stated: “[I]t is true that there was control exerted over the property and that that control was certainly unauthorized. It was simply not done in Morgan County. And so with respect to the theft, the pawning of this stuff is a venue issue.” Transcript at 132. The court denied Farmer’s motion and later found him guilty as charged. The court sentenced Farmer to twenty years for burglary as a class B felony and three years for theft as a class D felony. The court ordered the sentences to be served concurrently.

## I.

The first issue is whether the trial court improperly denied Farmer's motion for discharge under Ind. Criminal Rule 4(B). Farmer argues that Ind. Criminal Rule 4(B) applies and that "problems with Marion County refusing to allow [him] to be transported" is not a valid justification for delay. Appellant's Brief at 7. The State argues that "[b]ecause [Farmer] chose to commit multiple crimes in multiple counties, the court properly concluded that he was responsible for the delay." Appellee's Brief at 8. The State also argues that Farmer waived any objection because Farmer "had no objections to the next pre-trial conference date or the setting of the omnibus date" at the April 8, 2010 hearing and failed to object to any subsequent scheduling of a trial date. Id. at 9.

We review *de novo* a trial court's denial of a motion to discharge a defendant. Kirby v. State, 774 N.E.2d 523, 530 (Ind. Ct. App. 2002), reh'g denied, trans. denied. "The Sixth Amendment to the United States Constitution and Article 1, section 12 of the Indiana Constitution guarantee the right to a speedy trial. The provisions of Ind. Criminal Rule 4 implement these protections." Wilkins v. State, 901 N.E.2d 535, 537 (Ind. Ct. App. 2009) (citing Clark v. State, 659 N.E.2d 548, 551 (Ind. 1995)), trans. denied. Ind. Criminal Rule 4(B)(1) provides, in pertinent part:

If any defendant held in jail on an indictment or an affidavit shall move for an early trial, he shall be discharged if not brought to trial within seventy (70) calendar days from the date of such motion, except where a continuance within said period is had on his motion, or the delay is otherwise caused by his act, or where there was not sufficient time to try

him during such seventy (70) calendar days because of the congestion of the court calendar.

A movant for an early trial must maintain a position which is reasonably consistent with the request that he has made. Wilburn v. State, 442 N.E.2d 1098, 1103 (Ind. 1982). “[I]t is incumbent upon defendant to object at the earliest opportunity when his trial date is scheduled beyond the time limits prescribed by Ind. R. Crim. P. 4(B)(1).” Smith v. State, 477 N.E.2d 857, 861-862 (Ind. 1985). “This requirement is enforced to enable the trial court to reset the trial date within the proper time period.” Dukes v. State, 661 N.E.2d 1263, 1266 (Ind. Ct. App. 1996). “A defendant who permits the court, without objection, to set a trial date outside the 70-day limit is considered to have waived any speedy trial request.” Stephenson v. State, 742 N.E.2d 463, 488 (Ind. 2001), cert. denied, 534 U.S. 1105, 122 S. Ct. 905 (2002).

The record reveals that Farmer filed a *pro se* Motion for Fast and Speedy Trial on February 17, 2010, requesting “an early trial within 70 days pursuant to Criminal Rule 4(B)(1) . . . .” Appellant’s Appendix at 12A. At the initial hearing on April 8, 2010, the court scheduled a pretrial conference for July 1, 2010, well after the seventy-day deadline of April 28, 2010, and Farmer did not object. While Farmer’s attorney was appointed at the April 8, 2010 hearing, and entered his appearance on April 15, 2010, he did not object to the scheduling of the pretrial conference in July. Rather, Farmer’s attorney filed a motion for discharge under Ind. Criminal Rule 4(B) on May 5, 2010, which was twenty-seven days after the court had scheduled a pretrial conference for July on April 8, 2010.

Under the circumstances, we conclude that Farmer waived his earlier speedy trial request. See Goudy v. State, 689 N.E.2d 686, 691 (Ind. 1997) (addressing defendant’s argument relating to Ind. Criminal Rule 4(B) and holding that “defendant waived his earlier speedy trial request by acquiescing in the setting of an omnibus date, and by necessary implication, a trial date, beyond the seventy day limit permitted by Criminal Rule 4(B)(1)”), reh’g denied; Wright v. State, 593 N.E.2d 1192, 1195 (Ind. 1992) (holding that “it was reasonable to assume that [the defendant] had abandoned his request for a speedy trial” where the defendant “waited nearly a month before filing an objection to the later trial date”), cert. denied, 506 U.S. 1001, 113 S. Ct. 605 (1992), abrogated on other grounds by Fajardo v. State, 859 N.E.2d 1201 (Ind. 2007); Smith, 477 N.E.2d at 862 (holding that “[i]nsofar as no timely objection was made by defendant to the trial date being scheduled beyond the seventy-day time limit, defendant’s request for an early trial date is deemed waived and therefore defendant is not entitled to a discharge under Ind. R. Crim. P. 4(B)(1)”); Jacobs v. State, 454 N.E.2d 894, 898 (Ind. Ct. App. 1983) (holding that the assertion of a speedy trial violation was untimely when it was raised three days after the court rescheduled the trial date).

## II.

The next issue is whether the evidence is sufficient to sustain Farmer’s convictions for burglary and theft. When reviewing the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). We do not

assess witness credibility or reweigh the evidence. Id. We consider conflicting evidence most favorably to the trial court's ruling. Id. We affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." Id. (quoting Jenkins v. State, 726 N.E.2d 268, 270 (Ind. 2000)). It is not necessary that the evidence overcome every reasonable hypothesis of innocence. Id. at 147. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. Id.

Identification testimony need not necessarily be unequivocal to sustain a conviction. Heeter v. State, 661 N.E.2d 612, 616 (Ind. Ct. App. 1996). Elements of offenses and identity may be established entirely by circumstantial evidence and the logical inferences drawn therefrom. Bustamante v. State, 557 N.E.2d 1313, 1317 (Ind. 1990). As with other sufficiency matters, we will not weigh the evidence or resolve questions of credibility when determining whether the identification evidence is sufficient to sustain a conviction. Id. Rather, we examine the evidence and the reasonable inferences therefrom that support the verdict. Id.

Farmer argues that the evidence is insufficient: (A) to support his convictions for burglary and theft; and (B) to establish venue in Morgan County as to the theft.

A. Evidence of Burglary & Theft

The offense of burglary as a class B felony is governed by Ind. Code § 35-43-2-1, which provides that "[a] person who breaks and enters the building or structure of another person, with intent to commit a felony in it, commits burglary, a Class C felony.

However, the offense is . . . a Class B felony if . . . the building or structure is a . . . dwelling . . . .” Thus, to convict Farmer of burglary as a class B felony, the State needed to prove that Farmer broke and entered a dwelling with intent to commit a felony in it. The offense of theft as a class D felony is governed by Ind. Code § 35-43-4-2, which 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 D felony.” Thus, to convict Farmer of theft as a class D felony, the State needed to prove that Farmer knowingly or intentionally exerted unauthorized control over the Woodses’ property with intent to deprive them of any part of the property’s value or use.

Farmer argues that “[o]ther than his recent possession of stolen property, nothing linked Farmer to the Woods’ burglary.” Appellant’s Brief at 7. Farmer argues that “[t]he State simply presented nothing which in any way suggested that Farmer broke into the Woods’ home with the intention of committing theft.” Id. at 8. Farmer also argues that Fortson v. State, 919 N.E.2d 1136 (Ind. 2010) “dictates that he be acquitted of the Burglary and Theft charges . . . .” Id. at 9.

In Fortson, around 4:30 p.m. on March 17, 2007, Nathan Sosh parked his pick-up truck in a parking lot, accidentally left his keys in the ignition, and went inside a store. 919 N.E.2d at 1137. When Sosh exited the store thirty to forty-five minutes later his truck was gone. Id. Around 11:20 p.m., Fortson was stopped by the police while driving Sosh’s truck. Id. at 1138. Fortson informed officers that the truck was “loaned to him.”

Id. The State charged Fortson with receiving stolen property. Id. After a jury trial, Fortson was found guilty as charged. Id.

On appeal, the Indiana Supreme Court discussed the history of the “mere possession” rule in Indiana and stated:

[W]e return to this jurisdiction’s original moorings and as such abandon the so-called mere possession rule. That is to say, the mere unexplained possession of recently stolen property standing alone does not automatically support a conviction for theft. Rather, such possession is to be considered along with the other evidence in a case, such as how recent or distant in time was the possession from the moment the item was stolen, and what are the circumstances of the possession (say, possessing right next door as opposed to many miles away). In essence, the fact of possession and all the surrounding evidence about the possession must be assessed to determine whether any rational juror could find the defendant guilty beyond a reasonable doubt.

Id. at 1143 (footnotes omitted). The Court held that the State failed to provide any facts other than mere possession to support an inference of knowledge and reversed Fortson’s conviction. Id. at 1144.

Based upon Fortson, Farmer’s possession of the property is to be considered in light of the other evidence in the case. The record reveals that Farmer’s ex-wife lent him a 1991 blue Buick LeSabre, which is a “four-door big car.” Transcript at 66-67. On the morning of July 24, 2009, Leisher noticed an “older, four-door car” in the Woodses’ driveway and the garage door going down. Detective Sanders testified that the description of the vehicle by Leisher and the vehicle that Farmer had been reported driving were “similar in nature” and indicated that they “were not inconsistent in any fashion.” Id. at 107. Further, Leisher noticed the vehicle in the Woodses’ driveway at

“about 5 to 10:00 in the morning,” Farmer pawned some of the stolen property at a pawn shop in Indianapolis, and the pawn tickets displayed a time of receipt of 10:00 a.m. Id. at 60-61. While Detective Sanders testified that driving from the Woodses’ residence to the pawn shop would take “20, 30 minutes” and indicated that it would not be possible for a vehicle to drive from the Woodses’ residence to the pawn shop in five minutes, a reasonable inference from the evidence is that Farmer drove straight from the Woodses’ residence to the pawn shop. Id. at 110. Thus, Farmer’s possession of the stolen property was very recent in time.

While the trial court could have made different inferences from the evidence, we cannot say that the inferences made by the court here were unreasonable. Thus, we conclude that evidence of probative value exists from which the court as the trier of fact could have found Farmer guilty beyond a reasonable doubt of burglary as a class B felony and theft as a class D felony. See Brink v. State, 837 N.E.2d 192, 198 (Ind. Ct. App. 2005) (holding that the inferences made by the jury were not unreasonable and affirming the defendant’s convictions for burglary and theft), trans. denied.

B. Venue

Farmer argues that “the State never proved venue for the Theft charge” because “possession and control . . . took place in Marion County, not Morgan.” Appellant’s Brief at 9. “The right to be tried in the county in which an offense was committed is a constitutional and a statutory right.” Alkhalidi v. State, 753 N.E.2d 625, 628 (Ind. 2001) (citing Ind. Const. art. 1, § 13; Ind. Code § 35-32-2-1(a)). Venue is not an element of the

offense. Id. Accordingly, although the State is required to prove venue, it may be established by a preponderance of the evidence and need not be proved beyond a reasonable doubt. Id.

Venue is usually an issue for determination by the trier of fact. Id. This is because venue typically turns on an issue of fact, i.e., where certain acts occurred. Id. Given the similarities between Farmer's vehicle and the vehicle seen outside of the residence in Morgan County, and the short period of time between Farmer's sale of the stolen property after the burglary, we conclude that evidence of probative value exists from which the court could have found venue in Morgan County. See Alkhalidi, 753 N.E.2d at 629 (holding that the evidence was sufficient to establish venue).

For the foregoing reasons, we affirm Farmer's convictions for burglary as a class B felony and theft as a class D felony.

Affirmed.

ROBB, C.J., and RILEY, J., concur.