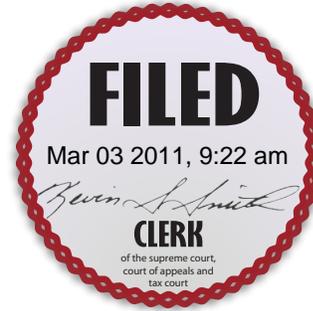


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

C.H.,)
)
Appellant-Respondent,)
)
vs.) No. 49A02-1008-JV-912
)
STATE OF INDIANA,)
)
Appellee-Petitioner.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Geoffrey A. Gaither, Magistrate
Cause No. 49D09-1005-JD-001364

March 3, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

C.H. appeals his adjudication as a juvenile delinquent, for committing acts that would have been battery, criminal recklessness, and dangerous possession of a firearm, if committed by an adult or resulted in a criminal conviction,¹ and also challenges the order committing him to the Department of Correction (“DOC”). We affirm.

Issues

C.H. presents two issues for review:

- I. Whether there is sufficient evidence to support his adjudication as a juvenile delinquent; and
- II. Whether the juvenile court abused its discretion by committing him to the DOC.

Facts and Procedural History

Around 9:00 p.m. on May 20, 2010, twelve-year-old M.P. stepped outside of his Indianapolis duplex to talk with a group of friends. B.W., who is M.P.’s cousin and next-door neighbor, came outside. One of M.P.’s guests challenged B.W. to a fight and began to push him. A fight broke out involving four individuals, including B.W. and K.H. (who is C.H.’s younger brother).

T.W., who is B.W.’s older brother, came outside to find “two little dudes” that were “jumping [his] little brother.” (Tr. 29.) One of the boys ran off, but T.W. caught him and beat him. K.H. then confronted T.W. “wanting to fight” but T.W. dismissed him saying,

¹ The latter offense, a criminal misdemeanor offense that may be elevated to a Class C felony by reason of a prior conviction, specifies that the actor is a “child.” See Ind. Code § 35-47-10-5.

“you too little.” (Tr. 31.) K.H. walked away, heading down 27th Street.

Approximately two or three minutes later, C.H. appeared in a vacant field across the street from M.P.’s duplex. He fired multiple shots, one of which entered M.P.’s side of the duplex and one of which entered T.W.’s duplex side. M.P.’s sister, D.B., was shot in her arm.

On May 21, 2010, the State alleged that C.H. is a juvenile delinquent because he had committed acts that would be battery, criminal recklessness, and dangerous possession of a firearm, if committed by an adult. On June 15, 2010, the juvenile court held a denial hearing and entered true findings as to the allegations against C.H. A dispositional hearing was conducted on July 12 and 13, 2010. The juvenile court committed C.H. to the DOC, with a recommended term of six months. This appeal ensued.

Discussion and Decision

I. Sufficiency of the Evidence

When reviewing a juvenile delinquency adjudication, we will consider only the evidence and reasonable inferences that support the judgment. B.R. v. State, 823 N.E.2d 301, 306 (Ind. Ct. App. 2005). We neither reweigh the evidence nor judge witness credibility. Id. If there is substantial evidence of probative value from which a reasonable trier of fact could conclude beyond a reasonable doubt that the juvenile committed a delinquent act alleged, we will affirm the adjudication. Id.

To support a true finding for Criminal Recklessness, the State was required to establish that C.H. recklessly, knowingly, or intentionally performed an act that created a

substantial risk of bodily injury. See Ind. Code § 35-42-2-2. To support a true finding for battery, as alleged, the State was required to establish that C.H., by means of a deadly weapon, knowingly touched D.B. in a rude, insolent, or angry manner. See Ind. Code § 35-42-2-1(3). To support a true finding for dangerous possession of a firearm, the State was required to establish that C.H., a child, knowingly, intentionally, or recklessly possessed a firearm. See Ind. Code § 35-47-10-5(1).

Here, D.B. testified that she had been shot in the arm and M.P. offered eyewitness testimony. M.P. had known C.H. for several years, and recognized him as the person who had stood in the vacant field across from M.P.'s home and fired multiple shots. The testimony is sufficient to support C.H.'s adjudication as a delinquent. Nevertheless, C.H. argues that M.P.'s testimony must be disregarded entirely because it is incredibly dubious.

In rare cases, the “incredible dubiousity rule” will permit an appellate tribunal to impinge upon the factfinder’s responsibility to judge the credibility of witnesses. Berry v. State, 703 N.E.2d 154, 160 (Ind. 1998). Application of the rule is limited to cases where a sole witness provides inherently contradictory testimony that is equivocal or coerced, and no circumstantial evidence supports the defendant’s guilt. Id.

However, M.P. was not the sole witness against C.H. T.W. gave voice-identification testimony placing C.H. in the field from which M.P. testified that shots had been fired. According to T.W., he heard a shot, stepped outside, and recognized C.H.’s voice saying “something about his brother,” just prior to the firing of a second shot. (Tr. 33.) Also, the State presented corroborative circumstantial evidence, having documented bullet damage

inside the duplex and having recovered a rifle from C.H.'s residence. Accordingly, C.H. presents no basis for applying the incredible dubiousity rule. The State presented sufficient evidence from which the juvenile court could adjudicate C.H. a delinquent.

II. Dispositional Order

C.H. contends that the trial court abused its discretion by committing him to the DOC because less restrictive and appropriate placements were available.² More specifically, C.H. sought placement with a relative or in Lutherwood.

The choice of the specific disposition of a juvenile adjudicated a delinquent child is a matter within the sound discretion of the juvenile court and will only be reversed if there has been an abuse of that discretion. J.S. v. State, 881 N.E.2d 26, 28 (Ind. Ct. App. 2008). However, the juvenile court's discretion is subject to the statutory considerations of the welfare of the child, the safety of the community, and the policy of favoring the least harsh disposition. Id. An abuse of discretion occurs when the juvenile court's action is clearly erroneous and against the logic and effect of the facts and circumstances before the court or the reasonable, probable, and actual inferences that can be drawn therefrom. Id. Accordingly, the juvenile court is accorded wide latitude and great flexibility in fashioning dispositional orders. Id.

Indiana Code section 31-37-18-6 sets forth the following factors that a juvenile court must consider when entering a dispositional decree:

² We note that, if the juvenile court's July 2010 recommendation for a six-month term has been honored, C.H. has by now completed this term.

If consistent with the safety of the community and the best interest of the child, the juvenile court shall enter a dispositional decree that:

(1) is:

(A) in the least restrictive (most family like) and most appropriate setting available; and

(B) close to the parents' home, consistent with the best interest and special needs of the child;

(2) least interferes with family autonomy;

(3) is least disruptive of family life;

(4) imposes the least restraint on the freedom of the child and the child's parent, guardian, or custodian; and

(5) provides a reasonable opportunity for participation by the child's parent, guardian, or custodian.

As such, the statute requires the juvenile court to select the least restrictive placement in most situations. In re J.S., 881 N.E.2d at 28-29. Nonetheless, our legislature has recognized that a more restrictive placement may be appropriate under certain circumstances. Id. at 29.

Here, evidence adduced at the dispositional hearing disclosed that, despite multiple contacts with the juvenile justice system, C.H. has continued in a pattern of unlawful conduct. In 2008, C.H. faced allegations of battery and domestic battery. His diversion contract failed. In 2009, he was arrested upon a complaint from his school, and found to have committed an act that would be battery if committed by an adult. His home confinement was deemed successful. Later in 2009, he was arrested and alleged to have possessed cocaine. He has an additional true finding for criminal trespass. The instant acts involved use of a deadly weapon and substantial bodily injury to a bystander. It appears that, in the face of minimal provocation, C.H. is willing to retaliate with deadly force and

endanger members of the community. Under these circumstances, we cannot say that the juvenile court abused its discretion by committing C.H. to the DOC, with a recommended term of six months.

Affirmed.

NAJAM, J., and DARDEN, J., concur.