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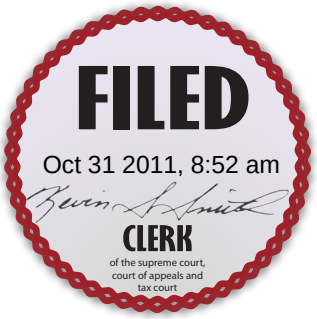


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# IN THE
# COURT OF APPEALS OF INDIANA

| | | |
|---|---|---|
| S.W., | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 49A04-1104-JV-190 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Gary Chavers, Judge Pro Tempore
The Honorable Geoffrey Gaither, Magistrate
Cause No. 49D09-1101-JD-25

**October 31, 2011**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**RILEY, Judge**

## STATEMENT OF THE CASE

Appellant-Respondent, S.W., appeals his adjudication as a delinquent child for attempted robbery, which would have been a Class C felony if committed by an adult, Ind. Code §§ 35-42-5-1; 35-41-5-1.

We affirm.

## ISSUE

S.W. raises one issue on appeal, which we restate as: Whether the State presented sufficient evidence to sustain S.W.'s adjudication as a delinquent child.

## FACTS AND PROCEDURAL HISTORY

At approximately 10:30 p.m. on December 17, 2010, Daniel Perry (Perry), a delivery driver for Dominos Pizza, made a delivery to a residence on Rochelle Road in Indianapolis, Indiana. The street lights were lit on both sides of the street and the residence's porch lights were on. As he was about to back out of the residence's drive-way, he noticed three people behind his vehicle. A young girl, who seemed happy and harmless, approached his car and knocked on the window. When Perry rolled down the window, the girl tried to open up the driver's side door. At that moment, a young male, later identified as S.W., also walked up to Perry's car. He yelled at Perry "to give it up" and to "get out of the car." (Transcript p. 8). S.W. demanded money from Perry and threw punches at him, some of which struck Perry and caused him pain. Perry managed to drive away and notify the police.

One hour later, at approximately 11:30 p.m., Indianapolis Metropolitan Police Detective Brian Hofmeister (Detective Hofmeister) showed Perry a photo array which

included a photo of one suspect—not S.W.—but Perry did not identify anyone. Around 1:30 a.m. that same night, Detective Hofmeister showed Perry a second, different photo array and Perry identified S.W. as the person who had tried to rob him and threw the punches. Perry testified that when he looked at the photo array, he looked at each picture in detail as he did not want to jump to any conclusion. When he identified S.W., Perry did not "have any [] reservations or doubts." (Tr. p. 22).

On January 7, 2011, the State filed a delinquency petition alleging that S.W. had committed attempted robbery, which would have been a Class C felony if committed by an adult. On March 2, 2011, the juvenile court conducted a fact-finding hearing, at the close of which the juvenile court entered a true finding on the attempted robbery allegation. On March 23, 2011, the juvenile court imposed a suspended commitment to the Department of Correction and placed S.W. on probation, with a probation end date scheduled for July 31, 2011. The juvenile court also entered a parental participation order.

S.W. now appeals. Additional facts will be provided as necessary.

## DISCUSSION AND DECISION

S.W. contends that the State failed to present sufficient evidence to sustain S.W.'s true finding for attempted robbery and his subsequent adjudication as a delinquent. When the State seeks to have a juvenile adjudicated to be a delinquent child, the State must prove every element of that offense beyond a reasonable doubt. *C.T.S. v. State*, 781 N.E.2d 1193, 1200 (Ind. Ct. App. 2003), *trans. denied*. Upon review, we will not reweigh the evidence or judge the credibility of the witnesses. *Id*. Rather, this court

looks to the evidence and the reasonable inferences therefrom that support the true finding, and we will confirm a conviction of evidence if probative value exists from which the factfinder could find the defendant guilty beyond a reasonable doubt. *Id.* Thus, we will affirm the finding of delinquency unless it may be concluded that no reasonable factfinder could find the elements of the crime proven beyond a reasonable doubt. *Id.*

In order to adjudicate S.W. of attempted robbery, the State was required to establish the elements of the robbery statute and the attempt statute. The robbery statute, I.C. § 35-42-5-1, provides that

> A person who knowingly or intentionally takes property from another person or from the presence of another person:
> (1) by using or threatening the use of force on any person; or
> (2) by putting any person in fear;
> commits robbery, a Class C felony.

The attempt statute, I.C. § 35-41-5-1, reads, in pertinent part, that "a person attempts to commit a crime when, acting with the culpability required for commission of the crime, he engages in conduct that constitutes a substantial step toward commission of the crime." Although S.W. does not outright challenge the State's evidence establishing that an attempted robbery occurred, S.W. argues that the State failed to prove S.W. was involved in the attempted offense.

S.W.'s contention in essence amounts to an invitation to reweigh the evidence and to discredit Perry's testimony, even though the juvenile court found Perry to be a credible witness. We decline S.W.'s invitation. *See C.T.S.*, 781 N.E.2d at 1200. Nevertheless, it should be noted that Perry testified that, when presented with the photo arrays, he

carefully looked at each photo as he did not want to jump to any conclusion. When he identified S.W. in the second photo array, Perry told the juvenile court that he did not "have any [] reservations or doubts." (Tr. p. 22). The area was well-lit and S.W. made a lasting impression on Perry as he was the perpetrator throwing punches at him. Furthermore, the State presented evidence indicating that Detective Hofmeister did not improperly coach Perry during the photo array identification. As such, we will not disturb the juvenile court's province to determine the credibility of the witnesses and we will not re-evaluate that decision on appeal.

## CONCLUSION

Based on the foregoing, we conclude that the State presented sufficient evidence to sustain S.W.'s adjudication as a delinquent child.

Affirmed.

NAJAM, J. and MAY, J. concur