MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Amanda O. Blackketter
Blackketter Law, LLC
Shelbyville, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

George P. Sherman
Supervising Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Matter of K.B., a Child Alleged to be a Delinquent Child

Appellant-Respondent,

v.

State of Indiana,

Appellee-Petitioner.

May 17, 2022

Court of Appeals Case No. 21A-JV-2818

Appeal from the Decatur Circuit Court

The Honorable Timothy B. Day, Judge

Trial Court Cause Nos. 16C01-2108-JD-167 16C01-2102-JD-27

Bradford, Chief Judge.

Case Summary

[1] In March of 2021, fifteen-year-old K.B. was placed on nine months of supervised probation after admitting to being a delinquent child. On August 8, 2021, an Officer Moore responded to a call from K.B.'s mother, who reported that K.B. was walking around the house with a knife. K.B., who had become enraged because her stepfather had shut off the Wi-Fi, walked around the house with a knife, threatened to hurt her mother, and stabbed her bedroom wall. On August 18, 2018, the State filed a delinquency petition alleging that K.B. had committed what would be Level 6 felony intimidation if committed by an adult. Despite a warning by the juvenile court to comply with the terms of her probation before the dispositional hearing, K.B. subsequently fled parental supervision, failed to comply with electronic monitoring, refused to cooperate with therapy, refused to take medication for her behavior, and frequently tested positive for marijuana. The juvenile court then ordered K.B. to an indeterminate commitment to the Department of Correction ("DOC"). K.B. appeals, arguing that the State failed to prove that she had committed what would constitute Level 6 felony intimidation if committed by an adult and that the juvenile court abused its discretion by committing her to DOC. We affirm.

Facts and Procedural History

[2] On March 3, 2021, fifteen-year-old K.B. admitted to being a delinquent child for committing acts that would constitute the offenses of public intoxication and illegal consumption of an alcoholic beverage if committed by an adult, under

cause number 16C01-2102-JD-27 ("Cause No. JD-27"), and truancy, under cause number 16C01-2011-JS-206 ("Cause No. JD-206"). The juvenile court placed K.B. on nine months of supervised probation.

[3] On August 8, 2021, Officer Moore responded to K.B.'s residence in Greensburg because her mother reported that K.B. was walking around the house with a knife. When Officer Moore arrived, K.B. was sitting on the front porch and told him she had stabbed her bedroom wall with a knife. K.B.'s mother testified that K.B. had been enraged because her stepfather had shut off the Wi-Fi and that K.B. had walked around with a knife which she had used to stab her bedroom wall. When K.B. had entered the kitchen with the knife, a younger sibling had told K.B. "please don't hurt me," and K.B. had responded "It won't be you; it will be Mom." Tr. Vol. II p. 14.

[4] On August 18, 2018, the State filed a delinquency petition under cause number 16C01-2108-JD-167 ("Cause No. JD-167"), alleging that K.B. had committed what would be Level 6 felony intimidation if she were an adult. A fact-finding hearing was held on October 27, 2021, and the juvenile court found that K.B. had committed what would be Level 6 felony intimidation if committed by an adult under Cause No. JD-167 and that K.B. had violated her probation in Cause Nos. JD-27 and JS-206 by committing intimidation, missing probation meetings, and being suspended from school. The juvenile court set a disposition hearing for January 5, 2021, and admonished K.B. to comply with the terms of her probation and home detention in the meantime.

[5] In November of 2021, juvenile probation case manager Katrina Shrader received an alert that the battery for K.B.'s GPS monitor was dead. That same day, Shrader went to K.B.'s home, and K.B.'s mother stated that she had noticed that K.B. was missing that morning. K.B.'s bedroom window was open, and her mother stated that she did not know where she had gone. K.B. was eventually located and taken into custody.

[6] A detention hearing was held on November 19, 2021. Shrader testified as to K.B.'s disappearance earlier that month and that, between the October 27, 2021, fact-finding hearing and K.B.'s disappearance in November, she had not complied with the requirements of her home detention. The juvenile court ordered that K.B. would be held in detention until the dispositional hearing.

[7] The juvenile court held the dispositional hearing on November 30, 2021. The predispositional report prepared by the juvenile-probation department noted that K.B. was "actively us[ing] illegal substances" and that she had failed drugs screens multiple times, including for the use of THC and methamphetamine. App. Vol. II p. 111. The predispositional report stated that K.B. refused to cooperate with therapy, refused to take medication for her behavior, and frequently tested positive for marijuana. The predispositional report also indicated that delinquency petitions had been filed in Dubois and Daviess Counties in 2020 for several delinquent acts, including acts that would constitute battery and domestic battery if committed by an adult.

[8] The juvenile court ordered that K.B be placed in DOC for an indeterminate commitment and stated that, following the commitment, K.B. would be on probation until she was eighteen years old. The juvenile court noted that it was "absolutely okay with modifying" K.B.'s commitment to a less-restrictive placement and that if K.B. was successful in that environment, it would allow her to stay with her grandmother. Tr. Vol. II p. 76.

Discussion and Decision

I. Insufficient Evidence

[9] K.B. contends that the State produced insufficient evidence to sustain a finding that she committed the delinquent act of what would be Level 6 felony intimidation if committed by an adult. The standard of review for reviewing the sufficiency of the evidence to support a delinquency adjudication is the same as for reviewing the sufficiency of the evidence to support an adult criminal conviction. *A.E.B. v. State*, 756 N.E.2d 536, 540 (Ind. Ct. App. 2001).

> When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence

> overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146–47 (Ind. 2007) (cleaned up). Stated differently, "'[w]e affirm the judgment unless no reasonable factfinder could find the defendant guilty.'" *Mardis v. State*, 72 N.E.3d 936, 938 (Ind. Ct. App. 2017) (quoting *Griffith v. State*, 59 N.E.3d 947, 958 (Ind. 2016)). In order to prove that K.B. was delinquent for committing what would be Level 6 felony intimidation if she were an adult, the State was required to prove that K.B. was a child, *i.e.*, a person "who is less than eighteen years old," Ind. Code § 35-47-10-3, and that she communicated a "threat to commit a forcible felony" with "the intent[…] that another person engage in conduct against the other person's will[.]" Ind. Code § 35-45-2-1(b)(1)(A).

[10] K.B. argues that the State failed to present sufficient evidence that she communicated a threat to commit a forcible felony with the intent that a person engages in conduct against their will. The State filed a delinquency petition alleging that K.B. "did communicate a threat to commit a forcible felony with intent that a person engage in conduct against her will, Intimidation, Level 6 Felony, contrary to [Indiana Code section 35-45-2-1(b)(1)(A)][,]" ("subsection (b)(1)(A)"). Appellant's App. Vol. II p. 67. K.B. alleges that the State then failed to present evidence at the dispositional hearing as to what conduct she intended her mother to engage in against her will. Still, the juvenile court found that the State "made their burden and proved intimidation." Tr. Vol. II

p. 19. However, K.B. argues that the juvenile court was, in fact, relying on an unalleged portion of the intimidation statute, specifically Indiana Code section 35-45-2-1(a)(2) ("subsection (a)(2)"), which requires that "(a) A person […] communicates a threat with the intent […] (2) that another person be placed in fear of retaliation for a prior lawful act." The State argues on appeal that the juvenile court only "discussed" the unalleged subsection, and ultimately relied on subsection (b)(1)(A) in concluding that the State met its burden. The most relevant portion of this colloquy is as follows:

> [The State]: Your Honor, we heard that [K.B.'s mother] said that the encounter involves — all stemmed from the Wi-Fi being shut off, Your Honor, that the — the walking around, the threats all followed because of that, that the threat to like, for to — that [K.B.] was wanting [her mother] to turn the Wi-Fi back on, Your Honor. That was the —
>
> [K.B.'s counsel]: I would object to that, Your Honor. That was not testified to by the witness. I move to strike that.
>
> The Court: Okay. And again, that may be an inference I can draw for it but it was indirect evidence, so I'll allow the argument. It is argument, at this point, it's not evidence. Okay. So there's two prongs to intimidation. One is exactly what [the State] is arguing, that are threats with intent of another person, engage in conduct against their will, but there's a second part of intimidation which are threats made against another person and place them in fear of retaliation for a prior lawful act.
>
> So the prior [lawful] act that I heard was shutting off her Wi-Fi, which obviously angered her, and I — very brief testimony, but it was she was retaliating because of that, and what I heard was she had retrieved a knife from the kitchen, and when one of their — her siblings got upset and asked her not to hurt her, she said no, it won't be you, it will be mom, which is a — pretty much a direct threat of retaliating against her for that act.

> The threats could be made verbally and by actions, so I think brandishing the knife, making stabbing motions, or stabbing the wall in her room and again is in furtherance of that threatening nature, so I'm going to find that she — the State's made their burden and proved intimidation which would be a Level 6 felony if committed by an adult due to the knife being involved. So I'm making a finding that the juvenile's liable for that offense.

Tr. Vol. II p. 19–20.

[11] The juvenile court had ample evidence from which it could conclude that K.B. "did communicate a threat to commit a forcible felony with intent that a person engage in conduct against her will, Intimidation, Level 6 Felony, contrary to [Indiana Code 35-35-2-1(b)(1)(A)][,]" as alleged. Appellant's App. Vol. II p. 67. While K.B. argues that the juvenile court agreed with her argument at the dispositional hearing that the State had failed to present evidence concerning what conduct she wished her mother to engage in, that is not the case. Instead, the juvenile court acknowledged that it could draw the inference that K.B. intended her behavior to communicate the threat of violence to induce her mother to turn the Wi-Fi back on. We agree that such an inference is supported by the record. K.B.'s mother testified that K.B. was enraged because stepfather had shut off the Wi-Fi, K.B. threatened her stepfather, and K.B. walked around the house with a knife that she used to stab her bedroom wall. Further, when a younger sibling told K.B. "please don't hurt me," KB. said "It won't be you; it will be Mom." Tr. Vol. II p. 14. While the juvenile court may have discussed subsection (a)(1) of the intimidation statute, it did not specifically say that it had concluded that the State had failed to prove the elements of subsection

(b)(1)(A). We conclude that the State produced sufficient evidence to prove that K.B. had committed what would be intimidation if committed by an adult.

II. Abuse of Discretion

[12] K.B. contends that the juvenile court abused its discretion in ordering her committed to the DOC. A juvenile court is accorded "wide latitude" and "great flexibility" in its dealings with juveniles. *J.S. v. State*, 881 N.E.2d 26, 28 (Ind. Ct. App. 2008). "[T]he choice of a specific disposition of a juvenile adjudicated a delinquent child is a matter within the sound discretion of the juvenile court and will only be reversed if there has been an abuse of that discretion." *Id*. The juvenile court's discretion in determining a disposition is subject to the statutory considerations of the welfare of the child, the safety of the community, and the policy of favoring the least-harsh disposition. *Id*. An abuse of discretion occurs when the juvenile court's action is "clearly erroneous" and against the logic and effect of the facts and circumstances before it. *Id.*

[13] The goal of the juvenile process is rehabilitation rather than punishment. *R.H. v. State*, 937 N.E.2d 386, 388 (Ind. Ct. App. 2010). "Accordingly, juvenile courts have a variety of placement options for juveniles with delinquency problems, none of which are considered sentences." *Id.* Indiana Code section 31-37-18-6(1)(A) provides that "[i]f consistent with the safety of the community and the best interest of the child, the juvenile court shall enter a dispositional decree that is in the least restrictive (most family like) and most appropriate

setting available." "[T]he statute contains language that reveals that a more restrictive placement might be appropriate under certain circumstances." *J.S.*, 881 N.E.2d at 29. The law requires only that the disposition selected be the least restrictive disposition that is "consistent with the safety of the community and the best interest of the child." *D.S. v. State*, 829 N.E.2d 1081, 1085 (Ind. Ct. App. 2005). "When reviewing a claim of insufficient evidence regarding juvenile adjudications, we do not reweigh the evidence nor judge the credibility of witnesses, and we consider only the evidence and reasonable inferences favorable to the judgment." *C.S. v. State*, 953 N.E.2d 1144, 1145–46 (Ind. Ct. App. 2011).

[14] K.B. contends that the juvenile court abused its discretion in ordering her committed to DOC. Under the circumstances, we cannot agree. K.B. has had multiple occasions to correct her behavior and has failed to do so. After being declared a delinquent child in Cause Nos. JD-27 and. JS-206, K.B. committed what would be Level 6 Felony intimidation if committed by an adult. Before her dispositional hearing K.B. refused to cooperate with therapy, refused to take medication for her behavior, and frequently tested positive for marijuana, despite being given a prior admonishment by the court. Further, new delinquency petitions were filed in Dubois and Daviess Counties in 2020 for several delinquent acts, including what would be battery and domestic battery if committed by an adult. "Although options other than commitment to an institution are available for juvenile courts to utilize in dealing with a juvenile, there are times when commitment to a suitable public institution is in the best

interest of the juvenile and of society." *S.C. v. State*, 779 N.E.2d 937, 940 (Ind. Ct. App. 2002), *trans. denied*. We cannot say that the juvenile court abused its discretion in concluding that this is one of those times.

[15] K.B. argues that the juvenile court abused its discretion due to the fact that there was a less-restrictive placement available. K.B.'s argument is, essentially, that her grandmother would be able to provide K.B. with supervision; transportation to school, therapy, and other court-related evaluations; and a more stable environment generally. Further, K.B. argues that Rebecca Kime, a support specialist with the Indiana Public Defender Counsel, testified that K.B.'s placement with grandmother could be an appropriate option and placement in DOC generally increased the risk of recidivism. The juvenile court, however, was under no obligation to credit this evidence and was also in the best position to evaluate its significance if it did. Further, the record indicates that the juvenile court was open to the option of placing K.B. in a less-restrictive setting at some point, if appropriate, noting that it was "absolutely okay with modifying" if K.B. was successful. Tr. Vol. II p. 76. K.B.'s argument is nothing more than an invitation to reweigh the evidence, which we will not do. *See C.S.*, 953 N.E.2d at 1145–46.

[16] The judgment of the juvenile court is affirmed.

Najam, J., and Bailey, J., concur.