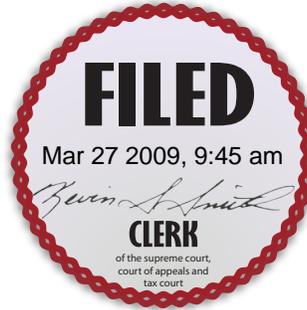


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF:)
)
R. P.,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 49A02-0808-JV-737

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
Cause No. 49D09-0801-JD-319

March 27, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

R.P. appeals his adjudication as a delinquent for committing acts that would constitute two counts of criminal mischief as class B misdemeanors¹ if committed by an adult. R.P. raises one issue, which we revise and restate as whether the evidence is sufficient to sustain R.P.'s adjudication as a delinquent. We affirm.

The relevant facts follow. On the evening of January 17, 2008, Spencer Fleck was driving home on 62nd Street in Indianapolis when his car was hit with a "brick" in front of Eastwood Middle School. Transcript at 5. Fleck pulled over, got out of his vehicle, and found a "big dent" in his vehicle. Id. at 9. A lady pulled up next to Fleck, and her vehicle had also been hit. Paul Beatty was also driving on 62nd Street when something hit his vehicle and "put a big scrape in it." Id. at 13. Beatty stopped at a gas station, noticed the scrape, and went back to the location where his vehicle was struck.

Fleck flagged down Washington Township School Police Officer Michael Dinnsen who was performing a routine school patrol at Eastwood Middle School. Fleck told the police that someone was "throwing rocks at cars" and he "got hit." Id. at 6. Officer Dinnsen observed damage to the vehicles.

As Officer Dinnsen was conducting an investigation, he observed R.P. walking northeast from the west side of the school. Officer Dinnsen and his partner, Officer Jason Holland asked R.P. where he was coming from. R.P. stated that he was coming from Eastwood for an athletic event, which was inconsistent with the direction R.P. was walking. Officer Dinnsen asked R.P. why he was coming from the west side of the

¹ Ind. Code § 35-43-1-2 (Supp. 2007).

school, and R.P. stated that he lived in an apartment complex west of the school. Officer Dinnsen then asked R.P. why he had been coming from the west side of the school and walking northeast if he was coming from the school itself, and R.P. did not have a response. For safety reasons, Officer Dinnsen patted R.P. down and removed “a whole bunch of” baseball-sized rocks from R.P. Id. at 9. Officer Holland asked R.P. for his name, and R.P. said that his name was John Smith. The officers ran the name provided by R.P. through their system, and nothing came back. Officer Dinnsen then asked R.P. for his real name, and R.P. gave him his real name and said that John Smith was simply a nickname.

The State alleged that R.P. was a delinquent for committing three counts of criminal mischief as class B misdemeanors for the damage done to Fleck’s vehicle, Beatty’s vehicle, and Megan Cogswell’s vehicle.² After the State presented its evidence, R.P. moved for an involuntary dismissal of the charges. The trial court granted R.P.’s motion for dismissal for the allegation regarding the damage to Cogswell’s vehicle, and denied it for the remaining counts. The juvenile court adjudicated R.P. to be a delinquent child for committing acts that would constitute two counts of criminal mischief as class B misdemeanors and placed R.P. on probation.

The sole issue is whether the evidence is sufficient to sustain R.P.’s adjudication as a delinquent for committing acts that would constitute two counts of criminal mischief as class B misdemeanors if committed by an adult. R.P. argues that “the only evidence

² Cogswell did not testify at the hearing.

supporting the Trial Court's True Finding as to Criminal Mischief is his presence near the scene at the time the police arrived and the possession of rocks, along with initially giving an obviously false name." Appellant's Brief at 9.

When the State seeks to have a juvenile adjudicated as a delinquent for committing an act that would be a crime if committed by an adult, the State must prove every element of the crime beyond a reasonable doubt. J.S. v. State, 843 N.E.2d 1013, 1016 (Ind. Ct. App. 2006), trans. denied. In reviewing a juvenile adjudication, this court will consider only the evidence and reasonable inferences supporting the judgment and will neither reweigh evidence nor judge the credibility of the witnesses. Id. 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. It is well established that "circumstantial evidence will be deemed sufficient if inferences may reasonably be drawn that enable the trier of fact to find the defendant guilty beyond a reasonable doubt." Pratt v. State, 744 N.E.2d 434, 437 (Ind. 2001).

Mere presence at the crime scene with the opportunity to commit a crime is not a sufficient basis on which to support a conviction. Id. at 436. However, presence at the scene in connection with other circumstances tending to show participation, such as the course of conduct of the defendant before, during, and after the offense, may raise a reasonable inference of guilt. Id.; Maul v. State, 731 N.E.2d 438, 439 (Ind. 2000).

The offense of criminal mischief as a class B misdemeanor is governed by Ind. Code § 35-43-1-2, which provides that “[a] person who . . . recklessly, knowingly, or intentionally damages or defaces property of another person without the other person’s consent . . . commits criminal mischief, a Class B misdemeanor.” Thus, to adjudicate R.P. to be a delinquent for committing acts that would constitute two counts of criminal mischief as class B misdemeanors if committed by an adult, the State needed to prove that R.P. recklessly, knowingly, or intentionally damaged or defaced property of Fleck and Beatty without their consent.

The record reveals that Fleck’s vehicle and Beatty’s vehicle were struck with something in front of Eastwood Middle School that resulted in a “big dent” to Fleck’s vehicle and a “big scrape” in Beatty’s vehicle. Transcript at 9, 13. Fleck flagged down Officer Dinnsen and told him that someone was “throwing rocks at cars.” Id. at 6. Officer Dinnsen observed damage to the vehicles and testified that the damage appeared to be from “a rock or some hard object.” Id. at 17.

As Officer Dinnsen was conducting an investigation, he observed R.P. walking northeast from the west side of the school. Officer Dinnsen and Officer Holland asked R.P. where he was coming from. R.P. stated that he was coming from Eastwood for an athletic event, which was inconsistent with the direction R.P. was walking. Officer Dinnsen asked R.P. why he was coming from the west side of the school, and R.P. stated that he lived in an apartment complex west of the school. Officer Dinnsen then asked R.P. why he had been coming from the west side of the school and walking northeast if

he was coming from the school itself, and R.P. did not have a response. For safety reasons, Officer Dinnsen patted R.P. down and removed “a whole bunch of” baseball-sized rocks from R.P. Transcript at 9. Officer Holland asked R.P. for his name, and R.P. said that his name was John Smith. The officers ran the name provided by R.P. through their system and nothing came back. Officer Dinnsen then asked R.P. for his real name, and R.P. gave him his real name and said that John Smith was simply a nickname.

Given the damage on the vehicles, R.P.’s presence while Officer Dinnsen was investigating, the presence of “a whole bunch of” baseball-sized rocks in R.P.’s pockets, and in light of R.P.’s providing Officer Dinnsen a false name and an explanation that was inconsistent with the direction he was walking, we conclude that the trial court here could have reasonably inferred from the evidence presented that R.P. threw rocks that struck Fleck’s vehicle and Beatty’s vehicle. Thus, we conclude that evidence of probative value exists from which the jury could have found R.P. guilty beyond a reasonable doubt of acts that would constitute two counts of criminal mischief as class B misdemeanors if committed by an adult. See, e.g., McGuire v. State, 625 N.E.2d 1281, 1282 (Ind. Ct. App. 1993) (holding that the evidence was sufficient to sustain the defendant’s conviction for criminal mischief where he threw a beer bottle at a vehicle during an argument and dented the vehicle). See also Malinski v. State, 794 N.E.2d 1071, 1086 (Ind. 2003) (holding that the defendant’s false explanation for his injuries along with other evidence supplied an inference that the defendant murdered the victim and sustained injuries during the victim’s attempts to defend herself); Dill v. State, 741 N.E.2d 1230, 1232 (Ind.

2001) (holding that flight and related conduct may be indicative of a guilty mind and may be considered in determining a defendant's guilt); Bennett v. State, 883 N.E.2d 888, 892 (Ind. Ct. App. 2008) (holding that the giving of a false name is a form of flight and thus evidence of consciousness of guilt), trans. denied.

For the foregoing reasons, we affirm R.P.'s adjudications for acts that would be two counts of criminal mischief as class B misdemeanors if committed by an adult.

Affirmed.

KIRSCH, J. and BRADFORD, J. concur