

RENDERED: FEBRUARY 10, 2006; 2:00 P.M.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2004-CA-002656-MR

KEVIN D. EARLY

APPELLANT

v. APPEAL FROM HENDERSON CIRCUIT COURT  
HONORABLE STEPHEN A. HAYDEN, JUDGE  
ACTION NO. 04-CR-00382

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: BUCKINGHAM, JOHNSON, AND TACKETT, JUDGES.

TACKETT, JUDGE: Kevin D. Early appeals from the judgment of the Henderson Circuit Court, entered on a conditional guilty plea to charges of fleeing or evading police in the first degree, for which he was sentenced to one year in prison probated for five years. Early argues on appeal that he should not have been charged for the same conduct in Kentucky after being convicted in Indiana of charges arising from a police pursuit which began in Kentucky and ended in Indiana. We disagree and affirm.

Early fled from police in July 2004 when an officer attempted to stop him for a traffic violation. He was pursued by Officer Jim Burke of the Henderson Police Department over the bridge across the Ohio River into Indiana, where Burke discontinued pursuit and notified Indiana authorities by radio. During the pursuit, Early forced other drivers off the road and ran a red light at the state line. Early got out of his car in Indiana and was captured by Evansville police and charged with resisting arrest in that state.

Early pled guilty to the charges in Indiana before entering his conditional guilty plea in this case. On appeal, he argues that his plea in Indiana should constitute a double jeopardy bar to prosecution in Kentucky.

Early acknowledges that his argument is not supported by any relevant authority, see Heath v. Alabama, 474 U.S. 82, 106 S.Ct. 433, 88 L.Ed.2d 3887 (1985); Commonwealth v. Stephenson, 82 S.W.3d 876 (Ky. 2002), but cites criticism of the authority as a reason to change existing law. Ronald J. Allen & John P. Ratnaswamy, *Heath v. Alabama: A Case Study of Doctrine and Rationality in the Supreme Court*, 76 J. Crim. L. & Criminology 801, 810 (1985).

We must point out the most critical flaw in Early's argument, namely that he was charged in Indiana for conduct that took place in Indiana, and that he was charged in Kentucky for

conduct that took place in Kentucky. Logically, there is no basis for saying that Early was charged with the same offense twice; he resisted arrest by Indiana authorities in Indiana after fleeing from Kentucky authorities from Kentucky into Indiana. For that reason, even if we agreed that the relevant authority on the dual sovereignty doctrine was flawed in the way Early suggests, which we do not, double jeopardy would not bar this prosecution because the dual sovereignty doctrine does not come into play. Stephenson, supra.

For the foregoing reasons, the judgment of the Henderson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Samuel N. Potter  
Assistant Public Advocate  
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo  
Attorney General of Kentucky  
  
Robert E. Prather  
Assistant Attorney General  
Frankfort, Kentucky