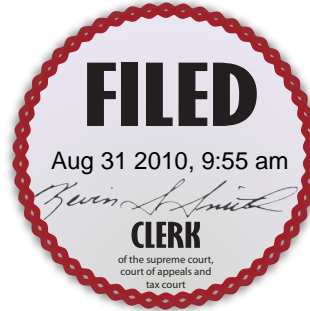


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

CARA SCHAEFER WIENEKE
Wieneke Law Office, LLC
Indianapolis, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

GARY DAMON SECREST
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

J. L.,)
)
Appellant-Respondent,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Petitioner.)

No. 49A02-0912-JV-1184

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Geoffrey A. Gaither, Magistrate
Cause No. 49D09-0909-JD-2772

August 31, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

J.L. appeals his adjudication as a delinquent child for committing acts that would have been the following offenses if committed by an adult: Class D felony resisting law enforcement,¹ Class A misdemeanor carrying handgun without a license,² and Class A misdemeanor dangerous possession of a firearm.³ As the State presented sufficient evidence to sustain the judgment, we affirm.

FACTS AND PROCEDURAL HISTORY

Officers Thomas and Eldridge were dispatched to an apartment complex because an anonymous caller reported teenagers were smoking narcotics in a hallway. The area was known to have a problem with narcotics dealing and with juveniles congregating in common hallways. The officers entered the hallway and smelled burnt marijuana. They saw three teenagers seated on stairs. The officers recognized two of the teens, J.W. and D.G., as previous offenders and knew one of them, D.G., had carried a handgun without a license.

Officer Eldridge asked the boys why they were in the hallway. They stated they were visiting a friend and identified a specific apartment. One of the officers knocked on the door of that apartment and received no response. J.L. was acting nervous and twice attempted to leave the area after the officers had begun their investigation. Each time an officer told him to sit back down, and J.L. complied. Officer Thomas asked the teenagers if any of them were carrying weapons. The teenagers denied having weapons, and

¹ Ind. Code § 35-44-3-3(a)(1) & (b)(1)(B).

² Ind. Code § 35-47-2-1.

³ Ind. Code § 35-47-10-5.

Officer Thomas said, “Then you don’t have any problems with me patting you down, right?” (Tr. at 32.)

Officer Thomas approached J.L. because he was “very fidgety.” (*Id.*) When the officer tried to put J.L.’s hands behind his back, J.L. forcibly pulled his hand away and swatted toward the officers. The officers tried to handcuff J.L. and repeatedly told him to stop resisting. J.L. slammed Officer Thomas into a mailbox. During the struggle, J.L. pulled a loaded .380 handgun from his pocket and tossed it to the ground. Officer Eldridge secured the weapon while Officer Thomas continued to struggle with J.L. Officer Eldridge told J.L. to stop resisting or she would use her stun gun. J.L. did not respond to the commands and could be controlled only after Officer Eldridge shocked him with her stun gun. During the altercation with J.L., both officers sustained jammed and cut fingers, and Officer Thomas’ head was cut.

The State alleged J.L. committed acts that would have been the following offenses if committed by an adult: Class D felony pointing a firearm,⁴ three counts of Class D felony resisting law enforcement, Class A misdemeanor carrying a handgun without a license, and Class A misdemeanor dangerous possession of a firearm. After a hearing, the court adjudicated J.L. a delinquent, finding he committed acts that would be resisting law enforcement, carrying a handgun without a license, and dangerous possession of a firearm. The court committed J.L. to the Department of Correction for six months.

DISCUSSION AND DECISION

On review of a juvenile adjudication, we apply the same sufficiency standard used

⁴ Ind. Code § 35-47-4-3.

in criminal cases. *A.E.B. v. State*, 756 N.E.2d 536, 540 (Ind. Ct. App. 2001). We do not reweigh the evidence or judge the credibility of witnesses. *D.R. v. State*, 729 N.E.2d 597, 599 (Ind. Ct. App. 2000). Instead we look only to the evidence of probative value and the reasonable inferences that support the determination. *Id.* Indiana Code § 35-44-3-3(b)(1)(B) provides that a person commits Class D felony resisting law enforcement if he knowingly or intentionally “forcibly resists, obstructs, or interferes with a law enforcement officer” who is lawfully engaged in the execution of the officer’s duties and draws a deadly weapon or causes bodily injury to another person in the process. Thus, to convict J.L. of resisting law enforcement the State needed to prove J.L. knowingly or intentionally forcibly resisted, obstructed, or interfered with officers lawfully engaged in the execution of their duties and drew a firearm or caused bodily injury to another person in the process.

J.L. argues the officers were not lawfully engaged in the execution of their duties because their warrantless search was improper under the Fourth Amendment to the United States Constitution and Article I, Section 11 of the Indiana Constitution: “Had the officers not attempted to perform an unlawful patdown search of J.L.’s person, they would not have discovered that he was in possession of a handgun.” (Appellant’s Br. at 9.) J.L. states he resisted only because the officers subjected him to an unlawful search without reasonable suspicion. (*Id.* at 4-5.) J.L. is asking us to reverse all of the findings by the trial court because of an alleged unconstitutional search.

Even if the officers had no reasonable suspicion to pat down J.L. for weapons, we could not reverse because J.L. committed a criminal offense when he forcibly resisted the

officers. *See Row v. Holt*, 864 N.E.2d 1011, 1017 (Ind. 2007) (even if an arrest is invalid, resisting is an independent offense). The general rule in Indiana is “a private citizen may not use force in resisting a peaceful arrest by an individual who he knows, or has reason to know, is a police officer performing his duties regardless of whether the arrest in question is lawful or unlawful.” *Id.* Before the search began, J.L. started to jerk away and forcibly resist. Then, while Officer Thomas was trying to handcuff him and gain control, J.L. responded by pushing and flailing his arms. Throughout the struggle, Officer Eldridge told J.L. to stop resisting and J.L. acknowledges he did not comply. J.L.’s resistance caused minor injuries to the officers trying to restrain him.

The resisting law enforcement statute does not condition the offense on a lawful order. *Alspach v. State*, 755 N.E.2d 209, 211 (Ind. Ct. App. 2001), *trans. denied*. Regardless of whether the search was constitutional, J.L. committed resisting law enforcement. The trial court had sufficient evidence to determine J.L. forcibly resisted the officers.

Officer Thomas had reason to believe J.L. violated the resisting law enforcement statute by forcibly resisting him after being told to submit to a patdown search, and thus the evidence leading to J.L.’s adjudication was discovered incident to an ensuing lawful arrest. *See Cole v. State*, 878 N.E.2d 882, 887 (Ind. Ct. App. 2007) (because Cole fled and forcibly resisted an officer, the handgun was seized incident to a lawful arrest). J.L. therefore cannot successfully claim the lawfulness *vel non* of Officer Thomas’s investigative stop affects the resisting law enforcement finding:

This approach balances both the right of the people to be free from unreasonable

searches and seizures and their right to be free from the dangers created by suspects who physically resist the police and provides sufficient disincentives to deter both police misconduct and criminal misconduct by suspects. As a result, “it would be farfetched to believe that police officers will attempt suspicionless investigatory stops or pat downs . . . in the hope that a suspect will commit an independent crime that will be the basis for a lawful search.”

Id. at 888 (quoting *State v. Williams*, 926 A.2d at 350 (N.J. 2007)).

When J.L. resisted the officers’ attempts to pat him down, he committed the independent crime of resisting law enforcement. Because he resisted before a search took place, J.L. cannot demonstrate the search was unconstitutional. While resisting, J.L. tossed away the handgun that resulted in the two handgun allegations. All of this evidence was constitutionally proper and was sufficient to sustain his adjudication as a delinquent.

Affirmed.

BAILEY, J., and BARNES, J., concur.