

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



ATTORNEYS FOR APPELLANT

Valerie K. Boots
Marion County Public Defender Agency
Indianapolis, Indiana
Jan B. Berg
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana
Kelly A. Loy
Deputy Attorney General
Brandon D. Smith
Certified Legal Intern
Indiana University Maurer School
of Law
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Bennett L. Houston,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 1, 2023

Court of Appeals Case No.
23A-CR-1725

Appeal from the Marion Superior
Court

The Honorable Cynthia L. Oetjen,
Judge

Trial Court Cause No.
49D30-2012-F2-35968

Memorandum Decision by Judge Bailey
Judges May and Felix concur.

Bailey, Judge.

Case Summary

- [1] Bennett Houston appeals his conviction for attempted robbery, as a Level 2 felony.¹ Houston raises one issue for our review, namely, whether the State presented sufficient evidence to support his conviction. We affirm.

Facts and Procedural History

- [2] On November 28, 2020, Jose Torres was selling items at a “yard sale” on the corner of Pendleton Pike and Shadeland Avenue in Indianapolis. Tr. Vol. 3 at 86. That evening, as he was packing up to leave, Torres felt someone approach him from behind. Torres turned around and saw a black male wearing a “fabric” mask. *Id.* at 87. The male said: “give me your money.” *Id.* at 86. Torres initially thought it was a joke, but when the male demanded money for the third time, he pulled a gun from behind his back. The male pointed the gun at Torres and fired, but Torres was able to move such that the bullet missed him. Torres then grabbed the barrel of the gun and “moved it downwards[.]” *Id.* at 89. The man “continued shooting” and struck Torres in the leg at least two times. *Id.* Torres and the man continued to struggle for control of the gun, and Torres called for help.

¹ Ind. Code §§ 35-42-5-1(a), 35-41-5-1 (2023).

- [3] Torres' friend, Luis Garcia, heard the shots and saw Torres and the male "struggling." *Id.* at 101. Garcia also heard Torres' request for help but did not initially get involved because of the gun. However, Torres and the other man fell to the ground, and Garcia and other individuals intervened and ultimately removed the gun from the man's possession. At some point, other witnesses called the police. After the man lost possession of the gun, Garcia watched him walk away and "follow[ed] him." *Id.* at 103.
- [4] Officers then arrived at the scene of the shooting. Indianapolis Metropolitan Police Detective Desiree Biggers saw that several people were pointing in a specific direction. Detective Biggers drove in that direction and came into contact with Garcia. Garcia told police that the man he had followed "was the one they were looking for." *Id.* at 104. Officers stopped the male, identified him as Houston, and arrested him.
- [5] The State charged Houston with attempted robbery, as a Level 2 felony, and unlawful possession of a firearm by a serious violent felon, as a Level 4 felony.² The State also alleged that he was a habitual offender.³ The court held a bifurcated jury trial on June 5 and 6, 2023. During the first phase of the trial, Torres testified to the events that had occurred. In addition, Garcia testified that he had followed the shooter, that he had the shooter "in his sights when he

² I.C. § 35-47-4-5(c).

³ I.C. § 35-50-2-8.

saw the police,” and that he had never “los[t] sight of” the shooter. *Id.* at 105. Garcia reiterated that the person he had followed was “the same person that [he] saw fighting with Jose Torres over the gun.” *Id.* at 133.

[6] At the conclusion of the first phase of the trial, the jury found Houston guilty of attempted robbery, and the State moved to dismiss the charge of unlawful possession of a firearm, which motion the court granted. Houston then admitted to being a habitual offender. The court entered judgment of conviction accordingly and sentenced Houston to an aggregate term of thirty years in the Department of Correction. This appeal ensued.

Discussion and Decision

[7] Houston contends that there was insufficient evidence to support his conviction for attempted robbery. Our standard of review on a claim of insufficient evidence is well settled:

For a sufficiency of the evidence claim, we look only at the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We do not assess the credibility of witnesses or reweigh the evidence. *Id.* We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Id.*

Love v. State, 73 N.E.3d 693, 696 (Ind. 2017).

[8] To show that Houston committed attempted robbery, as a Level 2 felony, the State was required to show that he knowingly or intentionally engaged in

conduct constituting a substantial step toward taking property from Torres by force or threat of force resulting in serious bodily injury to Torres. *See* Ind Code §§ 35-41-5-1 and 35-45-5-1(a). On appeal, Houston does not dispute that someone had attempted to rob Torres. *See* Appellant’s Br. at 8. Rather, Houston only contends that the State failed to prove that he was the person who had committed the offense.

[9] In particular, Houston asserts that, even though Torres struggled “up close with his attacker,” Torres “did not identify Bennett Houston as the individual who accosted and shot him.” *Id.* Houston also contends that “not one of” the witnesses who testified at his trial “was able to identify [him] as that individual.” *Id.* Houston also points to the “varying descriptions of the assailant” that the witnesses gave at trial and to the lack of “physical evidence” linking him to the crime to support his contention that the State failed to prove that he was the person who had shot Torres. *Id.* at 9, 11. However, Houston’s contention on appeal is simply a request that we reweigh the evidence, which we cannot do.

[10] The evidence most favorable to the verdict demonstrates that a black male attempted to rob Torres. The two struggled, during which time the man shot Torres at least twice, and they ultimately fell to the ground. After bystanders intervened and obtained the gun from the man’s possession, the man walked away. Luis Garcia, who had witnessed the struggle, “follow[ed]” the male and pointed him out to police as “the one they were looking for.” Tr. Vol. 3 at 103-04. Garcia testified that he never “lost sight” of the male. *Id.* at 104. And he

reiterated that the person he had followed that day was “the same person that [he] saw fighting with Jose Torres over the gun.” *Id.* at 133.

[11] In addition, Victor Mejia, another witness to the incident testified that, once the male lost the gun, he left, and Garcia followed. Mejia also confirmed that the man that Garcia had followed “is the one that was initially fighting with” Torres. *Id.* at 124. Detective Biggers then testified that, when she arrived at Garcia’s location, Garcia was “pointing at an individual,” who she was able to identify as Houston. *Id.* at 162. And Detective Biggers testified that there was nobody else “present that Luis Gargia could have been indicating to.” *Id.* at 167.

[12] Further, while the testifying witnesses did not describe the man who had struggled with Torres in exactly the same manner, they each provided testimony that was consistent with each other. Indeed, Garcia testified that the man was “dressed in all black.” *Id.* at 105. In addition, Garcia’s wife testified that the person who had struggled with Torres was a “kind of short” black man who “had on black clothes.” *Id.* at 112. Further, Mejia testified that the unknown man was a “black man” who was “a little bit chubby.” *Id.* at 120. Another witness, Bayron Perez, testified that the person who had fired the shots was a “chubby” black man. *Id.* at 153. And Detective Gregory Shue testified that, when he apprehended Houston, Houston was wearing “a black shirt” and “black pants.” *Id.* at 172.

[13] In other words, the evidence demonstrates that the person who had attempted to rob Torres was a black man who was wearing all black. The evidence also shows that Garcia saw the person who had struggled with Torres, followed that person after the altercation, and ultimately pointed that person out to police. And officers positively identified that person as Houston, who is a black male that was dressed in black at the time of his arrest. Based on that evidence, a reasonable fact-finder could conclude that Houston is the individual who had attempted to rob Torres. As such, we conclude that the State presented sufficient evidence to prove that Houston is the person who attempted to rob Torres. We affirm Houston's convictions.

[14] Affirmed.

May, J., and Felix, J., concur.