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**IN THE  
COURT OF APPEALS OF INDIANA**

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MYIA RELPHORDE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-1103-CR-91
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Jeffrey L. Marchal, Master Commissioner  
Cause No. 49G06-1005-FC-041544

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**October 5, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**VAIDIK, Judge**

## **Case Summary**

Myia Relphorde appeals her conviction for Class C felony conspiracy to commit robbery. Relphorde contends there is insufficient evidence to support her conviction because the State failed to prove fear by the victim, or use or threat of use of force against the victim. However, a conspiracy conviction does not require the actual commission of the underlying crime, only the intent to commit the underlying crime, an agreement to commit the underlying crime, and an overt act in furtherance of the conspiracy. The elements of conspiracy were sufficiently proven by the State at trial. We therefore affirm Relphorde's conviction.

## **Facts and Procedural History**

In May 2010, Relphorde, Tara Parsons, and Cheria Averitte worked at the Dairy Queen at 3740 Martin Luther King Jr. Street in Indianapolis. Relphorde told Tara that she was "fixing to have her boyfriend Aaron come and rob [the Dairy Queen]." Tr. p. 10. In response, Tara told Relphorde that her father, Martino, had previously committed a robbery. Martino went to the Dairy Queen on May 24, 2010, and Relphorde discussed robbing the Dairy Queen with him. Martino told Relphorde to call him if she wanted him to return later that evening to execute the robbery.

Relphorde did call Martino that evening and told him that it would be a "good day" for the robbery and to return to the Dairy Queen around its closing time of 10:00 p.m. *Id.* at 28. Relphorde relayed to Tara the contents of her conversation with Martino but did not inform Cheria of the plan.

At closing time, Relphorde put the money from the register into a Dairy Queen cup and placed it on the counter. A short time later, around 10:00 p.m., Martino walked in the back door of the Dairy Queen and said, “Give me the f\*\*\*in’ money!” Appellant’s App. p. 66. He was wearing a hooded shirt that shrouded his face and kept his hand inside his shirt to give the appearance of having a weapon. Martino again demanded the money and its location. Relphorde indicated that the money was in a cup on the counter where she had earlier placed it. He then took the money and left the Dairy Queen. Martino was apprehended shortly after the robbery. Police interviewed Relphorde, and she confessed to conspiring to commit the robbery. Tr. p. 45. During her confession, Relphorde noted that Martino was “giving the image that he has a gun.” Appellant’s App. p. 78.

The State charged Relphorde with both Class C felony conspiracy to commit robbery and Class C felony robbery. She waived her right to a jury trial, and a bench trial was held. Cheria, the victim, did not appear at trial despite the State’s best efforts to ensure her presence. After the State’s case in chief, the defense moved for judgment on the evidence because of the inability of the State to prove the victim’s fear due to Cheria’s absence. The trial court granted the motion as to the robbery charge only. The trial continued.

The trial court found Relphorde guilty of conspiracy to commit robbery. In delivering its judgment, the trial court stated:

[I]t’s clear to me that what was contemplated was something more than just stealing, than just taking something which would constitute a theft. This was going to be a forcible demand for money and that’s what took place in this instance. Whether or not he used an expletive or not, I don’t think

really matters. Mr. Parsons was clear that he was to come in and make a verbal demand for money from the employees of this particular establishment and he did so, while pretending or at least leading people to believe that he had a weapon, which he did not have.

Tr. p. 59-60. The trial court sentenced Relphorde to three years, with one year served on home detention through community corrections and two years suspended.

Relphorde now appeals.

### **Discussion and Decision**

Relphorde contends that the evidence is insufficient to support her conviction for conspiracy to commit robbery because there is no evidence that Cheria was either in fear or that force was used or threatened against her. She instead asks us to reduce her conviction to conspiracy to commit theft.

Our standard of review with regard to sufficiency claims is well settled. In reviewing a sufficiency of the evidence claim, this Court does not reweigh the evidence or judge the credibility of the witnesses. *Bond v. State*, 923 N.E.2d 773, 781 (Ind. Ct. App. 2010), *reh'g denied, trans. denied*. We consider only the evidence most favorable to the judgment and the reasonable inferences draw therefrom and affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. *Id.* Reversal is appropriate only when a reasonable trier of fact would not be able to form inferences as to each material element of the offense. *Id.*

The three elements needed to prove conspiracy are: (1) the defendant intended to commit the felony; (2) the defendant agreed with another person to commit the felony; and (3) either the defendant or the other person performed an overt act in furtherance of the conspiracy. Ind. Code § 35-41-5-2. It is important to note that the defendant need not

actually commit nor even attempt the underlying crime. *Owens v. State*, 929 N.E.2d 754, 756 (Ind. 2010), *reh'g denied*. “A conspiracy is ‘complete upon the agreement and the performance of an overt act in furtherance of the agreement.’” *Id.* (citing *Smith v. State*, 655 N.E.2d 532, 540 (Ind. Ct. App. 1995), *reh'g denied, trans. denied*).

Relphorde argues that her conspiracy conviction for robbery cannot stand because the underlying crime of robbery did not occur, specifically that Martino did not put Cheria in fear, use force against her, or threaten the use of force against her. We disagree.

The underlying crime of a conspiracy need only be intended, not completed nor even attempted, so it is immaterial whether a robbery actually took place. The evidence adduced at trial, however, shows that a robbery is exactly what was intended by Relphorde, Tara, and Martino. The elements of robbery are the defendant “knowingly or intentionally takes property from another person or from the presence of another person: (1) by using or threatening the use of force on any person; *or* (2) by putting any person in fear.” Ind. Code § 35-42-5-1 (emphasis added); *see also* Appellant’s App. p. 20-21. Relphorde argues that Cheria was neither put in fear, nor was force threatened against her. Relphorde’s confession, however, shows that Martino gave the impression that he had a gun when he entered the Dairy Queen by placing his hand underneath his sweatshirt in a threatening manner. Relphorde also admits that Cheria was unaware of the plan for Martino to return to the Dairy Queen and forcibly demand the money from the employees. As such, it is clear that the intention here, as the trial court said, was to commit a robbery and not just a theft.

The other two elements of conspiracy are also clearly shown by the evidence. Relphorde admittedly planned the robbery along with Martino and Tara. Martino then performed an overt act in furtherance of the conspiracy by returning to the Dairy Queen, entering the store, and forcibly demanding the money. This evidence is sufficient to satisfy all elements of conspiracy to commit robbery. We therefore affirm Relphorde's conviction.

Affirmed.

FRIEDLANDER, J., and DARDEN, J., concur.