

## MEMORANDUM DECISION

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

Mark Small  
Indianapolis, Indiana

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana  
  
Catherine E. Brizzi  
Deputy Attorney General  
Indianapolis, Indiana

---

## IN THE COURT OF APPEALS OF INDIANA

---

Nathaniel P. Long,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

March 15, 2021

Court of Appeals Case No.  
20A-CR-1878

Appeal from the Clinton Superior  
Court

The Honorable Justin H. Hunter,  
Judge

Trial Court Cause No.  
12D01-1804-F5-565

**Weissmann, Judge.**

- [1] Nathaniel Long kicked a Clinton County Sheriff's Deputy in the groin. Long appeals his conviction for Level 5 felony battery resulting in bodily injury to a public safety officer, arguing that his kick was involuntary and, therefore, the State failed to prove that he acted knowingly or intentionally. Specifically, Long contends he does not remember kicking the Deputy and may have been concussed when the kick occurred. Finding Long did not raise voluntariness as an issue at trial and that his alleged concussion is without evidentiary support, we conclude the jury could infer that Long's kick was voluntary and knowing or intentional from his commission of the act itself. We therefore affirm.

## Facts

- [2] While on duty in April 2017, Deputy Joshua Blackwell encountered Long on a public street in Frankfort, Indiana. Recognizing Long and knowing of an active warrant for his arrest, Deputy Blackwell asked Long to identify himself. Long, who also knew of the warrant, refused and walked away. His obstinance then quickly devolved into outright resistance.
- [3] Long continued walking when Deputy Blackwell twice ordered him stop. He pulled away when Deputy Blackwell grabbed his arm. He wrestled with Deputy Blackwell after being forced to the ground, and he continued to struggle as other officers handcuffed him. All the while, Long yelled and screamed that he was being kidnapped.

- [4] Eventually, Long was taken to the Clinton County Jail, where he continued “fighting and arguing.” Tr. Vol. II, p. 63. Deputy Blackwell and a jail officer had to forcibly remove Long from a police car, push him into the booking area, and hold him against the booking counter so he could not move. While restrained in this manner, Long abruptly kicked his leg backward and up into Deputy Blackwell’s groin.
- [5] Pained by Long’s kick, Deputy Blackwell immediately instructed the jail officer to take Long to the ground. There, Long continued to “resist and scream” until a third officer unholstered his taser and placed it against Long’s leg. *Id.* No shock was administered, but the imminence of one secured Long’s compliance. Officers then strapped Long into an emergency restraint chair and proceeded with his booking.
- [6] Long was charged with Level 5 felony battery resulting in bodily injury to a public safety officer, Class A misdemeanor resisting law enforcement, and Class B misdemeanor public intoxication. The trial court later dismissed the two misdemeanor charges at the State’s request. Following a jury trial, Long was convicted of Level 5 felony battery and sentenced to four years’ incarceration. He now appeals.

## Discussion and Decision

- [7] Long argues that the State presented insufficient evidence to support his conviction for Level 5 felony battery. When reviewing the sufficiency of the

evidence to support a criminal conviction, we neither reweigh evidence nor judge witness credibility. *Bailey v. State*, 907 N.E.2d 1003, 1005 (Ind. 2009). We consider only the evidence supporting the judgment and any reasonable inferences that can be drawn from such evidence. *Id.* We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt. *Id.*

[8] To convict Long of Level 5 felony battery resulting in bodily injury to a public safety officer, the State was required to prove that Long voluntarily and knowingly or intentionally kicked and injured Deputy Blackwell while he was engaged in official duties. Indiana Code §§ 35-41-2-1(a), -42-2-1(c)(1), -42-2-1(f)(5)(A). Long claims his kick was involuntary and, therefore, the State failed to prove it was knowing or intentional.

[9] Although inherently related and often overlapping, a person's volition to act and his intent in acting are distinct legal concepts. *Compare McClain v. State*, 678 N.E.2d 104, 107 (Ind. 1997) (stating involuntariness defense was, "[i]n essence," a claim that defendant "was unable to form criminal intent"), *with Baird v. State*, 604 N.E.2d 1170, 1176 (Ind. 1992) (stating "the absence of a voluntary act negat[es] the act element of the offense definition"). Simply put, a person who commits a wrongful act must be aware of both his action and its wrongfulness to be held criminally liable. *See Baird*, 604 N.E.2d at 1176. We therefore address Long's volition and intent separately.

## I. Volition

[10] Indiana Code § 35-41-2-1(a) provides that “[a] person commits an offense only if he voluntarily engages in conduct in violation of the statute defining the offense.” As used in this statute, the term “voluntarily” refers to “behavior that is produced by an act of choice and is capable of being controlled by a human being who is in a conscious state of mind.” *McClain*, 678 N.E.2d at 107. “In most cases there is no issue of voluntariness and the State’s burden is carried by proof of commission of the act itself. However, once evidence in the record raises the issue of voluntariness, the state must prove the defendant acted voluntarily beyond a reasonable doubt.” *Baird*, 604 N.E.2d at 1176.

[11] Our review of the record reveals that Long did not raise the issue of his volition at trial. Although Long testified that he does not recall kicking Deputy Blackwell, memory loss alone does not support involuntariness as a defense. *See McClain*, 678 N.E.2d at 107 n.5 (“It is one thing to say a person acted involuntarily, and quite another to say that the person has no memory of the event.”). Moreover, Long waived the issue by not requesting a jury instruction as to the volition requirement. *See State v. Huffman*, 643 N.E.2d 899, 900 (Ind. 1994) (discussing burden of production and waiver in intoxication defense context).

[12] Waiver notwithstanding, on appeal, Long contends he may have been suffering from a concussion when he kicked Deputy Blackwell. Long points to his uncorroborated testimony that he hit his head on a door while being escorted

into the jail's booking area moments before the kick occurred. But the record contains no evidence that Long was diagnosed with a concussion or that he exhibited signs of being concussed. To the extent Long's self-reported memory loss may be indicative of a concussion, he presented no evidence to that effect. There is also zero evidence to support for Long's implication that concussions cause involuntary actions. In fact, the word "concussion" is entirely absent from the trial transcript. Long's contention is therefore without merit.

- [13] Because Long did not raise the issue of his volition at trial, the State's evidence that Long kicked Deputy Blackwell was sufficient, in and of itself, to prove that he did so voluntarily. *See Baird*, 604 N.E.2d at 1176.

## II. Intent

- [14] Turning to the issue of Long's intent, Indiana Code § 35-42-2-1(c)(1) requires Long to have kicked Deputy Blackwell "knowingly or intentionally." "A person engages in conduct 'knowingly' if, when he engages in the conduct, he is aware of a high probability that he is doing so." Ind. Code § 35-41-2-2(b). "A person engages in conduct 'intentionally' if, when he engages in the conduct, it is his conscious objective to do so." Ind. Code § 35-41-2-2(a).
- [15] Because intent is a mental function, "[t]he trier of fact may infer that conduct was knowingly or intentionally performed from the voluntary commission of a prohibited act as well as from surrounding circumstances." *Wells v. State*, 555 N.E.2d 1366, 1371 (Ind. Ct. App. 1990). Here, as we resolved above, the State sufficiently proved that Long kicked Deputy Blackwell voluntarily. Therefore,

the jury could reasonably infer that Long's kick was knowing or intentional. *See Mishler v. State*, 660 N.E.2d 343, 348 (Ind. Ct. App. 1996) (presuming requisite intent for the offense of battery from the voluntary commission of the act itself).

[16] Long does not challenge the evidence of his criminal intent beyond his meritless claim that he kicked Deputy Blackwell involuntarily. However, we note the circumstances surrounding Long's kick also indicate that it was knowing or intentional. From the moment he first encountered Deputy Blackwell, Long's behavior degenerated from avoidance, to resistance, to belligerence. It culminated in Long striking Deputy Blackwell with a backwards kick to the groin and only improved after Long was taken to the ground and threatened with a taser. This evidence sufficiently supports a finding that Long had the requisite criminal intent. *See Wells* 555 N.E.2d at 1371.

[17] The judgment of the trial court is affirmed.

Mathias, J., and Altice, J., concur.