MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

G.P.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

September 28, 2021

Court of Appeals Case
No. 21A-JV-611

Appeal from the
Decatur Circuit Court

The Honorable
Timothy B. Day, Judge

Trial Court Cause Nos.
16C01-1907-JD-246
16C01-1908-JD-266
16C01-2012-JD-247
16C01-2101-JD-003

Vaidik, Judge.

Case Summary

[1] G.P. appeals the trial court's order adjudicating him a delinquent child, challenging the sufficiency of the evidence. We affirm.

Facts and Procedural History

[2] On the night of November 2, 2020, Jonathan Struckman answered the door of his apartment in Greensburg to find two people in dark clothes and masks. One person displayed a pistol and demanded drugs and money. Struckman slammed the door shut, and the two people pushed on it to try to get in. Struckman called police, prompting the two people to leave. According to Struckman, the assailant with the gun was "definitely" fourteen-year-old G.P. Tr. p. 60. Struckman knew of G.P. "through friends and other connections" and recognized his eyes, and at one point G.P. pulled his mask down, allowing Struckman to see his whole face. *Id.* at 56, 60, 64.

[3] About one month later, in early December, Alvin Herbert, who was dating and lived with G.P.'s maternal grandmother, discovered that at least five guns had been stolen from his garage. Herbert "figured" that G.P., who had previously lived with the couple, had taken the guns because "he stole stuff before," so Herbert had G.P.'s grandmother call G.P.'s mother. *Id.* at 34, 38. When G.P.'s mother confronted him about it, G.P. said "there's only two guns[.]" *Id.* at 42. G.P. then directed his mother to an abandoned garage where two guns were

located, and they retrieved them and returned them to Herbert. All this happened over the course of a day or two. *See id.* at 32-40.

[4] Based on the attempted robbery of Struckman, the State filed a delinquency petition alleging G.P. had committed what would be the following offenses if committed by an adult: Level 3 felony attempted robbery, Level 4 felony attempted burglary, Level 5 felony intimidation, and Level 6 felony pointing a firearm. Cause No. 16C01-2012-JD-247 ("JD-247"). Based on the theft of Herbert's guns, the State filed a delinquency petition alleging G.P. had committed what would be the following offenses if committed by an adult: Level 5 felony burglary, Level 6 felony theft, and Level 6 felony residential entry. Cause No. 16C01-2101-JD-3 ("JD-3").

[5] The trial court held a joint fact-finding hearing for the two cases. In JD-247, the trial court entered true findings for Level 4 felony attempted burglary, Level 5 felony attempted robbery, and Level 6 felony intimidation. In JD-3, the court entered a true finding for Level 6 felony theft.

[6] G.P. now appeals.

Discussion and Decision

[7] G.P. contends the State presented insufficient evidence to support the true findings. When reviewing such a claim, we view the evidence and the reasonable inferences from it in the light most favorable to the true finding. *D.P. v. State*, 80 N.E.3d 913, 915 (Ind. Ct. App. 2017). We neither reweigh the

evidence nor re-evaluate witness credibility. *Id.* We will affirm unless no reasonable fact-finder could have found the elements of the offense proven beyond a reasonable doubt. *Id.*

I. JD-247

[8] Regarding the November 2 incident, G.P. acknowledges Struckman's testimony that G.P. was one of the two assailants, but he argues that testimony should be disregarded under the incredible-dubiosity doctrine. Under that doctrine, we can impinge upon a fact-finder's responsibility to judge the credibility of the witnesses when "the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it." *Hampton v. State*, 921 N.E.2d 27, 29 (Ind. Ct. App. 2010), *trans. denied*. The doctrine "requires that there be: 1) a sole testifying witness; 2) testimony that is inherently contradictory, equivocal, or the result of coercion; and 3) a complete absence of circumstantial evidence." *Moore v. State*, 27 N.E.3d 749, 756 (Ind. 2015). As G.P. concedes, application of this rule is rare. *Leyva v. State*, 971 N.E.2d 699, 702 (Ind. Ct. App. 2012), *trans. denied*.

[9] In arguing that Struckman's identification testimony should not be believed, G.P. points to three facts: (1) it was dark outside; (2) Struckman told police that he recognized G.P.'s eyes, but he testified at the fact-finding hearing that he recognized G.P.'s eyes **and** that G.P. had pulled his mask down; and (3) there is evidence Struckman snorted Xanax earlier in the day. While these may be reasons to question Struckman's testimony, they do not render his testimony so

"inherently improbable that no reasonable person could believe it." *Hampton*, 921 N.E.2d at 29. Though it was dark at the time of the incident, Struckman was very close to the assailants when he answered the door. And while Struckman stated for the first time at the fact-finding hearing that G.P. pulled his mask down, that testimony does not "contradict" Struckman's statement to police that he recognized G.P.'s eyes. That is, there is no evidence Struckman told police that G.P. **did not** pull his mask down. Finally, the evidence that Struckman had taken Xanax earlier in the day was not accompanied by evidence of how much earlier that occurred, how much he consumed, or whether he was still under the influence at the time of the incident. Because Struckman's testimony is sufficient to support the true findings under JD-247 and was not incredibly dubious, we affirm those true findings.

II. JD-3

[10] G.P. also argues the State did not present sufficient evidence to prove beyond a reasonable doubt that he committed the theft of Herbert's guns. Specifically, he asserts there is no evidence of how he learned the location of the guns and that "the evidence supported the inference that anyone would have been able to remove the guns from the unlocked garage." Appellant's Br. p. 11. But for purposes of appeal, the evidence need not overcome every reasonable hypothesis of innocence. *Craig v. State*, 730 N.E.2d 1262, 1266 (Ind. 2000). It is enough if an inference may be drawn from the circumstantial evidence that supports the verdict. *Id.* And here, there is plenty of circumstantial evidence to support the true finding for theft.

[11] First, G.P. had previously lived with Herbert, which supports an inference that he was familiar with the garage and its contents. Second, when confronted about the theft by his mother, G.P. did not deny knowledge of it but rather clarified "there's only two guns." Third, G.P. knew exactly where the two guns were and brought his mother there to retrieve them. Fourth, the entire episode lasted only a day or two. While it's **possible** that G.P. came across the information innocently, his knowledge and the compact timeline also reasonably support the opposite inference: he was involved in taking the guns. As such, we affirm the true finding for theft.[1]

[12] Affirmed.

Kirsch, J., and May, J., concur.

[1] Based on the true findings in JD-247 and JD-3, the trial court modified G.P.'s disposition in two earlier cases, Cause No. 16C01-1908-JD-266 and Cause No. 16C01-1907-JD-246. G.P. argues that if we reverse the true findings in JD-247 and JD-3, we should reverse those modifications. Because we affirm the true findings, we also affirm the modifications.