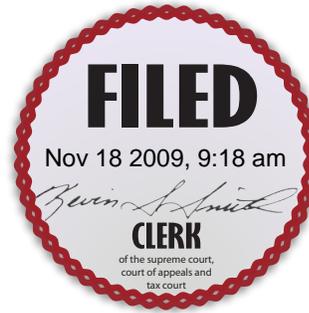


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

CURTIS DEWHART,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 02A04-0905-CR-248

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Kenneth R. Scheibenberger, Judge
Cause No. 02D04-0809-FD-846

November 18, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Following a jury trial, Appellant-Defendant Curtis Dewhart was convicted of Class D felony Resisting Law Enforcement¹ and Class C misdemeanor Operation of a Motor Vehicle by an Unlicensed Driver.² Upon appeal, Dewhart challenges the sufficiency of the evidence to support his conviction for resisting law enforcement. We affirm.

FACTS AND PROCEDURAL HISTORY

At approximately 7:00 a.m. on September 17, 2008, John Heingartner spotted a suspicious vehicle as he drove his son to a bus stop in Fort Wayne. The vehicle was driving slowly in the dark without its headlights illuminated. According to Heingartner, the driver of the vehicle, whom he later identified to be Dewhart, was “slumped way down.” Tr. p. 69. Heingartner saw the vehicle temporarily pull over and look down Heingartner’s friend’s driveway. After the vehicle continued driving, Heingartner exited his vehicle and signaled to the driver that his lights were off. In response, the driver sped up and “jerked” the vehicle around Heingartner. Tr. p. 70. Heingartner took down the vehicle’s license plate and notified authorities. Heingartner followed the vehicle, informing authorities of its location. When Heingartner saw an officer had arrived at their location, he heard tires squealing and saw the vehicle take off.

Upon locating the suspicious vehicle identified by Heingartner, Fort Wayne Police Officer James Payne, Jr. activated his emergency lights and siren. Officer Payne saw the driver look at him and then accelerate the vehicle. Officer Payne pursued the vehicle for

¹ Ind. Code § 35-44-3-3 (2008)

² Ind. Code § 9-24-18-1 (2008).

approximately three minutes, for a distance of approximately a mile, including through a yard. The vehicle's top speed was approximately forty-five miles per hour in an area where the posted speed limit was thirty-five miles per hour. The vehicle ultimately stopped, after which Officer Payne apprehended the driver and determined him to be Dewhart. Officer Payne subsequently discovered that Dewhart did not have a valid driver's license.

On September 23, 2008, the State charged Dewhart with Class D felony resisting law enforcement (Count I), Class A misdemeanor criminal mischief (Count II), and Class C misdemeanor operation of a motor vehicle by an unlicensed driver (Count III). During the March 19, 2009, jury trial, the State dismissed Count II. The jury subsequently found Dewhart guilty as charged of Counts I and III, and the trial court entered judgment of conviction on these counts. At an April 20, 2009 sentencing hearing, the trial court imposed concurrent sentences of two and one-half years in the Department of Correction on Count I and ninety days on Count III. This appeal follows.

DISCUSSION AND DECISION

Upon appeal, Dewhart challenges the sufficiency of the evidence to support his resisting-law-enforcement conviction in Count I by arguing that he did not "flee" from law enforcement.³ In making this argument, Dewhart points to the short duration and

³ Indiana Code section 35-44-3-3(a)(3) defines resisting law enforcement as knowingly or intentionally "flee[ing] from a law enforcement officer after the officer has, by visible or audible means, including operation of the law enforcement officer's siren or emergency lights, identified himself or herself and ordered the person to stop."

distance and relatively low speeds of the pursuit at issue as well as to what he claims is inconsistent evidence regarding when Officer Payne activated his lights and siren.

In evaluating the sufficiency of the evidence to support Dewhart's conviction, we do not reweigh the evidence or judge the credibility of the witnesses. *Kien v. State*, 782 N.E.2d 398, 407 (Ind. Ct. App. 2003), *trans. denied*. We consider only the evidence which supports the conviction and any reasonable inferences which the trier of fact may have drawn from the evidence. *Id.* We will affirm the conviction if there is substantial evidence of probative value from which a reasonable trier of fact could have drawn the conclusion that the defendant was guilty of the crime charged beyond a reasonable doubt. *Id.* It is the function of the trier of fact to resolve conflicts of testimony and to determine the weight of the evidence and the credibility of the witnesses. *Jones v. State*, 701 N.E.2d 863, 867 (Ind. Ct. App. 1998).

In the specific context of Indiana Code section 35-44-3-3(a)(3), "flight" has been defined to mean "a knowing attempt to escape law enforcement when the defendant is aware that a law enforcement officer has ordered him to stop or remain in place once there." *See Wellman v. State*, 703 N.E.2d 1061, 1063 (Ind. Ct. App. 1998). To the extent Dewhart suggests he was unaware of Officer Payne's efforts to stop him based upon allegedly conflicting testimony regarding when Officer Payne activated his lights and siren, Dewhart is asking us to reweigh the evidence, which we decline to do. Officer Payne testified that he immediately activated his lights and siren upon locating Dewhart's vehicle, that Dewhart looked at him and accelerated, and that he followed Dewhart for the significant period of up to three minutes, during which time Dewhart exceeded the

speed limit and left the road to drive across a lawn. This evidence and all reasonable inferences therefrom support the conclusion that Dewhart was aware of Officer Payne's attempts to stop him and that he knowingly or intentionally attempted to evade them. Accordingly, Dewhart's challenge to his resisting-law-enforcement conviction is without merit.

The judgment of the trial court is affirmed.

BAILEY, J., and VAIDIK, J., concur.