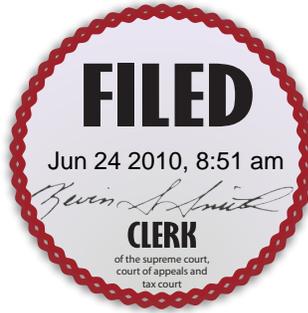


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

R.D.,)
)
Appellant-Defendant,)
)
vs.) No. 49A02-0909-JV-840
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores , Judge
The Honorable Scott Stowers, Magistrate
Cause No. 49D09-0906-JD-1995

June 24, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

R.D. appeals her adjudication as a delinquent child for committing acts that would constitute Criminal Recklessness,¹ a class D felony, if committed by an adult. R.D. presents a single issue for review: was there sufficient evidence to support the true finding of criminal recklessness?

We affirm.

The facts favorable to the true finding are that at the time of the events upon which the true finding is based, R.D. was thirteen years old. On June 29, 2009, she was visiting her boyfriend, R.B., and his brother, C.B., in a trailer park. N.H. was also present and visiting his sister in the trailer park that day. R.D. met N.H. when N.H. came to play video games with C.B. Later that afternoon, N.H. was riding R.B.'s bicycle around the trailer park. N.H. believed he had R.B.'s consent to do so. At some point, another neighborhood youth asked N.H. to let him ride R.B.'s bicycle, but N.H. refused. That youth went to R.B. and advised him that N.H. would not let him ride R.B.'s bicycle. R.B. decided to retrieve his bicycle from N.H. and R.D. accompanied R.B. when he did so. R.B. had a knife with a black and orange handle. R.D. asked R.B. if she could take his knife with her when they went to retrieve the bicycle. He agreed. R.D. and R.B. approached N.H., R.D. pulled out the knife, held the blade against N.H.'s throat, and told him to get off of the bicycle and give it to the neighborhood youth or she would cut his throat. N.H. hesitated and then got off the bicycle. N.H. had sustained a scratch on his neck where R.D. had pressed the knife against it. He returned to his sister's trailer and related to his sister and mother what had happened. Meanwhile, R.B. hid the knife in bushes about 200 feet from the trailer in which R.B. was

¹ Ind. Code Ann. § 35-42-2-2 (West, Westlaw through 2009 1st Special Sess.).

staying.

N.H.'s mother called the police and Officer Marc Klonne of the Indianapolis Metropolitan Police Department responded. When he learned the details of the incident, Officer Klonne searched R.B.'s grandfather's home looking for the knife. R.B. eventually admitted he had hidden the knife in some bushes and led Officer Klonne to it.

On June 30, 2009, a delinquency petition was filed alleging that R.D. had committed acts that would constitute the crimes of battery as a class C felony and criminal recklessness as a class D felony if committed by an adult. Following a hearing, the court entered a "not true" finding with respect to the battery allegation and a true finding with respect to the criminal recklessness allegation.

R.D. contends the evidence is insufficient to support the true finding of criminal recklessness. When reviewing the sufficiency of evidence supporting a true finding in a juvenile case, we are mindful that the State must prove every element of an offense beyond a reasonable doubt. *S.D. v. State*, 847 N.E.2d 255 (Ind. Ct. App. 2006), *trans. denied*. When conducting our review, we will not reweigh the evidence, judge the witnesses' credibility, or resolve conflicts in testimony, because these are determinations properly made by the trier of fact. *Id.* Instead, we look to the evidence and the reasonable inferences to be drawn therefrom that support the true finding. *Id.* We will affirm a true finding if there is probative evidence from which the factfinder could conclude the allegations are true beyond a reasonable doubt. *Id.*

In order to sustain a true finding for criminal recklessness, the State was required to prove that R.D. "recklessly, knowingly, or intentionally perform[ed] ... an act that create[d] a

substantial risk of bodily injury to another person ...while armed with a deadly weapon[.]” I.C. § 35-42-2-2(c)(2)(A). N.H. and R.B. both testified that R.D. was armed with a knife and held it to N.H.’s throat. If believed, their testimony was easily sufficient to establish all of the elements necessary to support a conclusion that the offense defined in I.C. § 35-42-2-2(c)(2)(A) was committed. R.D. does not challenge the evidence with respect to any particular element of the offense, but rather generally contends the testimonies of R.B. and N.H. were inconsistent with each other and thus not credible. In support of this claim, R.B. points to N.H.’s testimony that he and R.B. were “tight” friends, as juxtaposed against R.B.’s testimony that the two were not particularly close friends. *Transcript* at 24. He also notes that the two gave conflicting testimony on the matter of whether N.H. had R.B.’s permission to ride R.B.’s bicycle on the day of the incident. These discrepancies are not of such a character as to render the boys’ accounts of the incident entirely incredible.

The same is true of the other aspects of R.B.’s and N.H.’s testimonies that R.D. claims render them unworthy of belief. We note in this regard that it is not entirely implausible that R.D. would take the lead in retrieving R.B.’s bicycle from N.H., or that a thirteen-year-old girl described by her mother as “very moral”, “well-behaved”, and a straight A student would act in the manner that R.B. and N.H. claimed she did. *Id.* at 5. In the end, all of the alleged discrepancies and inconsistencies in the State’s witnesses’ testimonies were placed before the Marion County Superior Court, Juvenile Division and it was that court’s task to decide whether such rendered them unworthy of belief. The court decided that R.B.’s and N.H.’s testimonies were more credible than R.D.’s denials. We will not invade its province in that regard. *See S.D. v. State*, 847 N.E.2d 255. There was sufficient evidence to support the true

finding that R.D. committed acts that would constitute the crime of criminal recklessness if committed by an adult.

Judgment affirmed.

KIRSCH, J., and ROBB, J., concur.