MEMORANDUM DECISION

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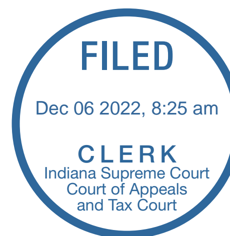

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IN THE COURT OF APPEALS OF INDIANA

A.M.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Petitioner.

December 6, 2022

Court of Appeals Case No. 22A-JV-755

Appeal from the Marion Superior Court

The Honorable Geoffrey A. Gaither, Judge

Trial Court Case No. 49D09-2109-JD-7709

Shepard, Senior Judge.

[1] Alleging the State's evidence is insufficient, A.M. appeals his adjudication as a juvenile delinquent based on true findings for the offenses of burglary, a Level 2

felony if committed by an adult,[1] and resisting law enforcement, a Class A misdemeanor if committed by an adult.[2] We affirm.

Facts and Procedural History

[2] In September 2021, Michael Fox and his roommate Tammy Bursley were robbed at gunpoint in their apartment by several young men. Officer Tomes of the Indianapolis Metropolitan Police Department, who was nearby, received information of the robbery from police dispatch. At an intersection near the location of the robbery, Officer Tomes saw three individuals walking in the direction opposite of where the robbery occurred. The officer activated his lights, and the individuals fled. Four juveniles were later apprehended, including A.M.

[3] Based on this incident, the State filed a delinquency petition alleging that A.M. committed two counts of burglary, both as Level 2 felonies if committed by an adult; two counts of armed robbery, both as Level 3 felonies if committed by an adult; intimidation, a Level 5 felony if committed by an adult; pointing a firearm, a Level 6 felony if committed by an adult, dangerous possession of a firearm, a Class A misdemeanor if committed by an adult; carrying a handgun without a license, a Class A misdemeanor if committed by an adult; resisting law enforcement, a Class A misdemeanor if committed by an adult; and

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[1] Ind. Code § 35-43-2-1 (2014).

[2] Ind. Code § 35-44.1-3-1 (2021).

possession of marijuana, a Class B misdemeanor if committed by an adult. Following a fact-finding hearing, the court entered a true finding on one count each of burglary and resisting.

[4] At a disposition hearing, the court ordered a suspended commitment to the Department of Correction, placed A.M. on probation with GPS monitoring, and ordered that A.M. participate in the Intercept Program and the New Boy mentoring program. A.M. now appeals.

Discussion and Decision

[5] A.M. contends the State's evidence is insufficient as to both of his adjudications. 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 (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. v. State*, 2 N.E.3d 798 (Ind. Ct. App. 2014).

A. Burglary

[6] A.M.'s challenge to the sufficiency of the evidence for his burglary adjudication rests on his contention that Fox's hearing testimony was incredibly dubious.

[7] The incredible dubiosity rule has a very limited scope, such that appellate courts may apply it to impinge upon the factfinder's function to judge the credibility of

a witness only when confronted with inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiosity. *Whatley v. State*, 908 N.E.2d 276 (Ind. Ct. App. 2009), *trans. denied*. Stated another way, a defendant's conviction may be reversed only where a sole witness presents inherently contradictory testimony which is equivocal or the result of coercion and there is a complete lack of circumstantial evidence of guilt. *Id.* Application of this rule is rare, and it is limited to cases where the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it. *Fajardo v. State*, 859 N.E.2d 1201 (Ind. 2007).

[8] In support of A.M.'s incredible dubiosity argument, he alleges Fox's testimony was (1) equivocal, (2) contradictory, and (3) uncorroborated.

[9] First, although acknowledging that Fox identified him as having participated in the home invasion/burglary, A.M. claims Fox's testimony was incredibly dubious because it was "uncertain and ambiguous" due to Fox's use of equivocal terms such as "believe" and "pretty sure." Appellant's Br. p. 16. During direct examination by the State, Fox identified A.M. at the fact-finding hearing:

> Q Do you see in this courtroom any of the individuals involved in the robbery of your home?
>
> A Yes, I do.
>
> Q Do you need masks removed or can you tell?
>
> A Most of them wore masks when it happened and it's more through facial features and builds that I was able to recognize them.

Q Okay. Point out the first one you recognize[] so we can see who they are.

. . . .

A The tall individual in the blue NBA shirt.

STATE: Your [H]onor, witness has identified [A.M.], what's [A.M.]'s last name, [A.M.'s last name].

Tr. Vol. II, pp. 16-17. Later, during cross examination by A.M.'s counsel about the show-up police conducted the night of the burglary, Fox testified as follows:

Q And you did not identify my client during that show up, correct?

A No, I believe I did.

Q But you're not sure, right?

A I'm pretty sure.

. . . .

Q So, it's possible that you're mixed up today about who you did or didn't identify, isn't it?

A Yes.

Id. at 23, 24.

[10] Fox's testimony was not incredibly dubious; rather, he clearly and unequivocally identified A.M. His use of uncertain terms came when he was asked about whether he identified A.M. at the show-up the night of the burglary. Fox was uncertain whether he in fact identified A.M. at the show-up; he was not uncertain about his in court identification of A.M. *See Glenn v. State*, 884 N.E.2d 347 (Ind. Ct. App. 2008) (reiterating that incredible dubiosity rule

applies only when witness contradicts himself in a single statement or while testifying, thus providing *inherently* contradictory statement), *trans. denied*.

[11] Next, A.M. asserts that Fox's in court identification contradicted the detective's testimony and other evidence. However, these types of evidence cannot support an allegation of incredible dubiosity. *See Whatley*, 908 N.E.2d 276 (application of the rule is limited to cases where *single witness* presents inherently contradictory testimony); *see also id.*

[12] Additionally, to the extent that A.M. challenges Fox's identification testimony because it contradicts his own prior statements, we cannot agree. Discrepancies between a witness's pretrial statements and trial testimony go to the weight of the testimony and the credibility of the witness, but they do not render the testimony incredibly dubious. *Chambless v. State*, 119 N.E.3d 182 (Ind. Ct. App. 2019), *trans. denied*; *see also Glenn*, 884 N.E.2d 347 (application of rule of incredible dubiosity is limited to cases where witness contradicts himself while testifying or in a single statement, not to conflicts between multiple statements).

[13] Finally, A.M. refers to the fact that Fox's testimony was uncorroborated. Yet, a determination of juvenile delinquency may be supported by only the uncorroborated testimony of a victim. *D.P. v. State*, 80 N.E.3d 913 (Ind. Ct. App. 2017). Thus, we conclude there is no basis here for application of the extraordinary rule of incredible dubiosity.

B. Resisting Law Enforcement

[14] A true finding for resisting required evidence that (1) A.M. (2) knowingly or intentionally (3) fled from a law enforcement officer (4) after the officer, by visible or audible means, including operation of the siren or emergency lights, identified himself and ordered A.M. to stop. *See* Ind. Code § 35-44.1-3-1(a)(3). A.M. challenges the State's evidence as to his identity and the officer's order to stop.

[15] At the fact-finding, Officer Tomes testified that, when he received the dispatch concerning the home invasion/burglary, he was nearby. He estimated that the crime occurred five to ten minutes before he received the dispatch. About one minute later, as he approached an intersection less than a mile away from where the burglary occurred, he saw three individuals crossing the street walking in the direction opposite of the location of the burglary. The officer further testified that "there was an immediate change in their behavior when they saw my police car coming their direction." Tr. Vol. II, p. 35. "They kept looking over their shoulder[s] at my car, watching what I was doing," and then "they began splitting apart and walking in different directions." *Id.* The officer stated that he was in a fully marked police car, and when he activated his lights, the individuals immediately fled. When asked whether he gave any verbal commands for the juveniles to stop, Officer Tomes responded that he did not give a verbal command and that he did not have a chance to do so because they fled. *Id.* at 41-42. Officer Tomes described the individuals as: "three black male juveniles wearing all dark clothing." *Id.* at 35. One male was

apprehended by police after fleeing. A K-9 unit was then brought in to conduct a track, which gave rise to police detaining two other males and, later, a fourth male.

[16] A.M.'s challenge to the evidence identifying him as one of the burglars is an invitation to reweigh the evidence, which we cannot do. *See Z.A.*, 13 N.E.3d 438. While Officer Tomes was unable to identify A.M. specifically as one of the juveniles who fled from him, A.M. matched the general description of the young men; he was in attire similar to that described by Officer Tomes; he was found in an area in close proximity to the burglary location; he was found in the same area as the other three juveniles; and he was located by K-9 tracking. The identity of the perpetrator of an offense may be established solely by circumstantial evidence and logical inferences drawn therefrom. *D.G. v. State*, 947 N.E.2d 445 (Ind. Ct. App. 2011). The above facts and their inferences support the trial court's judgment.

[17] A.M. also disputes the sufficiency of the evidence as to the officer's order to stop. The evidence is undisputed that Officer Tomes did not audibly order the juveniles to stop. Accordingly, the issue is whether the evidence supports the conclusion that the officer visibly ordered A.M. to stop.

> A police officer's order to stop need not be limited to an audible order to stop. The order to stop may be given through visual indicators. Evidence of a proper visual order to stop is based on the circumstances surrounding the incident and whether a reasonable person would have known that he or she had been ordered to stop.

Conley v. State, 57 N.E.3d 836, 838 (Ind. Ct. App. 2016) (quoting *Vanzyll v. State*, 978 N.E.2d 511, 516 (Ind.Ct.App.2012)), *trans. denied*.

[18] Here, the record shows that Officer Tomes was in a fully marked police car, which the young men apparently saw approaching. The juveniles continued to look back toward Officer Tomes' police car before they began to split up. Once the officer activated his car's emergency lights, the young men fled. This evidence demonstrates that the officer, by visible means, ordered the juveniles to stop. Under these circumstances, a reasonable person would have interpreted the officer's activation of his car's emergency lights as a visual command to stop, and Officer Tomes' testimony supports a reasonable inference that the juveniles saw the officer and saw the lights but proceeded to flee. *See Spears v. State*, 412 N.E.2d 81 (Ind. Ct. App. 1980) (holding that evidence was sufficient to establish visual order to stop where police officer approached car with police badge and radio in hand and gun in sight and came within three feet of defendant).

[19] Lastly, A.M. claims that Officer Tomes lacked reasonable suspicion to stop him. The statutory element "after the officer has, by visible or audible means, including operation of the law enforcement officer's siren or emergency lights, identified himself or herself and ordered the person to stop" requires that such order to stop rest on reasonable suspicion. *Gaddie v. State*, 10 N.E.3d 1249 (Ind. 2014). Reasonable suspicion arises from specific, articulable facts that would lead the officer to reasonably suspect that criminal activity is afoot. *Id.* And

nervous, evasive behavior is a pertinent factor in determining reasonable suspicion. *Id.*

[20] In this case, Officer Tomes testified that he had just received a dispatch for a home invasion/burglary that had occurred nearby and involved five individuals. About one minute later and less than a mile away from where the burglary occurred, the officer saw three individuals crossing the street walking in the direction opposite that of the burglary. Officer Tomes testified that he works this area frequently and "at least ten times a night I drive through that intersection and foot traffic is extremely rare in that area." Tr. Vol. II, p. 34. The officer also noticed that these individuals changed their behavior when they saw his police car and repeatedly looked over their shoulders at him. Given the information the officer had received from dispatch, the timing, the proximity to the location of the crime, the unusual activity for the area, and the juveniles' behavior upon seeing the police car, we conclude there existed reasonable suspicion that criminal activity was afoot.

Conclusion

[21] Based upon the foregoing, we conclude that the evidence and the inferences therefrom constitute substantial evidence of probative value to support the judgment.

[22] Affirmed.

Tavitas, J., and Weissmann, J., concur.