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IN THE COURT OF APPEALS OF INDIANA

A.D.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-1105-JV-451
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Geoffrey Gaither, Judge
Cause No. 49D09-1011-JD-3320

December 6, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

A.D. appeals a true finding that he committed an act that would constitute the offense of Attempted Robbery, a class B felony, if committed by an adult. Upon appeal, A.D. challenges only the sufficiency of the evidence supporting the true finding.

We affirm.

The facts favorable to the judgment are that on November 26, 2010, Larry Warren delivered a pizza on Planewood Drive in the Deer Run housing addition in Indianapolis. When he returned to his car, two juveniles accosted him at gunpoint and demanded money. Both assailants wore colorful jackets and one, later identified as A.D., wore a pilot-style hat that looped over his ears. A.D., who pointed the handgun at Warren during the confrontation, was the taller of the two. Warren fled on foot, attempting to call 9-1-1 while he ran. The two assailants pursued Warren, but abandoned the chase and fled when a vehicle pulled into the driveway of the home next door to the home to which Warren had made the delivery. That vehicle was driven by Takreemah Abdul'Halim. Takreemah was there to pick up her brother, Triant Abdul'Halim, who was waiting in the living room of that house. Triant saw some of what had occurred, including the two assailants chasing Warren past the window through which he was watching. Apparently, either Takreemah or Triant recognized the shorter of the two as someone who attended the local high school and lived somewhere near this neighborhood. This led the responding officer, Officer Gary Torres, to consult a local high school yearbook to verify the name. Having done that, he reviewed police records and developed a possible address for assisting officers to check. That address was in an adjoining housing development. Officer Christopher Dickerson drove to that address and found two persons fitting the description of the assailants. He detained them until Warren

could be transported to the scene for purposes of identification. Warren arrived on the scene and identified A.D. as one of the assailants who had attempted to rob him at gunpoint.

A.D. contends the evidence was insufficient to support his conviction. As in adult criminal cases, a true finding that a child committed a delinquent act must be based upon proof beyond a reasonable doubt. Ind. Code Ann. § 31–37–14–1 (West, Westlaw through end of 2011 1st Regular Sess.). We review sufficiency claims in this context utilizing the same standard employed in challenges to the sufficiency of evidence supporting adult criminal convictions. *See B.K.C. v. State*, 781 N.E.2d 1157 (Ind. Ct. App. 2003). Pursuant to that standard:

> [w]hen reviewing the sufficiency of the evidence needed to support a criminal conviction, we neither reweigh evidence nor judge witness credibility. *Henley v. State*, 881 N.E.2d 639, 652 (Ind. 2008). "We consider only the evidence supporting the judgment and any reasonable inferences that can be drawn from such evidence." *Id.* We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt. *Id.*

Bailey v. State, 907 N.E.2d 1003, 1005 (Ind. 2009).

A.D. challenges the sufficiency of the evidence identifying him as one of the two assailants. It appears that the basis of his challenge lies primarily in the fact that there was some confusion at the time of the delinquency hearing as to which person – Triant or Takreemah – initially recognized V.C. such that Officer Torres was prompted to consult a high school yearbook to identify V.C. as one of the suspects. As reflected above, this, in turn, led the officer to generate the nearby address where A.D. and V.C. were apprehended a short time later. Warren, the victim, was transported to the location where A.D. and V.C. were being detained forty-five minutes after the incident occurred and positively identified

them as his assailants. At the hearing, he was asked, "And are you certain that [V.C.] and [A.D.] are the persons who tried to take your money on October 26, 2010?" *Transcript* at 18. He answered, "Absolutely without a doubt." *Id*. Regardless of the uncertainty of the testimony of the two witnesses who were on the scene shortly after the victim was accosted, Warren was unequivocal in his identification of A.D. as a participant in the attempted robbery. The evidence was sufficient to sustain the true finding.

To the extent A.D. may be understood to argue that the show-up identification was unduly suggestive, it is without merit. Our Supreme Court has held that "[a] show-up procedure may be so unnecessarily suggestive and so conducive to irreparable mistake as to constitute a violation of due process of law under the Fourteenth Amendment." *Hubbell v. State*, 754 N.E.2d 884, 892 (Ind. 2001). When reviewing a claim that a show-up identification was impermissibly suggestive, we examine the totality of the circumstances surrounding the identification, including the following:

> (1) [T]he opportunity of the witness to view the criminal at the time of the crime; (2) the witness's degree of attention; (3) the accuracy of his or her prior description of the criminal; (4) the level of certainty demonstrated by the witness at the confrontation; and (5) the length of time between the crime and the confrontation.

Lyles v. State, 834 N.E.2d 1035, 1044-45 (Ind. Ct. App. 2005), *trans. denied*. "Identifications of a freshly apprehended suspect have been held to be not unnecessarily suggestive despite the suggestive factors unavoidably involved in such confrontations because of the value of the witness's observation of the suspect while the image of the offender is fresh in his mind." *Id*. at 1045 (quoting *Lewis v. State*, 554 N.E.2d 1133, 1135 (Ind. 1990)).

Warren testified that he was able to view A.D. for approximately ten to fifteen second before Warren took off running. The two were approximately fifteen feet apart. Although it was dark at the time, Warren testified that the area in which A.D. was standing was "lit up." *Transcript* at 22. Warren described the distinctive clothing A.D. was wearing at the time and A.D. was apprehended a short time later in a nearby location while wearing clothing that matched the description provided by Warren. Finally, Warren was unequivocal in his identification of A.D. Therefore, the show-up identification of A.D. as the person who attempted to rob him was not unduly suggestive.

Judgment affirmed.

DARDEN, J., and VAIDIK, J., concur