

MEMORANDUM DECISION

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IN THE Court of Appeals of Indiana

M.G.,
Appellant-Respondent

v.

State of Indiana,
Appellee-Petitioner



March 27, 2024

Court of Appeals Case No.
23A-JV-2346

Appeal from the Allen Superior Court

The Honorable Daniel Pappas, Judge Pro Tempore

Trial Court Cause No.
02D07-2307-JD-765

Memorandum Decision by Chief Judge Altice
Judges Bradford and Felix concur.

Altice, Chief Judge.

Case Summary

[1] The juvenile court adjudicated M.G. a delinquent child for committing acts that would be Level 3 felony attempted armed robbery and Class A misdemeanor resisting law enforcement if committed by an adult. M.G. appeals the attempted armed robbery adjudication and asserts that the State failed to present sufficient evidence that he took a substantial step toward the commission of the offense.

[2] We affirm.

Facts & Procedural History

[3] One afternoon in July 2023, Jarred Holbrook was sitting in his work pick-up truck in a church parking lot, with engine running, while he was on the phone with his employer. Holbrook saw a youth, later identified as M.G., ride past on a bike on the passenger side of his truck, then shortly thereafter, M.G. “banged” on the driver’s side window. *Transcript* at 9. Holbrook, muted his phone call, rolled down the window, and asked, “how can I help you.” *Id.* M.G. told Holbrook, “[g]et out of the car, bitch,” to which Holbrook responded “no” and started rolling up the window. *Id.* at 9, 14. M.G. then said “okay, bitch” and lifted up his shirt, showing Holbrook that he had a Taurus 9-millimeter handgun in his waistband. *Id.* at 10. Holbrook unmuted his phone and said, “I think I’m getting robbed.” *Id.* at 9. When Holbrook then pointed to his truck’s

dashcam, which was operating, M.G. hopped on the bicycle and left. Holbrook moved his vehicle to a nearby street and called 911.

- [4] Officers responded and obtained a suspect description from Holbrook. A pursuit of M.G. ensued, first by police car and thereafter on foot, until officers eventually apprehended M.G.
- [5] The State filed a verified petition alleging M.G. to be a delinquent for committing Level 3 felony attempted armed robbery and Class A misdemeanor resisting law enforcement if committed by an adult. At the factfinding hearing, Holbrook described what occurred and said it was when M.G. lifted his shirt and “brandished” the Taurus handgun¹ that he “felt threatened” and believed he was being robbed. *Id.* at 10, 15.
- [6] The juvenile court adjudicated M.G. a delinquent as to both counts. Subsequently, a dispositional hearing was held, and the court awarded wardship of M.G. to the Indiana Department of Correction. M.G. now appeals.

Discussion & Decision

- [7] M.G. challenges the sufficiency of the evidence to support his adjudication as a delinquent for an act that would be considered Level 3 felony attempted armed robbery if committed by an adult. When reviewing the sufficiency of the

¹ Holbrook explained that he was familiar with the weapon he saw, having been trained with the Army National Guard and personally owning the same Taurus handgun.

evidence in a juvenile adjudication, we do not reweigh the evidence or judge witness credibility. *B.T.E. v. State*, 108 N.E.3d 322, 326 (Ind. 2018). We consider only the evidence favorable to the judgment and the reasonable inferences supporting it. *Id.* We will affirm a juvenile delinquency adjudication if a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. *Id.*

- [8] Pursuant to Ind. Code § 35-41-5-1, a person attempts to commit a crime when, acting with the culpability required for commission of the crime, the person engages in conduct that constitutes a substantial step toward commission of the crime. Thus, to adjudicate M.G. of the offense of attempted armed robbery, the State was required to prove beyond a reasonable doubt that he knowingly or intentionally engaged in conduct constituting a substantial step toward taking the property of Holbrook by threat of force, while armed with a deadly weapon. Ind. Code § 35-42-5-1(a)(2); I.C. § 35-41-5-1. Our Supreme Court has recognized that what qualifies as a substantial step under the attempt statute “is not amenable to a hard-and-fast definition but is based on context.” *B.T.E.*, 108 N.E.3d at 327 (quotations omitted). “Whether a step is substantial ‘must be determined from all the circumstances of each case.’” *Id.* (quoting *Zickefoose v. State*, 388 N.E.2d 507, 510 (Ind. 1979)). The substantial-step requirement is a minimal one, often defined as any overt act in furtherance of the crime. *Id.* (quotations omitted). In assessing whether a substantial step was taken, as opposed to mere planning or preparation, which is insufficient to establish attempt, we balance various factors, including, whether the defendant’s conduct

strongly corroborates his criminal intent, the severity of the charged crime, and whether the defendant's acts, viewed together, indicate he attempted a crime. *Id.* at 328.

[9] Here, M.G. argues that the State failed to show that his statement to Holbrook to “[g]et out of the car, bitch” constituted a substantial step toward the commission of armed robbery. *Transcript* at 14. Given the circumstances in which M.G. made the statement, we disagree.

[10] M.G. approached Holbrook in his parked truck, which had its engine running, and banged on the driver's side window, using profanity to order Holbrook out of his vehicle. When Holbrook refused, M.G. pulled up his shirt and “brandished” a handgun that he had in his waistband. *Id.* at 10. Holbrook then told his employer on the phone that he believed he was being robbed. M.G. immediately fled on his bike when Holbrook pointed to his dashcam. On this record, we find that the State presented sufficient evidence from which the juvenile court could reasonably conclude that M.G., who was armed, took a substantial step toward robbing Holbrook.

[11] M.G. urges that he could have ordered Holbrook out of the vehicle, not with the intention to rob him, but perhaps to fight him or for a myriad of possible reasons – even “to speak about the weather.” *Appellant's Brief* at 12. This is a request for us to reweigh the evidence, which we cannot do. Furthermore, it is not necessary that the evidence overcome every reasonable hypothesis of innocence. *D.M. v. State*, 222 N.E.3d 404, 411 (Ind. Ct. App. 2023).

[12] Accordingly, we find that the State presented sufficient evidence to sustain M.G.'s adjudication for Level 3 attempted armed robbery if committed by an adult.

[13] Judgment affirmed.

Bradford, J. and Felix, J., concur.

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