MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

David W. Stone IV
Anderson, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Robert Yoke
Deputy Attorney General

Abigail C. Dehmlow
Certified Legal Intern
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

C.B.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 19, 2023

Court of Appeals Case No. 22A-JV-2740

Appeal from the Madison Circuit Court

The Honorable Stephen J. Koester, Judge

Trial Court Cause No. 48C02-2207-JD-133

Memorandum Decision by Judge Bailey
Judges Brown and Weissmann concur.

Bailey, Judge.

Case Summary

[1] C.B. appeals his adjudication as a juvenile delinquent for intimidation, as a Level 5 felony if committed by an adult;[1] pointing a firearm, as a Level 6 felony if committed by an adult;[2] and dangerous possession of a firearm, as a Class A misdemeanor if committed by an adult.[3] C.B. raises one issue for our review, namely, whether the State presented sufficient evidence to support his adjudication. We affirm.

Facts and Procedural History

[2] On July 8, 2022, Keaton Green was working his first day as a delivery driver for Domino's Pizza. Shortly before 6:00 p.m. that evening, Green responded to a request to deliver "a few" pizzas to C.B.'s parents' house. Tr. at 10. The total cost for the pizzas was $29.87. Green arrived at C.B.'s house shortly thereafter, and he began to walk up to the front door. Green observed that C.B. and another juvenile were sitting on the front porch. As Green approached, C.B. asked if the order had already been paid for. Green responded that it had not.

---

[1] Ind. Code § 35-35-2-1(a)(1) (2022).

[2] I.C. § 35-47-4-3.

[3] I.C. § 35-35-47-10-5(a).

At that point, C.B. "pulled [a] gun out and pointed it at" Green's chest for "three to four seconds" before putting it back in his pocket. *Id*. at 14, 16.

[3] After he had returned the firearm to his pocket, C.B. called out to his father and asked if the order had been paid for online. C.B.'s father stated that he must not have paid online but that he would call Domino's to correct the situation. Green then returned to his car with the pizzas and left "as quick[ly] as [he] could." *Id*. at 15. Green returned to his store, informed his manager about what had happened, and reported the incident to the police.

[4] Officers with the Anderson Police Department responded to Green's report. Green informed officers that he believed the firearm C.B. had pointed at him was real because it did not have the "orange tip" that is typically associated with "a fake handgun or BB gun[.]" *Id*. at 20. A little later that evening, officers spoke with C.B. C.B. reported that he had "a BB gun" that was "in his lap" the whole time Green was there. *Id*. at 19. C.B. also reported to officers that, after Green had left, he had walked to a nearby park and "dropped it by the bathrooms[.]" *Id*. at 20. When officers searched the area, they were unable to locate any firearm or BB gun. In addition, officers questioned some individuals who had been in the park at the relevant time, and the individuals reported that they "hadn't seen any juveniles in that area[.]" *Id*. at 19.

[5] The State filed a petition and alleged that C.B. was a delinquent for having committed intimidation, as a Level 5 felony if committed by an adult; pointing a firearm, as a Level 6 felony if committed by an adult; and dangerous

possession of a firearm, as a Class A misdemeanor if committed by an adult. At a fact-finding hearing, Green testified that he was "familiar with firearms" because he "gr[ew] up shooting[.]" *Id*. at 14. And Green testified that he believed the gun C.B. had pointed was "a black semi-automatic" gun and that there "was a clip in it." *Id*. He also testified that he felt that he was going "to be robbed" by C.B. *Id*. at 17. Following the hearing, the court found that C.B. had committed the offenses as alleged and adjudicated him a delinquent. The court then placed C.B. on supervised probation. This appeal ensued.

Discussion and Decision

[6] C.B. contends that the State failed to present sufficient evidence to support his adjudication as a juvenile delinquent. Our standard of review is well settled:

> We neither reweigh the evidence nor judge the credibility of witnesses. The State must prove beyond a reasonable doubt that the juvenile committed the charged offense. We examine only the evidence most favorable to the judgment along with all reasonable inferences to be drawn therefrom. We will affirm if there exists substanti[al] evidence of probative value to establish every material element of the offense. Further, it is the function of the trier of fact to resolve conflicts in testimony and to determine the weight of the evidence and the credibility of the witnesses.

J.C. v. State, 131 N.E.3d 610, 612 (Ind. Ct. App. 2019) (citation omitted). We will affirm a juvenile delinquency adjudication unless no reasonable factfinder could have found the respondent guilty beyond a reasonable doubt. *B.T.E. v. State*, 108 N.E.3d 322, 326 (Ind. 2018).

Firearm Charges

[7] C.B. first contends that the State failed to present sufficient evidence to support the allegations that he had committed either of the firearm offenses. To show that C.B. had committed pointing a firearm, as a Level 6 felony if committed by an adult, the State was required to show that C.B. had knowingly or intentionally pointed a firearm at Green. *See* I.C. § 35-47-4-3. And to show that C.B. had committed dangerous possession of a firearm, as a Class A misdemeanor if committed by an adult, the State was required to show that C.B. had knowingly, intentionally, or recklessly possessed a firearm. *See* I.C. § 35-47-10-5(a).

[8] On appeal, C.B. contends that the State failed to demonstrate that he had committed either offense because there are many BB guns that resemble real firearms, because Green only "saw the pistol [for] 3 or 4 seconds," and because he testified that the item he had possessed was a BB gun. Appellant's Br. at 9. In other words, C.B. contends that the State failed to prove that the item he had possessed was actually a firearm and not a BB gun.

[9] However, C.B.'s argument is merely a request for this Court to reweigh the evidence, which we cannot do. The evidence most favorable to the trial court's judgment demonstrates that C.B. pointed a firearm at Green as opposed to a BB gun. Indeed, Green testified that he was "familiar with firearms" because he "gr[ew] up shooting[.]" Tr. at 14. Green believed that the gun C.B. had pointed was "a black semi-automatic" gun and that there "was a clip in it." *Id.*

Further, Green reported to officers that the firearm did not have an "orange tip," which is typically associated with "a fake handgun or BB gun[.]" *Id*. at 20.

[10] In addition, the evidence shows that C.B. took efforts to conceal his crime. Specifically, C.B. told officers that he had thrown the firearm away in the park. But, after searching the park, officers were not able to locate the gun. And individuals who had been in the park reported that they had not seen any juveniles in the area. Based on Green's statements and C.B.'s actions, a reasonable fact-finder could infer that C.B. was in possession of a firearm as opposed to a BB gun. We therefore hold that the State presented sufficient evidence to demonstrate that C.B. had dangerously possessed a firearm and that he had pointed it at Green.

Intimidation

[11] C.B. next contends that the State failed to present sufficient evidence to show that he had committed intimidation. To prove that C.B. committed intimidation, as a Level 5 felony if committed by an adult, the State was required to prove that C.B. had communicated a threat with the intent that Green engage in conduct against his will. *See* Ind. Code § 35-45-2-1(a)(1). "'Threat' means an expression, by words or action, of an intention to . . . unlawfully injure the person threatened" or "commit a crime." I.C. § 35-45-2-1(c). A defendant's intent may be proven by circumstantial evidence alone, and knowledge and intent may be inferred from the facts and circumstances of each case. *B.B. v. State*, 141 N.E.3d 856, 860 (Ind. Ct. App. 2020).

[12] On appeal, C.B. contends that the State failed to demonstrate that he had committed intimidation because there "was no evidence of any prior legal act by Mr. Green that gave rise to the claimed intimidation" and because there "was no evidence that [he] sought to make Mr. Green do anything against his will." Appellant's Br. at 10-11. We cannot agree.

[13] The evidence shows that Green arrived at C.B.'s parents' house in order to deliver pizza. Upon his arrival, C.B. asked Green if the pizza had already been paid for, and Green responded that it had not. At that point, C.B. pointed the firearm at Green, and Green felt that he was going "to be robbed." Tr. at 17. In other words, there is evidence that Green had engaged in a prior lawful act—the delivery of pizza to C.B.'s home. And based on the fact that C.B. pointed a firearm at Green only after Green stated that the order had not yet been paid for, a reasonable fact-finder could readily infer that C.B. had communicated a nonverbal threat of harm to Green with the intent that Green leave the pizzas without payment. We therefore hold that the State presented sufficient evidence to show that C.B. had committed intimidation.

Conclusion

[14] The evidence shows that the item C.B. had pointed at Green was a firearm and not a BB gun such that the State presented sufficient evidence to show that he had committed dangerous possession of a firearm and pointing a firearm. In addition, a reasonable fact-finder could infer that C.B. had communicated a

nonverbal threat when he pointed a firearm at Green such that C.B. committed intimidation. We therefore affirm C.B.'s adjudication as a delinquent.

[15] Affirmed.

Brown, J., and Weissmann, J., concur.