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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF M.P.T.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 70A04-0706-JV-326
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE RUSH CIRCUIT COURT
The Honorable Brian D. Hill, Special Judge
Cause No. 70C01-0702-JD-5

December 28, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

M.T. appeals his adjudication for being a delinquent child for shooting at an animal from or across a public highway. We reverse.

Issue

The dispositive issue is whether there is sufficient evidence to support the delinquency adjudication.

Facts

The evidence most favorable to the delinquency adjudication is that at about 8:30 p.m. on December 23, 2006, seventeen-year-old M.T. decided to go raccoon hunting with a friend, B.C. M.T. drove to a bridge on County Road 350 East in Rush County, accompanied by B.C.

Wayne Elwell lived about 300 to 350 feet from the bridge. He noticed M.T.'s vehicle near the bridge and also saw a spotlight, apparently coming from the truck. He then heard a gunshot fired, but he did not see a flash or anything else to indicate from where the shot had been fired. Elwell called the Rush County Sheriff's Department and requested that a deputy come to the scene. Elwell then heard a second gunshot and saw someone in a ditch beside the road.

After the second shot was fired, M.T. drove away. Sheriff's Deputy William Chandler arrived on the scene shortly thereafter and passed M.T. heading in the opposite direction. Deputy Chandler then turned around and began chasing M.T. It took several miles and speeds in excess of 100 miles per hour before Deputy Chandler finally caught up with M.T. However, at no time had Deputy Chandler activated his emergency lights,

until just before he approached M.T.'s already-stopped vehicle by the side of a road. M.T. was in the driver's seat of the vehicle and B.C. was a passenger. Deputy Chandler found in M.T.'s vehicle a loaded .22 caliber rifle, a handheld spotlight, and a dead raccoon.

On March 5, 2007, the State filed a petition alleging M.T. was a delinquent child, and the trial court approved the filing. The petition alleged that M.T. violated Indiana Code Section 14-22-6-9, which criminalizes hunting or shooting from or across a public highway. After a fact-finding hearing held on April 26 and May 17, 2007, the trial court found the allegations of petition to be true and adjudicated M.T. to be a delinquent child.[1] M.T. now appeals.

Analysis

M.T. contends the State presented insufficient evidence to support the delinquency adjudication. If the State seeks to have a juvenile adjudicated to be a delinquent for committing an act that would be a crime if committed by an adult, it must prove every element of the crime beyond a reasonable doubt. J.S. v. State, 843 N.E.2d 1013, 1016 (Ind. Ct. App. 2006), trans. denied. Upon review of a delinquency adjudication, we will consider only the evidence and reasonable inferences supporting the judgment. Id. "We will neither reweigh the evidence nor judge witness credibility." Id. If there is substantial evidence of probative value from which a reasonable trier of fact could

[1] Although B.C. originally had been charged with being a delinquent child for this incident, that proceeding was dismissed after M.T. was found to be delinquent.

conclude beyond a reasonable doubt that the juvenile committed the delinquent act, we will affirm the adjudication. Id.

We also observe that evidence of guilt of substantial and probative value, as required to affirm a delinquency finding on appeal, requires more than a mere scintilla of evidence. See Short v. State, 564 N.E.2d 553, 557 (Ind. Ct. App. 1991). Evidence that only tends to support a conclusion of guilt is insufficient to sustain a conviction or adjudication, as evidence must support the conclusion of guilt beyond a reasonable doubt. See id. (citing Vuncannon v. State, 254 Ind. 206, 258 N.E.2d 639 (1970)). Circumstantial evidence must do more than merely tend to arouse suspicion of guilt in order to support a conviction or delinquency finding. See Marrow v. State, 699 N.E.2d 675, 677 (Ind. Ct. App. 1998).

The State alleged that M.T. violated Indiana Code Section 14-22-6-9, which provides: "A person may not: (1) hunt, shoot, shoot at, or kill an animal; or (2) shoot at an object; from within, into, upon, or across a public highway in Indiana." The offense is a Class C misdemeanor if committed by an adult. See Ind. Code § 14-22-38-1. On appeal, the State's sufficiency argument focuses solely upon whether M.T. shot or shot at raccoons from the road, not whether he hunted or killed them from the road.

Here, Elwell was the only testifying witness to the gunshots that were fired in the general vicinity of M.T.'s vehicle. Although we say "witness," however, Elwell never testified that he saw any shots being fired "from within, into, upon, or across" County Road 350 East. The State argues that it nevertheless can be inferred that one or both gunshots were fired from M.T.'s vehicle while it was on the road. We conclude that

making such an inference beyond a reasonable doubt in this case stretches the concept of circumstantial evidence beyond its breaking point.

We keep in mind that this incident occurred well after sundown. As for the first gunshot, there does not appear to be any testimony by Elwell that he even was looking in the general direction of M.T.'s vehicle when he heard it. In fact, he testified, in response to the prosecutor's question, that he was unable "to see a flash or anything that would indicate . . . where the shot was coming from." Tr. p. 45. With respect to the second gunshot, Elwell testified, "I stood there in the window and kept watching and a short period of time later I see the vehicle move in reverse, hear the second shot. I see someone going into the ditch. I made my second call to the Sheriff's Department." Tr. p. 45. This testimony was not followed by any questions as to whether Elwell actually could see from where the shot had been fired. Nor is the testimony clear that Elwell saw someone exit the vehicle only after the second shot had been fired. The testimony also does nothing to refute the possibility that someone already was outside the vehicle when the shot was fired.

Both M.T. and B.C. were raccoon hunting. It is impossible to discern from Elwell's testimony that any gunshots were fired from M.T.'s vehicle while it was on County Road 350 East, or across or from within that road, as opposed to being fired by someone standing off the side of the road while the other person drove the vehicle and/or shined a spotlight on raccoons from the vehicle. In sum, Elwell's testimony amounts only to a scintilla of evidence that someone <u>might</u> have fired a gun from within or across the road. It is not substantial and probative evidence of M.T.'s guilt.

The State also asserts that there is evidence of M.T.'s guilt in his alleged high-speed flight from Deputy Chandler. It is questionable whether M.T.'s driving away from the scene could be considered "flight," when Deputy Chandler did not activate his emergency lights until after he came upon M.T.'s vehicle already stopped by the side of the road. In any event, evidence of flight is not probative unless tied to some other evidence that is strongly corroborative of the actor's intent to commit a specific crime. Anderson v. State, 774 N.E.2d 906, 910 (Ind. Ct. App. 2002). The other evidence must provide a solid basis to support a reasonable inference that the defendant intended to commit the underlying, specifically charged crime. Id. The crime M.T. allegedly committed was a violation of an obscure hunting statute; it was not an obvious wrongful act, unlike murder or robbery, for example. We already have recounted the weakness of the circumstantial evidence that M.T. violated that statute. We cannot say M.T.'s alleged flight from the scene is strongly corroborative of any intent on M.T.'s part to violate the statute.

Conclusion

There is insufficient evidence to support M.T.'s delinquency adjudication. We reverse.

Reversed.

SHARPNACK, J., and VAIDIK, J., concur.