

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-070204
	:	TRIAL NO. 06CRB-38074
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
LAMONTE BROWNER,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant Lamonte Browner was hired to work at the Shell service station on Gilbert Avenue. On his second day of work, Browner’s register was short \$487.01. Store surveillance cameras showed Browner taking money from customers at the register. Browner would then grab a newspaper, leave customers standing near the register, and disappear into the cooler area of the store. The assistant manager had to leave the back area of the store and go to the front to wait on customers. At that point, Browner would reappear at the register. This sequence of events was repeated at various times during Browner’s shift. Browner left early, and he did not return to work his scheduled shift the next day. Employees found the newspaper in the cooler area. The state’s theory was that Browner had used the newspaper to transport the money that he

¹See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

had been stealing. Browner was later lured back to the store under the guise of picking up a paycheck. When police told Browner to stop, he ran. Browner eventually surrendered.

Browner was found guilty of theft and obstructing official business. He was sentenced on the theft to 180 days' incarceration, with 90 days suspended. He was also ordered to pay restitution. Browner has appealed only his theft conviction.

The first assignment of error, alleging that Browner's conviction for theft was based upon insufficient evidence, is overruled. After viewing the evidence in the light most favorable to the prosecution, we hold that a rational trier of fact could have found that all the essential elements of the offense of theft had been proved beyond a reasonable doubt.² The testimony of the manager and her assistant, the cash register report, and the video evidence of Browner going back and forth from the register to the cooler area with his newspaper were sufficient to support a guilty finding.

The second assignment of error, alleging that defense counsel was ineffective, is overruled. Reversal of a conviction based upon the ineffective assistance of counsel requires a showing by the appellant that his counsel's performance was deficient, and that he was prejudiced by the deficiency.³ We have reviewed the record, and we hold that it does not demonstrate either deficient performance or prejudice to Browner. The record shows that counsel offered a vigorous defense, objected at the appropriate times, sufficiently cross-examined the witnesses, and pointed out the deficiencies on the videotapes. Further, counsel was not ineffective for failing to make a Crim.R. 29 motion for acquittal because the motion clearly would have failed.

Therefore, the judgment of the trial court is affirmed.

² See *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus; *State v. Roberts*, 1st Dist. No. C-040547, 2005-Ohio-6391.

³ See *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052; *State v. Bradley* (1989), 42 Ohio St.3d 136, 538 N.E.2d 373.

OHIO FIRST DISTRICT COURT OF APPEALS

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

SUNDERMANN, P.J., DINKELACKER and WINKLER, JJ.

RALPH WINKLER, retired, from the First Appellate District, sitting by assignment.

To the Clerk:

Enter upon the Journal of the Court on March 26, 2008
per order of the Court _____.
Presiding Judge