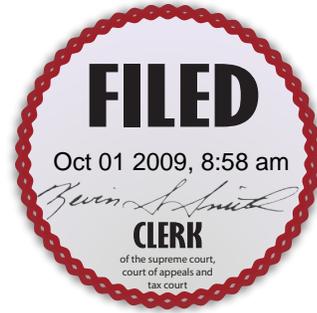


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

A.E.,)
)
Appellant-Defendant,)
)
vs.) No. 49A02-0901-JV-58
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn Moores, Judge
The Honorable Scott Stowers, Magistrate
Cause No. 49D09-0807-JD-1995

October 1, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

A.E. was adjudicated a delinquent child for committing acts that would constitute Resisting Law Enforcement by Fleeing, a class D felony, Resisting Law Enforcement by Fleeing, a class A misdemeanor, Criminal Mischief,¹ a class A misdemeanor, Resisting Law Enforcement by Force, a class A misdemeanor, Possession of Marijuana/Hashish, a class A misdemeanor, and Driving Without a License, a class A misdemeanor, if committed by an adult. A.E. challenges only the true finding of criminal mischief presenting the following issue for our review: Was there sufficient evidence of the amount of pecuniary loss to support the true finding of criminal mischief?

We affirm.

The facts most favorable to the adjudication are that at approximately 2:00 a.m. on July 3, 2008, Officer Lori Phillips of the Indianapolis Metropolitan Police Department observed a dark, four-door car exit a Taco Bell and head east on 71st street. Officer Phillips noticed that the car's headlamps were not illuminated at first, but when they were turned on, the taillights did not function. Officer Phillips then activated the emergency lights on her vehicle and pulled in behind the car. The driver of the car initially slowed down, starting to pull over to the right, but when Officer Phillips pulled over, the driver of the vehicle accelerated rapidly to approximately sixty miles-per-hour leading Officer Phillips on a chase lasting several miles. During the course of the chase, many motorists were forced off the road. Officer James McGunegill joined in the chase and drove into the grass in an attempt to

¹ Ind. Code Ann. § 35-43-1-2 (West, PREMISE through Public Laws approved and effective through 4/20/2009).

block A.E. after A.E. slowed the vehicle, exited from the driver's side of the car, and ran into a nearby yard. Because A.E. had not placed the car in park it continued rolling up to the curb ultimately crashing into Officer Phillips' parked vehicle. Officer Phillips had parked her car in the roadway and exited it, jumping over a fence to pursue A.E. After exiting the car, A.E. bumped up against Officer McGunegill's car, then ran around it, jumping over a fence before hiding behind an overturned wheelbarrow in the back yard of one of the residences there.

A.E. did not comply with Officer Phillips' command to show his hands, so she fired her taser at A.E. When the taser missed and struck the wheelbarrow, Officer Phillips grabbed A.E. and began wrestling with him. They went to the ground and Officer Phillips attempted to handcuff A.E. A.E. pulled away while Officer Phillips attempted to handcuff A.E.'s left hand. Officer Phillips then used OSOC spray, but A.E. continued to struggle. Officer Phillips used a knee strike resulting in A.E.'s compliance. As Officer Phillips was trying to get A.E. to his feet he stated, "I smoked too much weed man," "I can't walk." *Transcript at 51.*

Officer Courtney Harris, who assisted at the scene, conducted an inventory of A.E.'s car and found a small scale that had marijuana residue on it. Officer Phillips testified that the kind of damage to her vehicle would usually cost \$1,000 to repair.

The State filed a delinquency petition on July 6, 2008, alleging that A.E. committed six counts of delinquent conduct. On July 7, 2008, the court found there was probable cause to believe that A.E. was a delinquent child and ordered the delinquency petition filed. The court placed A.E. in the care of the Marion County Probation Department. After several

denial hearings, the juvenile court found that A.E. was a delinquent child having committed five of the six delinquent acts alleged including the class A misdemeanor criminal mischief. A.E.'s dispositional hearing was held on December 4, 2008, resulting in his wardship being awarded to the Indiana Department of Correction until A.E. reached twenty-one years of age. The court also ordered A.E. to be incarcerated for six months. A.E. now appeals claiming that there was insufficient evidence of the amount of pecuniary loss to sustain the true finding of criminal mischief.

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 offense beyond a reasonable doubt. *Johnson v. State*, 719 N.E.2d 445 (Ind. Ct. App. 1999).

In reviewing the sufficiency of the evidence with respect to juvenile adjudications, our standard of review is well settled. We neither reweigh the evidence nor judge the credibility of witnesses. *K.D. v. State*, 754 N.E.2d 36 (Ind. Ct. App. 2001). We examine only the evidence most favorable to the judgment along with all reasonable inferences to be drawn therefrom. *Id.* We will affirm if there exists substantive evidence of probative value to establish every material element of the offense. *Id.*

In order to establish that A.E. committed what would have constituted class A misdemeanor criminal mischief had A.E. been an adult, the State was required to show beyond a reasonable doubt that A.E. recklessly, knowingly, or intentionally damaged the property of the Indianapolis Metropolitan Police Department and the amount of the pecuniary loss was between \$200 and \$2,500. I. C. Ann. § 35-43-1-2(a)(1).

Officer Phillips testified that in her experience as a police officer the damage caused by A.E.'s car crashing into her car would usually cost approximately \$1,000 to repair, which is well above the threshold of \$200 for the element of damages. That testimony is enough to support an inference that the amount was within the range of pecuniary loss required by statute. Furthermore, photographs of the damaged vehicles were introduced in evidence for the trier of fact to evaluate. Officer Phillips's inability to testify to the exact amount of the cost of the repair goes to the weight to be given to her testimony, which is a task left to the trier of fact.

A.E. cites to *Pepper v. State*, 558 N.E.2d 899 (Ind. Ct. App. 1990) in support of his argument; *Pepper*, however, is inapposite. In *Pepper* the charging information and probable cause affidavit provided the only evidence of damages and that value was \$100, below the threshold of damages for the offense. Consequently, we found the trial court erred by finding the defendant guilty of class A misdemeanor criminal mischief, but found that the evidence supported a conviction of the lesser-included offense of class B misdemeanor criminal mischief, as that offense did not require proof of damages above a certain threshold.

We have held that the exact amount of the damages is irrelevant for purposes of proving the pecuniary loss element of the crime of class D felony criminal mischief once the evidence establishes that the damages exceed the threshold amount. See *Mitchell v. State*, 559 N.E.2d 313 (Ind. Ct. App. 1990). Here, the reasonable inference to be drawn from the evidence is that the amount of pecuniary loss far exceeds the threshold amount. We find that

there is sufficient evidence to support A.E.'s true finding of the commission of criminal mischief.

Adjudication affirmed.

BAKER, C.J., and RILEY, J., concur.