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**IN THE
COURT OF APPEALS OF INDIANA**

A.N.,)
)
Appellant/Respondent,)
)
vs.) No. 49A04-0906-JV-311
)
STATE OF INDIANA,)
)
Appellee/Petitioner.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn Moores, Judge
The Honorable Geoffrey A. Gaither, Magistrate
Cause No. 49D09-0901-JD-22

December 29, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Respondent A.N. appeals from the findings that he committed what would be Class A misdemeanor Intimidation¹ and Class B misdemeanor Battery² if committed by an adult. We affirm in part, reverse in part, and remand with instructions.

FACTS

A.N. was born on January 26, 1992. At some point prior to November 7, 2008, A.N. told seventeen-year-old K.K., who was in his English class at North Central High School, that he was going to cut her head off with an axe so that he could keep it in a freezer and stare at her every day. On November 19, 2008, K.K. encountered A.N. outside the lunchroom. A.N. had not been in class for approximately two weeks, and K.K. asked him where he had been. A.N. replied that he had been in “Juvenile” for swinging an axe at his father and trying to kill him. Tr. p. 6. K.K. recalled A.N.’s previous statement to her, realized that “he was being serious[,]” and became fearful. Tr. p. 8. During the conversation, A.N. touched K.K. on the calf without permission, and she asked him to stop. K.K. did not appreciate A.N. touching her and did not want him to.

On January 5, 2009, the State filed a delinquency petition alleging that A.N. had committed what would be, if committed by an adult, Class A misdemeanor intimidation and Class B misdemeanor battery. On April 9, 2009, after a hearing, the juvenile court found the petition true as alleged. On May 14, 2009, the juvenile court committed A.N. to the Department of Correction, suspended the commitment, and imposed probation with special conditions.

¹ Ind. Code § 35-45-2-1(a) (2008).

² Ind. Code § 35-42-2-1(a) (2008).

DISCUSSION AND DECISION

Whether the State Produced Sufficient Evidence to Sustain the Juvenile Court's True Findings

“In addressing a claim of insufficient evidence, an appellate court must consider only the probative evidence and reasonable inferences supporting the judgment, without weighing evidence or assessing witness credibility, and determine therefrom whether a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt.” *Fajardo v. State*, 859 N.E.2d 1201, 1208 (Ind. 2007) (citing *Whedon v. State*, 765 N.E.2d 1276, 1277 (Ind. 2002)).

I. Intimidation

In order to support a true finding that A.N. committed intimidation, the State was required to establish that he communicated a threat to K.K. with the intent that she be placed in fear of retaliation for a prior lawful act, specifically having a conversation with A.N. Ind. Code § 35-45-2-1(a). As the State concedes, however, there is no evidence in the record to establish that A.N. had any conversation with K.K. prior to his threat to decapitate her. In the absence of any evidence of a prior lawful act by A.N., the juvenile court's intimidation finding is not supported by sufficient evidence.

II. Battery

In order to support a true finding that A.N. committed battery, the State was required to establish that he knowingly or intentionally touched her in a rude, insolent, or angry manner. Ind. Code § 35-42-2-1(a). A.N. contends that he did not touch K.K. in a rude, insolent, or angry manner. Although there does not seem to be any evidence that

A.N. touched K.K. in an angry manner, we conclude that there is sufficient evidence to establish that he touched her in, at the very least, a rude manner.

Rude may be defined as “offensive in manner or action[.]” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1985 (Phillip Babcock Gove et al. eds., G.&C. Merriam Company 1964). A.N. touched K.K., a female, on the calf during a conversation in which he claimed to have tried to kill his father with an axe and a few weeks after telling her that he desired to decapitate her. The juvenile court was entitled to conclude that a person making such disturbing statements to K.K. would know that a touch to her body would not be welcome. Under the circumstances, sufficient evidence supported the juvenile court’s finding that A.N. intended his touch to be offensive and was therefore done in a rude manner. We affirm the juvenile court’s finding that A.N. committed what would be Class B misdemeanor battery if committed by an adult.

We affirm the juvenile court’s finding that A.N. committed what would be Class B misdemeanor battery if committed by an adult and reverse its finding that he committed what would be Class A misdemeanor intimidation. Because the juvenile court’s disposition does not indicate which portion of it, if any, depended specifically on its intimidation finding, we remand for a new disposition.

The judgment of the juvenile court is affirmed in part, reversed in part, and remanded with instructions.

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