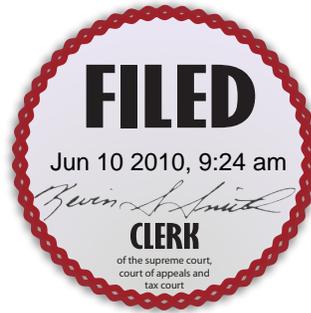


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

**COREY L. SCOTT**  
Indianapolis, Indiana

**GREGORY F. ZOELLER**  
Attorney General of Indiana

**ARTURO RODRIGUEZ II**  
Deputy Attorney General  
Indianapolis, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

T.Y., )  
 )  
Appellant-Defendant, )  
 )  
vs. ) No. 49A02-0911-JV-1131  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

---

APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Gary K. Chavers, Judge Pro Tempore  
The Honorable Scott B. Stowers, Magistrate  
Cause No. 49D09-0907-JD-2171

---

**June 10, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BROWN, Judge**

T.Y. appeals the juvenile court's true findings that he committed delinquent acts, which, if committed by an adult, would constitute two counts of forgery as class C felonies<sup>1</sup> and two counts of attempted theft as class D felonies.<sup>2</sup> T.Y. raises three issues, which we restate as the following four issues:

- I. Whether T.Y.'s true findings for attempted theft are barred by Indiana's prohibitions against double jeopardy;
- II. Whether the juvenile court abused its discretion by admitting a statement made by T.Y. to a police officer;
- III. Whether the juvenile court abused its discretion by admitting evidence of a prior attempt by T.Y. to make a purchase with a counterfeit bill; and
- IV. Whether the evidence is sufficient to support the juvenile court's true findings that T.Y. committed delinquent acts, which would have constituted two counts of forgery as class C felonies.

We affirm in part, reverse in part, and remand.

The facts most favorable to the juvenile court's true findings follow. On July 16, 2009, fifteen-year-old T.Y. visited a Walgreens store, presented a drink to the service clerk for the clerk to scan, and then gave the clerk a \$100 bill. The clerk noticed that the bill "felt heavier than a regular hundred dollar bill and much [] darker." Transcript at 13. The clerk then told T.Y. that "the money look[ed] fake" and that he "could not accept it." Id. T.Y. then left the Walgreens store, and the clerk called a manager to tell him about the situation.

---

<sup>1</sup> Ind. Code § 35-43-5-2 (Supp. 2006).

<sup>2</sup> Ind. Code § 35-43-4-2 (Supp. 2009); Ind. Code § 35-41-5-1 (2004).

T.Y. then visited a Dollar General store which was located near the Walgreens. T.Y. walked to the cashier counter and put deodorant on the counter, and when the cashier told T.Y. what he owed, he gave the cashier a \$100 bill. The cashier noticed that the bill “looked funny,” and then told T.Y. that she needed to get change and called the manager. Id. at 41. The manager of the Dollar General observed that the bill was fake and, although T.Y. asked for the bill, the manager told him that the bill would not be returned. T.Y. left the Dollar General store and entered the backseat of a vehicle with two other men, and the vehicle drove away. The manager of the Dollar General store then contacted the police. The manager spoke with Indianapolis Metropolitan Police Officer Roger Taylor, gave Officer Taylor a description of T.Y., including that he was wearing a red shirt, and gave Officer Taylor a description of the color of the car that T.Y. entered and a “partial license plate of 52.” Id. at 57.

Indianapolis Metropolitan Police Officer Richard Cox was dispatched to the area of the Dollar General store in connection with a report of counterfeit money. Dispatch told Officer Cox that the persons involved “were in a maroon Ford Taurus, 3 black males, and that the license plate had a 5-2 in it.” Id. at 45. Officer Cox observed a “maroon Ford Taurus” with “[t]hree black males in it” turn “right in front of [him],” and after getting behind the Taurus noticed that “the license plate in fact had a 5-2 in the numeric[is of it.” Id. at 45. Officer Cox followed the Taurus a short distance and then initiated a stop.

Officer Cox approached the vehicle and asked the driver “if they had come from the Dollar General Store,” and the driver responded “that they had.” Id. at 53. Officer

Cox then asked the occupants of the vehicle whether any of them had tried to “buy anything over there with a hundred dollar bill,” and T.Y., who was seated in the back seat of the vehicle, stated: “I tried to buy something with a hundred dollar bill but I didn’t, but I didn’t know it was fake.” Id. Officer Taylor separately took the manager of the Dollar General store and the clerk from the Walgreens store to the location, and each independently identified T.Y. as the person who had attempted to pass the counterfeit \$100 bill.

On July 17, 2009, the State filed a petition alleging T.Y. to be a delinquent child for committing two counts of forgery, class C felonies when committed by an adult, and two counts of attempted theft, class D felonies when committed by an adult. On August 24, 2009, the State filed a notice of intent to offer evidence pursuant to Ind. Evidence Rule 404(b), specifically evidence that T.Y. had entered the Dollar General store approximately one month before July 16, 2009, and attempted to make a purchase using a counterfeit bill.

On October 8, 2009, the juvenile court held a denial hearing, during which T.Y. moved to exclude the State’s evidence of a prior attempt to pay with a counterfeit \$100 bill arguing that the evidence was improper under Ind. Evidence Rule 403 in that the prejudicial value of the evidence outweighed its probative value. Following argument by the parties, the court denied T.Y.’s motion and admitted the evidence to show T.Y.’s intent to commit the offenses. T.Y. also moved to suppress any statements which he made to Officer Cox based on the Fifth Amendment and any additional constitutional

protections afforded to juveniles under the Indiana Code. The court denied T.Y.'s motion to suppress.

Following the denial hearing, the court entered true findings on all four counts. The court placed T.Y. on probation with special conditions, including "Formal Probation; Teen Rap; Random Drug screens every 30 days, 50 hours of community service; no contact with Walgreens and Dollar General," and scheduled an end date for April 22, 2010, unless the conditions were not completed in which case probation could be extended. Appellant's Appendix at 7-8.

#### I.

The first issue, which we raise *sua sponte*, is whether T.Y.'s true findings for attempted theft are barred by Indiana's prohibitions against double jeopardy. See Smith v. State, 881 N.E.2d 1040, 1047 (Ind. Ct. App. 2008) ("We raise this issue *sua sponte* because a double jeopardy violation, if shown, implicates fundamental rights.").

Article 1, Section 14 of the Indiana Constitution provides that "[n]o person shall be put in jeopardy twice for the same offense." Two or more offenses are the "same offense" under Article 1, Section 14, if, with respect to either the statutory elements of the challenged crimes or the actual evidence used to convict, the essential elements of one challenged offense also establish the essential elements of another challenged offense. Lee v. State, 892 N.E.2d 1231, 1233 (Ind. 2008).

Under the actual evidence test, the evidence presented at trial is examined to determine whether each challenged offense was established by separate and distinct facts. Id. at 1234. To show that two challenged offenses constitute the "same offense" in a

claim of double jeopardy, a defendant must demonstrate a reasonable possibility that the evidentiary facts used by the fact-finder to establish the essential elements of one offense may also have been used to establish the essential elements of a second challenged offense. Id. Application of this test requires the court to identify the essential elements of each of the challenged crimes and to evaluate the evidence from the fact-finder's perspective. Id.

The elements of forgery are defined at Ind. Code § 35-43-5-2(b):

A person who, with intent to defraud, makes, utters, or possesses a written instrument in such a manner that it purports to have been made:

- (1) by another person;
- (2) at another time;
- (3) with different provisions; or
- (4) by authority of one who did not give authority;

commits forgery, a Class C felony.

The elements of theft are set forth at Indiana Code section 35-43-4-2(a):

A person who knowingly or intentionally exerts unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use, commits theft, a Class D felony.

Here, the State charged T.Y. with two counts of forgery based upon the fact that he presented a \$100 bill to the cashiers at both the Walgreens and Dollar General stores. The State also charged T.Y. with two counts of attempted theft based upon T.Y. presenting a counterfeit \$100 bill to the cashiers at the Walgreens and Dollar General stores in order to make a purchase. The actual evidence as set forth in the State's

charging information and as presented at trial demonstrates that the forgery offense and attempted theft offense with respect to each store was not established by separate and distinct facts. Instead, the State's exclusive evidence supporting both the forgery conviction and the attempted theft conviction with respect to each store was the fact that T.Y. presented the counterfeit bill as payment. Thus, T.Y.'s attempt to make payment using a counterfeit bill formed the basis of both the State's forgery and attempted theft charges.

Because the exact same facts formed the basis of the forgery and attempted theft charges, there is more than "a reasonable possibility" that the evidentiary facts used by the State to establish all of the essential elements of one offense (forgery) were also used to establish all of the essential elements of the other offense (attempted theft). Therefore, the juvenile court impermissibly punished T.Y. twice for the same offense by entering true findings on both the forgery and the attempted theft charges. See Williams v. State, 892 N.E.2d 666, 668-669 (Ind. Ct. App. 2008) (concluding that the State's exclusive evidence supporting the defendant's convictions for forgery as a class C felony and attempted theft as a class D felony was the fact that the defendant presented the stolen and fraudulent check to a bank to cash and therefore that the defendant's convictions for forgery and attempted theft violated double jeopardy principles based upon the actual evidence test), trans. denied.

Where two convictions violate double jeopardy, "we vacate the conviction with the less severe penal consequences." Richardson v. State, 717 N.E.2d 32, 55 (Ind. 1999). T.Y.'s true findings for attempted theft as class D felonies carried less severe penal

consequences than the true findings for forgery as class C felonies. Accordingly, we remand to the juvenile court with instructions to vacate T.Y.'s two true findings for attempted theft as class D felonies.

## II.

The next issue is whether the juvenile court abused its discretion by admitting a statement made by T.Y. to Officer Cox. We review the trial court's ruling on the admission of evidence for an abuse of discretion. Noojin v. State, 730 N.E.2d 672, 676 (Ind. 2000). We reverse only where the decision is clearly against the logic and effect of the facts and circumstances. Joyner v. State, 678 N.E. 2d 386, 390 (Ind. 1997), reh'g denied. Even if the trial court's decision was an abuse of discretion, we will not reverse if the admission constituted harmless error. Fox v. State, 717 N.E.2d 957, 966 (Ind. Ct. App. 1999), reh'g denied, trans. denied.

At the denial hearing, Officer Cox testified that after he had approached the Ford Taurus, he asked the driver if they had come from the Dollar General store and the driver responded in the affirmative; that he then asked the occupants whether any of them had tried to "buy anything over there with a hundred dollar bill;" and that T.Y. said "I tried to buy something with a hundred dollar bill but I didn't, but I didn't know it was fake." Id. T.Y.'s counsel objected to Officer Cox's testimony regarding the statement made by T.Y. and asked that the statement be suppressed based on the Fifth Amendment and any additional constitutional protections afforded to juveniles under the Indiana Code. The juvenile court denied T.Y.'s motion to suppress.

On appeal, T.Y. argues that he was not advised of his Miranda rights or his right to have his parents present during questioning. T.Y. argues that “it is important to note that T.Y. and the other suspects were held by police until store personnel from Dollar General and Walgreen’s were brought to the scene . . . .” Appellant’s Brief at 12. T.Y. argues that “the officers made a traffic stop while they were in their fully marked police vehicle, in full uniform, questioned T.Y., a juvenile crime suspect while he was in custody” and that “suffice it to say, that T.Y. being in police custody, was entitled to be advised of his Miranda Warnings and to have a parent or guardian present during interrogation by police to protect against potentially making self-incriminating statements.” Id. The State argues that the court properly admitted T.Y.’s statement because he was not in custody when he spoke to Officer Cox; that he was not being interrogated; and that even if improperly admitted, the evidence of T.Y.’s statement was harmless and does not constitute grounds for reversal.

In Miranda v. Arizona, 384 U.S. 436, 444, 86 S. Ct. 1602 (1966), the United States Supreme Court held that when law enforcement officers question a person who has been “taken into custody or otherwise deprived of his freedom of action in any significant way,” the person must first “be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.” “The purpose underlying Miranda warnings is to protect an individual’s Fifth Amendment privilege against self-incrimination by placing reasonable limitations on police interrogations.” Sauerheber v. State, 698 N.E.2d 796, 801 (Ind. 1998).

When determining whether a person was in custody or deprived of his freedom, “the ultimate inquiry is simply whether there is a ‘formal arrest or restraint on freedom of movement’ of the degree associated with a formal arrest.” Luna v. State, 788 N.E.2d 832, 833 (Ind. 2003) (quoting California v. Beheler, 463 U.S. 1121, 1125, 103 S. Ct. 3517, 3520 (1983)). This is determined by examining whether a reasonable person in similar circumstances would believe he is not free to leave. Id. (citing Cliver v. State, 666 N.E.2d 59, 66 (Ind. 1996), reh’g denied). “Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a ‘seizure’ has occurred.” Id. (citing Florida v. Bostick, 501 U.S. 429, 433-434, 111 S. Ct. 2382, 2386 (1991)). The Miranda safeguards do not attach unless “there has been such a restriction on a person’s freedom as to render him in custody,” Loving v. State, 647 N.E.2d 1123, 1125 (Ind. 1995), and a police officer is required to give Miranda warnings only when a defendant is both in custody and subject to interrogation. Furnish v. State, 779 N.E.2d 576, 578 (Ind. Ct. App. 2002), trans. denied; see also Green v. State, 753 N.E.2d 52, 58 (Ind. Ct. App. 2001) (noting that police officers are not required to give Miranda warnings unless the defendant is both in custody and subject to interrogation), trans. denied. A person is not in custody where he is “unrestrained and ha[s] no reason to believe he could not leave.” Kubsch v. State, 784 N.E.2d 905, 917 (Ind. 2003) (citation omitted).

Miranda warnings are not required prior to questioning as part of a general or on-the-scene investigation in a noncoercive atmosphere. Green, 753 N.E.2d at 58 (citing Orr v. State, 472 N.E.2d 627, 636 (Ind. Ct. App. 1984), reh’g denied, trans. denied; Hatcher

v. State, 274 Ind. 230, 232, 410 N.E.2d 1187, 1189 (1980)). Miranda recognizes that “[a]ny statement given freely and voluntarily without any compelling influences is . . . admissible in evidence.” J.D. v. State, 859 N.E.2d 341, 345 (Ind. 2007) (citing Miranda, 384 U.S. at 478, 86 S.Ct. at 1630).

Here, despite T.Y.’s assertions, the record does not disclose evidence establishing that he was in custody when Officer Cox asked if anyone in the vehicle had used a \$100 bill to make a purchase at the Dollar General store. The police officers did not draw or point a weapon at T.Y. or threaten T.Y. The record does not show that Officer Cox restrained T.Y. during his initial approach to the vehicle or at any time during the initial encounter. We also note that T.Y. was a passenger in the vehicle and that Officer Cox addressed all of the vehicle’s occupants. We cannot say given the facts set forth in the record that Officer Cox’s preliminary questions were more than merely investigatory in nature. Under the circumstances, we conclude that T.Y. was not in custody at the time that he answered Officer Cox’s question. See J.D., 859 N.E.2d at 345 (holding that the trial court did not abuse its discretion by admitting a juvenile’s statements to a police deputy); Barrett v. State, 837 N.E.2d 1022, 1029 (Ind. Ct. App. 2005) (concluding that the defendant was not in custody when an officer pulled her over for a traffic violation and asked questions about where she had been), trans. denied. Accordingly, the juvenile court did not abuse its discretion by admitting the statement made by T.Y. to Officer Cox.<sup>3</sup>

---

<sup>3</sup> T.Y. also cites to Ind. Code § 31-32-5-1 and argues that he “was entitled to have a parent or guardian present during interrogation by police . . . .” Appellant’s Brief at 12. Ind. Code § 31-32-5-1

### III.

The next issue is whether the juvenile court abused its discretion by admitting evidence of a prior attempt by T.Y. to make a purchase with a counterfeit bill. Prior to the denial hearing, the State filed a notice of intent to offer evidence pursuant to Ind. Evidence Rule 404(b) that T.Y. had entered the Dollar General store approximately one month before July 16, 2009 and attempted to make a purchase using a counterfeit bill. At the denial hearing, T.Y. moved to exclude the evidence of the prior attempt and argued that its prejudicial value outweighed its probative value. The State argued that the evidence was admissible under Ind. Evidence Rule 404(b) to show the element of intent. The court denied T.Y.'s motion and stated that the "evidence of the prior act" was allowed "only for the limited purpose of proving intent." Transcript at 28.

T.Y. argues that "[t]he trial court erred by admitting 404(b) evidence to prove intent" and that "[g]iven the closeness in time of the two incidents, the similarities in facts in term[s] of allegedly attempting to present fake \$100.00 bills on both occasions at the same store, . . . the testimony was useful to prove intent," but that "for the same reasons, the prejudicial nature of the testimony outweighed its probative value regarding intent." Appellant's Brief at 13. T.Y. asserts that "once such evidence is admitted and believed by the court, the next logical conclusion is that T.Y.[,] having acted in such a way previously, acted in conformity therewith during the incident in question." Id.

---

provides that any rights guaranteed to a child under the United States Constitution, the Constitution of the State of Indiana, or any other law may be waived only under certain circumstances, including by counsel if child joins the waiver, by the child's custodial parent under certain circumstances, and by the child if the child has been emancipated. Here, because we hold that that Officer Cox was not required under the circumstances to give T.Y. his Miranda warnings prior to posing the preliminary investigative questions, we need not address this argument.

The State argues that “[w]hen a defendant places his intent as an issue or suggests that the criminal conduct was the result of a mistaken understanding of the facts or an accident, then 404(B) evidence may be admissible to rebut those defenses and prove that T.Y. intended to commit the crime and did not make a mistake or accidentally commit a crime.” Appellee’s Brief at 10. The State also argues that T.Y.’s “previous action was also properly admitted to show his identity” and that “[e]ven if improperly admitted, the evidence was harmless and does not constitute grounds for reversal.” Id. at 11-12.

We review the trial court’s ruling on the admission of evidence for an abuse of discretion. Noojin, 730 N.E.2d at 676. We reverse only where the decision is clearly against the logic and effect of the facts and circumstances. Joyner, 678 N.E.2d at 390. Even if the trial court’s decision was an abuse of discretion, we will not reverse if the admission constituted harmless error. Fox, 717 N.E.2d at 966.

Indiana Evidence Rule 404(b) provides:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, *intent*, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pre-trial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

Ind. Evidence Rule 404(b) (emphasis added).

The standard for assessing the admissibility of Rule 404(b) evidence is: (1) the court must determine that the evidence of other crimes, wrongs, or acts is relevant to a matter at issue other than the defendant’s propensity to commit the charged act; and (2)

the court must balance the probative value of the evidence against its prejudicial effect pursuant to Rule 403. Boone v. State, 728 N.E.2d 135, 137-138 (Ind. 2000), reh'g denied; Hicks v. State, 690 N.E.2d 215, 221 (Ind. 1997). “If the evidence is offered only to produce the ‘forbidden inference,’ that is, that the defendant had engaged in other, uncharged misconduct and that the charged conduct was in conformity with the uncharged misconduct, then the evidence is inadmissible.” Crain v. State, 736 N.E.2d 1223, 1235 (Ind. 2000) (citation omitted). “If evidence has some purpose besides behavior in conformity with a character trait and the balancing test is favorable, the trial court can elect to admit the evidence.” Boone, 728 N.E.2d at 138.

In Wickizer v. State, 626 N.E.2d 795 (Ind. 1993), the Indiana Supreme Court held that the intent exception is available only where a defendant goes beyond merely denying the charged culpability and affirmatively presents a claim of particular contrary intent. Id. at 799. “In this respect, intent is unlike the other listed exceptions in Evid. R. 404(b)” as it “is often an element of the crime and is likely to be found relevant” and “[a] prior intent to commit a bad act, however, although of some relevance, introduces the substantial risk of conviction based predominately on bad character, because, since the defendant meant to cause harm before, he must therefore have meant to cause harm in this case.” Payne v. State, 854 N.E.2d 7, 19 (Ind. Ct. App. 2006) (citations and quotation marks omitted). Because of this danger, the Court in Wickizer narrowly construed the intent element making the intent exception available only when a defendant alleges a particular contrary intent, whether in an opening statement, by cross examination of the State’s witnesses, or by presentation of his own case-in-chief. Payne, 854 N.E.2d at

19 (citing Wickizer, 626 N.E.2d at 799). The State may then respond by offering evidence of prior crimes, wrongs, or acts to the extent genuinely relevant to prove the defendant's intent at the time of the charged offense. Payne, 854 N.E.2d at 19.

In addition, we note that a defendant's statement to police may be an affirmation of particular contrary intent that justifies the State's use of prior misconduct evidence in its case-in-chief. Day v. State, 643 N.E.2d 1, 4 (Ind. Ct. App. 1994), trans. denied. For instance, in Whitehair v. State, 654 N.E.2d 296 (Ind. Ct. App. 1995), this court, relying upon Wickizer, found that the effect of a defendant's pre-trial statement to police, combined with his counsel's opening remarks, placed the defendant's intent at issue. Whitehair, 654 N.E.2d at 301-302. In Butcher v. State, the defendant's pretrial statement to the police that he could not resist touching his nude daughter, together with his counsel's opening remarks and his trial testimony, demonstrated that the defendant presented a claim of particular contrary intent. 627 N.E.2d 855, 857-859 (Ind. Ct. App. 1994), reh'g denied, overruled on other grounds.

Here, Officer Cox testified that at the time that T.Y. made the statement, Officer Cox had not yet "said anything about fake money." Id. at 54. During testimony at the denial hearing, T.Y.'s counsel objected to testimony regarding the fact that the bill presented at the Dollar General store approximately one month prior to the offenses in this case was fake and argued that "[t]his doesn't prove intent" and that "[w]e don't need details on why if we're just limited to the purpose of intent." Transcript at 30. During closing arguments, T.Y.'s counsel argued that the State had not proven T.Y.'s intent beyond a reasonable doubt, stating: "[t]he only information that we've gotten from

anyone is that he expressed surprise that this . . . hundred dollar bill wasn't good" and that "I don't know that [T.Y.] can be blamed for thinking well maybe if it's, maybe Walgreen's just doesn't want to take it okay so I'm going to go try it at this other place." Id. at 66. T.Y.'s counsel argued that the State did not meet its burden beyond a reasonable doubt in part because there were "too many problems with [] proof of intent." Id. at 67. The State argued that T.Y. "knew that the bill that he gave to this cashier was fake" and that the State "clearly proved that [T.Y.] had the intent to defraud Dollar General and Walgreen's . . . ." Id. at 64. We also note that T.Y. and the State stipulated that the \$100 bill was a counterfeit bill.

Based upon our review of the record, we conclude that T.Y.'s statement to Officer Cox and his counsel's arguments placed T.Y.'s intent at issue and demonstrate that T.Y. alleged a particular contrary intent. Therefore, the evidence that T.Y. previously attempted to make a purchase at the Dollar General store using a counterfeit bill was properly admissible under Ind. Evidence Rule 404(b) to show T.Y.'s intent. See Butcher, 627 N.E.2d at 859 (concluding that the defendant's prior acts were admissible under Ind. Evidence Rule 404(b) where the defendant's pretrial statement to police, counsel's opening remarks, and the defendant's trial testimony demonstrated a particular contrary intent). Also, because there was no jury trial, we are confident that the juvenile court was able to overlook any prejudicial aspects of this evidence and concentrate solely on the probative portions of the testimony. See Helton v. State, 624 N.E.2d 499, 513 (Ind. Ct. App. 1993) ("In criminal bench trials, we presume that the court disregarded inadmissible testimony and rendered its decision solely on the basis of relevant and probative

evidence.”), trans. denied, cert. denied, 520 U.S. 1119, 117 S. Ct. 1252 (1997). Accordingly, the juvenile court did not abuse its discretion by admitting evidence of T.Y.’s prior attempt to make a purchase with a counterfeit bill.

#### IV.

The next issue is whether the evidence is sufficient to support the juvenile court’s true findings that T.Y. committed delinquent acts which would have constituted two counts of forgery as class C felonies if committed by an adult.

In reviewing a juvenile adjudication, we will consider only the evidence and reasonable inferences supporting the judgment and will neither reweigh evidence nor judge the credibility of the witnesses. J.S. v. State, 843 N.E.2d 1013, 1016 (Ind. Ct. App. 2006), trans. denied. If there is substantial evidence of probative value from which a reasonable trier of fact could conclude that the juvenile was guilty beyond a reasonable doubt, we will affirm the adjudication. Id.

The offense of forgery is governed by Ind. Code § 35-43-5-2, which provides in part that “[a] person who, with intent to defraud, makes, utters, or possesses a written instrument in such a manner that it purports to have been made . . . by authority of one who did not give authority . . . commits forgery, a Class C felony.” Thus, to convict T.Y. on the two forgery counts, the State was required to show beyond a reasonable doubt that T.Y. submitted the counterfeit \$100 bill to Walgreens and Dollar General with the intent to defraud them.

T.Y. argues that the evidence was insufficient to support his true findings for forgery.<sup>4</sup> Specifically, T.Y. argues that “there was conflicting and vacillating eyewitness testimony.” Appellant’s Brief at 9. T.Y. argues that one eyewitness “only identified T.Y. based upon the color of the shirt that he was wearing” and “would not recognize T.Y. on the street if he ran into him,” that another eyewitness testified that she “would not recognize T.Y. if she saw him on the streets,” and that a third eyewitness “identified T.Y. mainly based upon the fake money that was given as payment to the cashier” and that she recognized “T.Y.’s ‘bald fade’ hair style” even though T.Y.’s mother testified that T.Y. “did not have a bald fade . . . during that time.” Id.

The State argues that “the officer stopped T.Y. shortly after he committed the offenses,” that “[t]he witnesses were taken from their stores to the location of where the officer had T.Y. standing outside of the vehicle,” and that “[t]he employees identified T.Y. as the person that gave them the fake money.” Appellee’s Brief at 5. The State argues that the juvenile court was “free to assess [the witnesses’] credibility and determine whether their testimony was reliable” and that “T.Y.’s argument is nothing more than [an] attempt for this court to reweigh the evidence and credibility of the witnesses, which is outside the province of appellate review.” Id.

We agree with the State and note that “[i]nconsistencies in identification testimony go only to the weight of that testimony; it is the task of the [trier of fact] to weigh the evidence and to determine the credibility of the witnesses.” Emerson v. State, 724

---

<sup>4</sup> T.Y. also argues that the evidence was insufficient to support his true findings for theft. However, because we reverse those true findings on other grounds, we need not address this argument.

N.E.2d 605, 610 (Ind. 2000), reh'g denied. T.Y.'s argument is merely a request that we reweigh the evidence and judge the credibility of the witnesses, which we cannot do. Id.; J.S., 843 N.E.2d at 1016.

The record reveals that the service clerk who was working at the Walgreens store on July 16, 2009 made an in-court identification of T.Y. as the person who attempted to purchase a drink using the counterfeit \$100 bill. On cross examination, the clerk testified that he was able to identify T.Y. to police officers on the night of July 16, 2009 by the color of T.Y.'s shirt and that, at the time of the denial hearing, the clerk would not be able to pick T.Y. out of a crowd. On redirect examination, the clerk testified that he identified T.Y. to police out of the three individuals that had been stopped by the police.

The record also reveals that the cashier who was working at the Dollar General store on July 16, 2009, made an in-court identification of T.Y. as the person who had attempted to purchase deodorant at the Dollar General store using a counterfeit \$100 bill. When asked during cross examination if she would recognize T.Y. in a crowd of people at the time of the denial hearing, the cashier testified “[n]ot really” and “[n]o.” Transcript at 43.

The manager of the Dollar General store also made an in-court identification of T.Y. as the person who had attempted to purchase deodorant using a counterfeit \$100 bill and testified that she observed T.Y. “enter the front door” and that her office “is right behind it.” Id. at 22. Officer Taylor testified that the Dollar General manager was the person who gave the police descriptions of T.Y. (including that he was wearing a red shirt) and the vehicle which he entered (including the color of the vehicle and the partial

license plate number), and the manager testified that she made an identification of T.Y. of the three men in the vehicle for the police on the night of July 16, 2009. The manager also testified regarding T.Y.'s previous attempt to make a purchase at the Dollar General store using a counterfeit bill.

On cross examination, the manager testified that she did not remember what T.Y. was wearing when T.Y. previously attempted to make a purchase using a counterfeit bill. When questioned further regarding how she recognized T.Y. on the night of July 16, 2009, the manager testified that she recognized him based upon his “[f]acial features when [the manager] walked up. He’s young. He had the bald fade that he’s always had . . . .”<sup>5</sup> Id. at 34. During cross examination, she said that she thought she would recognize T.Y. if she saw him. On redirect, the manager testified that there was no doubt in her mind that T.Y. was the same person that came into her store. While the juvenile court may have made different inferences from the evidence, we cannot say that the inferences made by the court here were unreasonable.

Based upon our review of the facts in the record most favorable to the true findings, we conclude that evidence of probative value exists from which a reasonable fact finder could find beyond a reasonable doubt that T.Y. was the person who attempted to purchase items at the Walgreens and Dollar General stores using a counterfeit \$100 bill and thus that T.Y. committed the charged delinquent acts, i.e., acts which, if committed by an adult, would constitute two counts of forgery. See Davis v. State, 524 N.E.2d 305,

---

<sup>5</sup> T.Y.'s mother testified that T.Y. had his hair cut “like the beginning of July . . . [e]nd of June” and that he previously “had dreads in his hair.” Transcript at 62.

307 (Ind. 1988) (holding that the evidence was sufficient to sustain the defendant's conviction where a witness observed a man fitting the robber's description get into the back seat of a vehicle identified less than twenty minutes later as the vehicle the defendant was driving); Newman v. State, 483 N.E.2d 36, 37 (Ind. 1985) (holding that the evidence was sufficient to sustain the defendant's conviction where two victims could not positively identify the defendant but other eyewitnesses to the offense positively identified the defendant).

For the foregoing reasons, we affirm the juvenile court's true findings that T.Y. committed delinquent acts, which if committed by an adult, would constitute two counts of forgery as class C felonies, and we reverse the juvenile court's true findings that T.Y. committed delinquent acts, which if committed by an adult would constitute two counts of attempted theft as class D felonies, and remand to the juvenile court with instructions to vacate T.Y.'s two true findings for attempted theft.

Affirmed in part, reversed in part, and remanded.

NAJAM, J., and VAIDIK, J., concur.