

Children's Law Center of Indiana



Delinquency

7/7/10

In ***A.C. v. State***, 929 N.E.2d 909 (Ind. Ct. App. 2010), the Court reversed the child's delinquency adjudication for an act that would be considered class A misdemeanor resisting law enforcement if he were an adult. On September 21, 2009, an Indianapolis Metropolitan Police officer was dispatched to the lobby of the IMPD North District Headquarters regarding the recovery of a runaway juvenile. The child was present with his mother, and was unresponsive to the officer's questions. The officer told the child to stand up, but the child refused to stand up, maintained silence, and did not look at the officer. The officer grabbed the child by his right arm, lifted him up, and placed him into handcuffs. The officer noticed that the child's pants were "sagging down below his waist, almost to his knees." The officer uncuffed the child and asked him to pull his pants up, but the child stood silent. The officer took a belt loop on the right side of the child's pants and made an attempt to lift the child's pants up. The child "began to pull away a little bit and then with his left hand, suddenly pulled his left part of his pants back down." The child shifted his body weight away from the officer and more towards the chairs and his mother, pulling his body suddenly over to his left side, away from the officer. The officer grabbed the child by the arm, put the child in handcuffs, and walked the child over to the child's mother, who pulled up the child's pants. As the officer led the child to see the medics for treatment of an arm injury, the child said, "Get off of me," leaned his weight and pulled away from the officer's grasp. The child did not push, hit, kick, or slap the officer and "never displayed any intent to do any violence toward the officer." On September 22, 2009, the State submitted a delinquency petition to the juvenile court, alleging that the child committed what would be class A misdemeanor resisting law enforcement if committed by an adult. The juvenile court held a denial hearing on October 19, 2009. The child moved to have the matter involuntarily dismissed. The juvenile court denied the motion and entered a true finding against the child for class A misdemeanor resisting law enforcement if committed by an adult. On November 12, 2009, the juvenile court held a dispositional hearing and committed the child to the Department of Correction, but suspended the commitment and placed the child on probation with special considerations. The child appealed.

The Court concluded that the evidence is insufficient to establish beyond a reasonable doubt that the child committed resisting law enforcement. *Id.* at 912. The Court said that, to obtain an adjudication for resisting law enforcement, the State was required to prove beyond a reasonable doubt that the child did knowingly or intentionally "[f]orcibly resist, obstruct, or

interfere with a law enforcement officer...while the officer [was] engaged in the execution of his duties as an officer.” IC 35-44-3-3. *Id.* at 909. The Court quoted *Spangler v. State*, 607 N.E.2d 720, 723 (Ind. 1993), which provides the following definition of forcible resistance: “One ‘forcibly resists’ law enforcement when strong, powerful, violent means are used to evade a law enforcement official’s rightful exercise of his or her duties.” (emphasis added). *A.C.* at 909. The Court stated that recently in *Lopez v. State*, 926 N.E.2d 1090 (Ind. Ct. App. 2010), trans. pending, the Court of Appeals recognized that the definition of forcible resistance as set forth in *Spangler* and its actual application in subsequent cases are not in perfect harmony. *A.C.* at 909. The Court cited *Graham v. State*, 903 N.E.2d 963 (Ind. 2009), where the defendant’s conviction for resisting law enforcement was reversed. *A.C.* at 910. In *Graham*, the defendant was on the porch, yelling obscenities at the police and refusing their requests to put his hands up. When it looked as though he was going back inside the house, possibly to get a shotgun, the police fired “bean bag rounds” at his legs “to bring him down.” *Graham* at 965. *A.C.* at 910. The officers then carried the defendant off the porch and ordered him to present his arms for cuffing, which he refused to do, so the officers laid the defendant on the ground on his belly, put his arms behind his back, and handcuffed him. *Graham* at 965. *A.C.* at 910. The *Graham* Court quoted *Spangler*, 607 N.E.2d at 724, stating that “[i]t is error as a matter of law to conclude...that forcibly resists includes all actions that are not passive.” *Graham* at 965. *A.C.* at 910-911. The Court also discussed *Colvin v. State*, 916 N.E.2d 306 (Ind. Ct. App. 2010), trans. denied, where the evidence did not support a reasonable inference that the defendant did more than passively resist. *Colvin* at 309. *A.C.* at 911. The *Colvin* Court noted that the “officers testified only that Colvin was not complying with the officers’ commands and that the officers had to use force to execute the arrest” and that there was “no evidence that Colvin stiffened his arms or otherwise forcibly resisted the officers.” (emphasis in original). *Colvin* at 309. *A.C.* at 911. The Court characterized *Colvin* as showing that “even though police officers may have to use force to effectuate an arrest, the officers’ use of force, in itself, does not establish that the defendant forcibly resisted.” *A.C.* at 911 n.2.

The Court opined that, in the child’s case, there is even less evidence of forcible resistance than in either *Graham* or *Colvin*. *A.C.* at 911. The Court noted the following: (1) although the child did not stand up when asked, the officer pulled him to his feet without resistance; (2) the child’s acts of leaning away from the officer and pulling the left side of his pants back down did not constitute forcible resistance to the performance of the officer’s duties; (3) there is no evidence that the officer experienced any difficulty whatsoever in handcuffing the child; (4) although the child leaned away when the officer was leading him to see the medics, there is no evidence that the officer had to struggle or get physical to successfully perform this task. *Id.* at 911-12. The Court opined that, while the child’s conduct may have justified a physical response from the officer, that does not equate to criminal conduct as to the child under the Indiana Supreme Court’s current definition of resisting law enforcement. *Id.* at 912.