

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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J.J.,  
*Appellant-Respondent*,  
  
v.  
  
State of Indiana,  
*Appellee-Petitioner*.

August 14, 2023  
  
Court of Appeals Case No.  
22A-JV-2532  
  
Appeal from the  
Marion Superior Court  
  
The Honorable  
Danielle P. Gaughan, Judge  
  
The Honorable  
Tara Y. Melton, Magistrate  
  
Trial Court Cause No.  
49D15-2208-JD-6418

**Memorandum Decision by Senior Judge Baker**  
Judges Vaidik and Pyle concur.

**Baker, Senior Judge.**

## Statement of the Case

- [1] J.J. appeals his adjudication as a juvenile delinquent based on a true finding for the offense of criminal recklessness, a Level 6 felony if committed by an adult,<sup>1</sup> challenging the sufficiency of the evidence. Having reviewed the evidence most favorable to the true finding, we find the evidence insufficient and reverse.

## Facts and Procedural History

- [2] On August 23, 2022, J.J. was at his home in Indianapolis with his father, Jason Johnson; his stepmother, Chantia Johnson; and his stepsister, Kaiy'la Andrews.<sup>2</sup> There were other individuals present in the home, including J.J.'s other siblings and Chantia's friend. At some point, J.J. and Jason went into the living room alone and engaged in an argument that ended when Jason took a gun from J.J. Jason placed the gun on top of a cabinet in the kitchen. J.J. left and later returned to the property with a different handgun and fired shots outside. Officers responded to the scene, interviewed witnesses, and collected the gun that had been placed on top of the kitchen cabinet.

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<sup>1</sup> Ind. Code § 35-42-2-2 (2019).

<sup>2</sup> Because multiple parties share the same last name, we will refer to all parties by their first names.

[3] Based on this incident, the State filed a delinquency petition alleging J.J. committed criminal recklessness, a Level 6 felony if committed by an adult, and dangerous possession of a firearm, a Class A misdemeanor if committed by an adult. Following a fact-finding hearing, the court entered true findings on both counts and placed J.J. on probation. J.J. now appeals.

## Discussion and Decision

[4] J.J. argues there was insufficient evidence to support a true finding of criminal recklessness. When the State seeks to have a juvenile adjudicated a delinquent for committing an act that would be a crime if committed by an adult, the State must prove every element of the offense beyond a reasonable doubt. *C.L. v. State*, 2 N.E.3d 798, 800 (Ind. Ct. App. 2014). When reviewing on appeal the sufficiency of the evidence supporting a juvenile adjudication, we neither reweigh the evidence nor judge the credibility of the witnesses. *Z.A. v. State*, 13 N.E.3d 438, 439 (Ind. Ct. App. 2014). We consider only the evidence most favorable to the judgment and the reasonable inferences therefrom, and we will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. *C.L.*, 2 N.E.3d at 800.

[5] To sustain a true finding for criminal recklessness in this case, the State must have proved beyond a reasonable doubt that (1) J.J. (2) recklessly, knowingly, or intentionally (3) with a firearm (4) shot at Jason Johnson (5) creating a substantial risk of bodily injury to Jason Johnson. *See Appellant's App. Vol. II*,

p. 18; *see also* Ind. Code § 35-42-2-2. To fulfill its burden of proof, the State presented the testimony of Chantia, Jason, and Detective Meyer.

[6] Chantia testified that she was in the kitchen while Jason and J.J. were in the living room having a discussion. Jason came into the kitchen with a handgun that he placed on top of a kitchen cabinet, telling Chantia it was J.J.'s. Chantia further testified the gun remained on top of the cabinet until the police seized it. While everyone else went outside, Chantia remained in the house. She testified she heard gunshots outside and called the police.

[7] Next, Jason testified that while he and J.J. were having a discussion, he saw a handgun in J.J.'s pocket. Jason took the gun from J.J. and put it on top of the kitchen cabinet. Jason testified that J.J. left the house, and then came back and argued with him. Although Jason acknowledged telling officers at the scene that it was J.J. who fired the shots, he testified that “[a]t that point in time, I thought it was him. But as I did my research and I thought the police was going to do. It wasn’t him.” Tr. Vol. II, pp. 24-25. When asked how Jason knew it was not J.J. firing the shots, he responded that he talked to some of the neighbors. In addition, when Jason was asked if it was his testimony that he did not see J.J. fire a gun on that day, Jason responded affirmatively.

[8] Indianapolis Metropolitan Police Department Detective Scott Meyer was the final witness for the State. He testified that the police seized the gun from the top of the kitchen cabinet.

[9] As part of his insufficient evidence claim, J.J. argues that a portion of Jason's testimony is impeachment evidence and thus may not be considered substantive evidence of J.J.'s guilt. The State contends that J.J. has waived this argument on appeal because he did not ask the trial court to limit the admissibility of the evidence. During direct examination by the State, Jason testified as follows:

Q What happened after you put the gun on top of the kitchen cabinet?

A [J.J.] left out of the door.

Q And after [J.J.] left the house what happened next?

A He left out and came back.

Q When he came back to the house, what did he do next?

A He cussed me out pretty much.

Q I am sorry, can you repeat that?

A Cussed me out pretty much. We got into an argument.

Q Okay. Do you remember hearing gunshots that day?

A Yes, but it wasn't from him.

Q Do you know?

A I talked to some of the neighbors in the neighborhood.

Q So when you heard shots where were you?

A I was outside.

Q How many shots did you hear?

A Two.

Q Okay and you remember talking with the police that day?

A Yes.

Q And you remember telling police that [J.J.] left the residence and returned with a handgun and started firing shots?

A At that point in time, I thought it was him. But as I did my research and I thought the police was going to do. It wasn't him.

Q Okay, but did you tell police that?

A I did, but it wasn't him.

*Id.* The classification of this evidence as either impeachment or substantive is irrelevant. Even if classified as substantive, taken together with all other evidence favorable to the true finding, this evidence is insufficient to prove J.J.'s guilt beyond a reasonable doubt.

[10] To sustain a true finding, the State must have proved beyond a reasonable doubt that J.J. shot at Jason and, by doing so, created a substantial risk of bodily injury to Jason. At best, the evidence pertaining to whether J.J. shot a gun on August 23, 2022, is conflicting. Moreover, the record is completely lacking in any evidence that J.J. shot a gun at Jason or acted in a manner so as to create a substantial risk of bodily injury to Jason as required by the charge in this case.

## Conclusion

[11] We conclude the evidence is insufficient to support a true finding of criminal recklessness and reverse accordingly.

[12] Reversed.

Vaidik, J., and Pyle, J., concur.