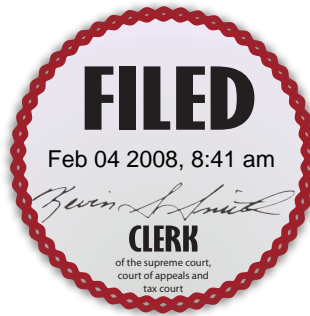


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

M.L.,)
)
Appellant-Respondent,)
)
vs.) No. 49A05-0706-JV-331
)
STATE OF INDIANA,)
)
Appellee-Petitioner.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Scott B. Stowers, Magistrate
Cause No. 49D09-0703-JD-925

February 4, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

M.L. appeals the true finding that he committed a delinquent act that would be Robbery, as a Class B felony, if committed by an adult.¹ We affirm.

Issue

M.L. raises two issues, only one of which requires our consideration:² whether the evidence was sufficient that he committed a delinquent act that would be Robbery if committed by an adult.

Facts and Procedural History

Leonid Broeskiy drove to an apartment building to deliver pizza. Three males confronted him, including one who wielded a gun. The three took currency, keys, a cell phone and the pizza.

The State alleged that M.L. committed a delinquent act that would be Robbery if committed by an adult. After a hearing, the juvenile court found that M.L. committed the alleged delinquent act. M.L. now appeals.

Discussion and Decision

I. Standard of Review

M.L. argues that the State failed to present sufficient evidence that he committed the alleged delinquent act. Specifically, he asserts that the State failed to prove his identity

¹ Ind. Code § 35-42-5-1.

² The parties agree that the true findings of Robbery and Criminal Confinement violated Article I, Section 14 of the Indiana Constitution. Appellee's Brief at 3. Accordingly, we vacate the true finding of Criminal Confinement.

beyond a reasonable doubt.

Our standard of review is well-established.

When reviewing a juvenile delinquency adjudication, we will consider only the evidence and reasonable inferences supporting the judgment. We neither reweigh the evidence nor judge witness credibility. If there is substantial evidence of probative value from which a reasonable trier of fact could conclude beyond a reasonable doubt that the juvenile committed the delinquent act, we will affirm the adjudication.

B.R. v. State, 823 N.E.2d 301, 306 (Ind. Ct. App. 2005) (citation omitted).

II. Application

The State asked the juvenile court to waive jurisdiction. After a hearing, the juvenile court denied the motion. The parties, however, stipulated to incorporating all of the testimony from the waiver hearing for purposes of the denial hearing. Accordingly, the juvenile court considered evidence submitted during both hearings in making its finding.

The following are the facts most favorable to the judgment. Late one night, Broeskiy drove to an apartment building to deliver Domino's pizza. He pulled in and saw M.L. and another male sitting in a car, switching on and off the interior light. He took the pizza out of the back seat, closed the door, and saw the two males start to walk behind the building. As Broeskiy was looking for the correct apartment, the same two males approached him and a third came from behind him. Two or three of them wore grey or black hoodies. Two wore black masks and the third wore a blue mask.

Broeskiy asked them for the location of the specific apartment. One of them pulled a gun and instructed Broeskiy to shut up, look down, and go into a well-lit hallway. He complied. One of them told Broeskiy to lay down on his stomach. After he did so, one of

them stepped on his hands and arms. The gunman stayed behind Broeskiy, while the third male emptied his pockets. They took several articles, including a black cell phone with an Indianapolis Colts sticker. The gunman and the male who emptied Broeskiy's pockets asked repeatedly, "That's all you got bitch"? Transcript at 19. As they then fled, the same two males screamed "white power m_____ f_____." Id.

Indianapolis Metropolitan Police Department ("IMPD") Officer Gregory Popcheff ("Officer Popcheff") arrived and spoke with Broeskiy. Officer Popcheff researched the car and determined that the registered address was in a nearby apartment complex. On the way to that address, he saw M.L. and another male wearing a black hoodie at an adjacent building. As Officer Popcheff stopped the other male, M.L. walked around the back of that building and was later detained. A black cell phone with a Colts sticker was found in the path M.L. had walked.

A search warrant was executed at the apartment to which the car was registered. IMPD Detective Delbert Shelton ("Detective Shelton") observed M.L.'s brother come out. Inside the apartment, he and Officer Popcheff found a blue stocking cap with holes cut out, a black "due-rag that . . . can be pulled down as a ski mask," a black hoodie, a grey hoodie, and a Domino's pizza delivery case with two pizza boxes. Id. at 51. The boxes had stickers with the address to which Broeskiy was making his delivery. The third male arrested that night resided at the searched apartment.

Approximately one hour after the incident, Detective Shelton had M.L. stand in front of a police car so that Broeskiy could view him. Broeskiy indicated that M.L. had the build

and complexion of one who had taken his money. Detective Shelton then had M.L. speak. Detective Shelton conducted the same procedure with the other two males. He testified that Broeskiy “could identify each individual person as to what they did during the robbery.” Id. at 54. According to Detective Shelton, Broeskiy was “more than just pretty sure” of his identification of M.L. Id.

Broeskiy identified M.L. during the waiver hearing and testified that he was sure that he was one of the three boys involved in the incident. On cross-examination, Broeskiy testified that he identified M.L. by his voice, his complexion, and the appearance of his pants. Officer Popcheff and Detective Shelton identified M.L. as being one of the males arrested that evening.

In announcing its true finding, the juvenile court stated that “if it were just the audio identification I would not have been convinced but there was some, uh, sufficient circumstantial evidence for me to enter a true finding as to count one robbery.” Id. at 120.

Circumstantial evidence may support a finding beyond a reasonable doubt.

Mere presence at the crime scene is insufficient proof to support a conviction, but presence at the scene coupled with other circumstances tending to show participation in the crime may be sufficient to sustain a guilty verdict. Such circumstantial evidence is sufficient if it allows for reasonable inferences enabling the jury to determine guilt beyond a reasonable doubt.

Rohr v. State, 866 N.E.2d 242, 248-49 (Ind. 2007) (citations omitted), reh’g denied. Here, the victim stated that M.L.’s build, his complexion, and the appearance of his pants matched those of one of his assailants. Once an officer required M.L. to speak, Broeskiy was “more than just pretty sure” that M.L. had participated in the incident. Tr. at 54. An officer

observed M.L. at the crime scene with a resident of the apartment to which the car was registered. M.L.'s brother was found in that apartment with Broeskiy's pizza and clothes matching Broeskiy's description. A somewhat unique cell phone, taken from the victim, was found in the path M.L. took. In the aggregate, we conclude that there was sufficient evidence to support the true finding.

Conclusion

For the reasons discussed in footnote two, we vacate the true finding of criminal confinement. However, the evidence was sufficient to support the true finding that M.L. committed a delinquent act that would be Robbery if committed by an adult.

Affirmed.

NAJAM, J., and CRONE, J., concur.