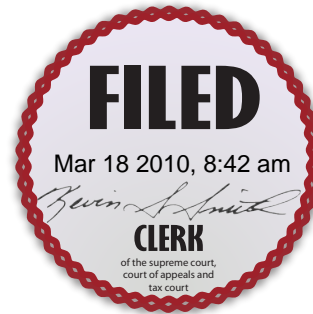


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

MARKQUEL NANCE,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 49A02-0908-CR-787

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Rebekah F. Pierson-Treacy, Judge
The Honorable Shatrese M. Flowers, Master Commissioner
Cause No. 49F19-0905-CM-50637

March 18, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Following a bench trial, Appellant-Defendant Markquel Nance appeals his conviction for Class A misdemeanor Resisting Law Enforcement,¹ for which he received a sentence of 365 days in the Marion County Jail, with thirty days executed and 335 days suspended. Upon appeal, Nance challenges the sufficiency of the evidence to support his conviction. We affirm.

FACTS AND PROCEDURAL HISTORY

On May 23, 2009, Indianapolis Metropolitan Police Officer Christopher Shaw responded to a call regarding a disturbance involving a person with a long gun. The person was described as having dreadlocks and wearing glasses, a black baseball hat, and a white T-shirt. Upon arriving at the scene, where there were approximately seventy-five to 100 persons present, Officer Shaw identified Nance as the person fitting that description. As soon as Officer Shaw and a certain Officer Fiscus, who had also arrived at the scene, began stepping out of their patrol cars and pointing at Nance, Nance “started taking off” toward a house located at the corner of 34th and Alpine Streets. Tr. p. 9. Officers Shaw and Fiscus identified themselves as police and commanded Nance, who was the only person “taking off,” to stop. Nance did not stop. Officer Shaw followed Nance to the house, yelling “Stop, police!” the entire time. The distance between Officer Shaw and Nance was approximately ten to fifteen yards to begin with but only two feet by the time Nance reached the house. Upon reaching the house, Nance tried to enter into it. Officer Shaw, who continued to yell, “Stop, police!” three more times, tried to prevent Nance from entering the house by grabbing his shirt. Officer Shaw’s efforts to grab

¹ Ind. Code § 35-44-3-3 (2008).

Nance were further thwarted by persons inside the house pulling Nance inside. Officer Shaw subsequently entered the home and placed Nance under arrest. After Officer Fiscus handcuffed Nance and escorted him outside, Officer Shaw discovered and secured a handgun which was located just behind the door where Nance had just been. Later, after Officers Fiscus and Shaw had turned their attentions to another individual on the scene, they suddenly realized that Nance, who was handcuffed, was no longer where they had left him and had re-entered the house. Officer Shaw did not give Nance permission to re-enter the house.

On May 24, 2009, the State charged Nance with Class A misdemeanor resisting law enforcement. During a July 30, 2009 bench trial, the trial court found Nance guilty. The trial court subsequently entered judgment of conviction and sentenced Nance to 365 days in the Marion County Jail, with 30 days executed and 335 days suspended. This appeal follows.

DISCUSSION AND DECISION

Upon appeal, Nance challenges the sufficiency of the evidence to support his conviction. Nance claims that the State failed to show he was knowingly fleeing from Officer Shaw or that he was aware that Officer Shaw had told him to stop.

When evaluating the sufficiency of the evidence to support Nance'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).

Indiana Code section 35-44-3-3(a)(3) provides that a person who knowingly or intentionally flees 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 and ordered the person to stop, commits Class A misdemeanor resisting law enforcement.

In support of his argument that he was not knowingly fleeing and unaware he had been ordered to stop, Nance points to *Czobakowsky v. State*, 566 N.E.2d 87, 88-89 (Ind. Ct. App. 1991), wherein this court reversed a resisting law enforcement conviction based upon insufficient evidence that the defendant knew he had been ordered to stop. In *Czobakowsky*, a police officer approached a group of persons from a distance of approximately fifty feet; remained in his patrol car with the police signal lights off; did not verbally identify himself; and did not command the defendant, who "took off," to stop. *Id.*

Here, unlike in *Czobakowsky*, Officer Shaw approached Nance on foot, identified himself as a police officer, and commanded, from a distance of as little as two feet, that Nance stop, which Nance did not do. Nance's fast and continuing exit upon police arrival, despite police pursuit and repeated commands from mere feet away that he stop,

supports the reasonable inference that Nance knew he was fleeing and aware he had been ordered to stop.

The judgment of the trial court is affirmed.

NAJAM, J., and FRIEDLANDER, J., concur.