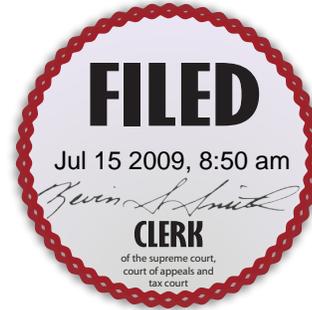


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

G.G.,)
)
Appellant-Defendant,)
)
vs.) No. 49A02-0812-JV-1148
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION COUNTY SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Danielle Gaughan, Commissioner
Cause No. 49D09-0807-JD-2254

July 15, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

G.G. appeals his adjudication, after a bench trial, as a delinquent child for committing acts that would be class A misdemeanor and class D felony resisting law enforcement if committed by an adult.

We reverse and remand.

ISSUE

Whether the trial court's true findings for two counts of resisting law enforcement violate Indiana's prohibition against double jeopardy where one count pertained to G.G.'s initial act of fleeing by vehicle and the other pertained to his subsequent flight on foot.

FACTS

Before he traveled to Nevada in late July of 2008, Tracy Harris parked his company vehicle in front of his home in Indianapolis and left the keys inside his home. Harris' company vehicle was a white Chevy van with his employer's name -- C.R. Electric Company -- prominently displayed on both sides. On July 26, 2008, Harris learned that his home may have been burglarized in his absence. He contacted his neighbor, Terry Elam, and asked him to check on the house. At Harris' home, Elam and his fiancée, Constance Coleman, observed evidence that the house had been burglarized and that Harris' company van was missing; they called the police.

Later that same day, while driving near their neighborhood, Elam and Coleman observed a C.R. Electric van parked on a city street. They parked near the van and called the police to report their location. As Elam and Coleman awaited the arrival of law enforcement, two young "boy[s]" approached their vehicle. (Tr. 30). The boys casually

addressed Elam and Coleman, passed them, and entered Harris' van. One boy -- later identified as G.G.¹ -- got into the driver's seat and drove off toward 38th Street.

As the van pulled away, Elam and Coleman called the police to report that the suspects were driving away. They followed in their car and kept the police informed of their location. Soon thereafter, Officers Ivalee Craney and Nhat Nguyen of the Indianapolis Metropolitan Police Department arrived at the scene and observed Harris' van near the intersection of 38th and Breen Streets. Officer Craney pulled her squad car behind the van and activated her lights and siren. G.G. suddenly "gunned" the engine and turned sharply to the right, heading eastbound on 38th Street. (Tr. 76). He then jumped a curb, drove "along the grass and tree line," and crashed into a utility pole. (Tr. 70).

After the crash, Officers Craney and Nguyen ran toward the van. G.G. jumped from the driver's side of the vehicle and tried to run toward the tree line. Officer Nguyen instructed G.G. to stop, saying, "Do not run. If you run, I'm gonna tase you." (Tr. 70). G.G. complied and was placed under arrest.

On July 28, 2008, the State filed a delinquency petition alleging that G.G. committed the following offenses, which would be crimes if committed by an adult: count I, class D felony auto theft; count II, class D felony resisting law enforcement; count III, class A misdemeanor resisting law enforcement; and counts IV and V, two counts of criminal mischief, as class B felonies. After a denial hearing on October 27,

¹ G.G. was born on December 10, 1993.

2008, the juvenile court entered true findings as to counts II through V, including the two counts of resisting law enforcement as a class D felony and A misdemeanor. Defense counsel moved that counts II and III be merged; the trial court denied the motion. G.G. now appeals.

DECISION

G.G. argues that the juvenile court's true findings as to two counts of resisting law enforcement violate Indiana's prohibition against double jeopardy pursuant to Article 1, Section 14 of the Indiana Constitution. Specifically, he argues that his acts of fleeing from law enforcement in a vehicle and then on foot constituted one continuous act of flight. We agree.

Article 1, Section 14 of the Indiana Constitution provides that '[n]o person shall be put in jeopardy twice for the same offense.' The right not to be placed in jeopardy twice stems from the underlying premise that a defendant should not be tried or punished twice for the same offense. It is the defendant's burden on appeal to demonstrate that his convictions violated his constitutional right to be free from double jeopardy.

Boyd v. State, 766 N.E.2d 396, 399-400 (Ind. Ct. App. 2002) (internal citations omitted).

In support of his argument, G.G. cites to *Arthur v. State*, 824 N.E.2d 383 (Ind. Ct. App. 2005), *trans. denied*. In *Arthur*, a Beech Grove patrolman observed a vehicle being driven erratically and failing to signal a turn. Suspecting that the driver was intoxicated, the officer initiated a traffic stop. As the patrolman approached the vehicle, the defendant sped away; the patrolman gave chase in his squad car. The defendant crashed into a fence, exited the vehicle, and fled on foot. He was apprehended approximately two blocks away. The defendant was subsequently charged with several offenses, including

two counts of resisting law enforcement as a class D felony and class A misdemeanor, respectively.² After a bench trial, the defendant was convicted on both counts of resisting law enforcement.

On appeal, the defendant argued that the trial court's entry of judgment of conviction as to both counts of resisting law enforcement violated double jeopardy principles because "his act[s] of fleeing in a vehicle and then on foot constituted one continuous act." *Id.* at 385. In our analysis, we noted the similarity between the defendant's argument and the double jeopardy issue frequently raised in the context of appeals from criminal confinement convictions -- namely, whether entry of judgment on two counts of criminal confinement of the same victim violate double jeopardy. We opined,

In deciding whether both convictions could stand, we were guided by the following inquiry: 'whether [Indiana Code §] 35-42-3-3 defines two separate species of confinement which may properly divide one continuous confinement episode into two distinct crimes for purposes of multiple convictions.' We answered this inquiry in the negative, and thus, we determined that there was only one continuous episode of confinement, rather than two separate confinements. We continued by concluding that the two convictions for confinement violated double jeopardy because 'one continuous confinement may result in only one confinement conviction, notwithstanding that the defendant engaged in two different acts, one proscribed in subsection one [of Indiana Code section 35-42-3-3(a)] , and the other in subsection two.'

Id. at 386. Applying the foregoing analysis to the context of Arthur's convictions for resisting law enforcement, we noted further,

² Arthur was also convicted of one count of operating a motor vehicle while under a lifetime forfeiture of his driving privileges.

[W]e cannot say that resisting law enforcement by fleeing in a vehicle is a different ‘species’ from resisting law enforcement by fleeing on foot. Rather, fleeing by means of a vehicle merely serves to enhance the penalty for fleeing. *See* Ind. Code § 35-44-3-3(b)(1)(A) (setting forth that the offense of resisting law enforcement by fleeing is a Class D felony if the person uses a vehicle to commit the offense). Stated otherwise, whether on foot or in a vehicle, the same ‘species’ of behavior is proscribed: fleeing. Here, Arthur committed one continuous act of fleeing, albeit by two different means: Arthur began fleeing in a truck, and when he crashed the truck, he immediately began to flee on foot without first being intercepted by the police. Because we find his actions of fleeing by vehicle and then on foot constitute one continuous act of resisting law enforcement, we find that convictions on both counts cannot stand.

Id. at 387.

G.G. asserts that Arthur is much akin to the instant facts. We agree, and the State acknowledges that the “factual circumstances [of *Arthur*] are nearly identical to those in this case.” State’s Br. at 8.

Here, after Officer Craney pulled him over pursuant to a traffic stop, G.G. fled in Harris’ van. He crashed the van and then attempted to flee on foot. As in *Arthur*, G.G.’s acts of fleeing, first, by vehicle and then, on foot, constituted a continuous act or single episode of fleeing; thus, the trial court’s two adjudications for resisting law enforcement cannot both stand. *See Brown v. State*, 830 N.E.2d 956, 965 (Ind. Ct. App. 2005) (ordering two of defendant’s three convictions for resisting law enforcement vacated where evidence showed that defendant fled from law enforcement first on foot and then by snowmobile, and therefore, engaged in a single episode of fleeing).

Accordingly, we reverse and remand this matter to the trial court to vacate and set aside G.G.’s adjudication for resisting law enforcement as a class A misdemeanor.

Reversed and remanded with instructions.

BAILEY, J., and ROBB, J., concur.