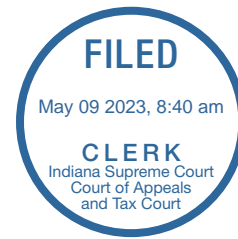


## MEMORANDUM DECISION

Pursuant to [Ind. Appellate Rule 65\(D\)](#), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

Mark Anthony Smith,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

May 9, 2023

Court of Appeals Case No.  
22A-CR-2997

Appeal from the Decatur Circuit  
Court

The Honorable Timothy B. Day,  
Judge

Trial Court Cause No.  
16C01-2110-F5-1015

**Memorandum Decision by Judge Mathias**  
Judges May and Bradford concur.

**Mathias, Judge.**

[1] Mark Anthony Smith appeals his convictions for Level 5 felony battery and Level 6 felony resisting law enforcement following a jury trial. He presents a single issue for our review, namely, whether the State presented sufficient evidence to support his convictions.

[2] We affirm.

## **Facts and Procedural History**

[3] During the evening of October 18, 2021, Smith consumed psilocybin in the form of mushrooms. While under the influence of that drug, Smith attempted to enter the home of Brian Grider in Westport, a small town with a population of approximately 1,300 people. Grider was home when he saw a man open a door to his house. Grider's dog jumped at the door and closed it before the man could gain entry. Grider opened the door and addressed the man, who was later identified as Smith. Grider asked Smith who he was and what he wanted. Smith gave Grider a name and said that he wanted some water, but then Smith "took off running." Tr. Vol. 3, p. 33.

[4] In the meantime, off-duty Reserve Officer Shaun Land was investigating reports that a "suspicious person" was hanging around downtown. *Id.* at 100. Westport Town Marshall Joe Talkington briefly spoke to Officer Land about the reports when he saw Grider standing outside his house waving to Officer Talkington. Grider then told Officer Talkington about the encounter with the man who had tried to enter his house, and he indicated the direction of his route on foot. As

Grider was pointing in that direction, he spotted Smith nearby, pointed, and said, “there he is.” *Id.* at 103. Officer Talkington recognized the man as Smith.

[5] Officer Talkington drove his marked police vehicle to get closer to Smith and said, “Mark, it’s Talkington. I need to talk to you.” *Id.* at 104. When Smith did not react, Officer Talkington repeated himself. Smith looked up, and Officer Talkington activated the emergency lights on his vehicle. In response, Smith “took off running.” *Id.* at 106. Officer Land, who was in plain clothes and driving his personal vehicle, pursued Smith, and Officer Talkington followed. Officer Land was able to catch up to Smith, who turned and ran towards Officer Land’s moving vehicle. Officer Land stopped his vehicle and opened his door, which struck Smith and knocked him to the ground. Officer Land then identified himself as a police officer “several times” and ordered Smith to “stay down[.]” *Id.* at 64-65.

[6] Officer Talkington arrived on the scene to find Officer Land “wrestling” with Smith, who had not complied with Officer Land’s orders. *Id.* at 65. Smith was kicking Officer Land, and he had taken a radio from Officer Land’s waistband. Smith then held the radio underneath his body as he was face-down on the ground. Officer Talkington joined Officer Land in trying to subdue Smith, and they were ultimately able to place him in handcuffs. As a result of the struggle with Smith, Officer Land sustained injuries to his shoulder and elbow.

[7] The State charged Smith with Level 5 felony battery resulting in bodily injury to a public safety officer; Level 5 felony disarming a law enforcement officer;

Level 6 felony attempted residential entry; and Level 6 felony resisting law enforcement. A jury found Smith guilty of Level 5 felony battery resulting in bodily injury to a public safety officer and Level 6 felony resisting law enforcement and acquitted him on the other two charges. The trial court entered judgment of conviction accordingly and sentenced Smith to concurrent sentences of three years and two years, respectively. This appeal ensued.

## Discussion and Decision

- [8] Smith contends that the State presented insufficient evidence to support his convictions. Our standard of review is well settled.

When an appeal raises “a sufficiency of evidence challenge, we do not reweigh the evidence or judge the credibility of the witnesses . . . .” We consider only the probative evidence and the reasonable inferences that support the verdict. “We will affirm ‘if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.’”

*Phipps v. State*, 90 N.E.3d 1190, 1195 (Ind. 2018) (quoting *Joslyn v. State*, 942 N.E.2d 809, 811 (Ind. 2011)).

- [9] To prove that Smith committed Level 5 felony battery resulting in bodily injury to a public safety officer, the State was required to show that Smith knowingly or intentionally touched Officer Land, a public safety official, in a rude, insolent, or angry manner that resulted in bodily injury to Officer Land while he was engaged in his official duties. [Ind. Code § 35-42-2-1\(g\)](#) (2022). To prove that Smith committed Level 6 felony resisting law enforcement, the State was

required to show that Smith knowingly or intentionally forcibly resisted, obstructed, or interfered with a law enforcement officer while the officer was lawfully engaged in the execution of the officer's duties, resulting in bodily injury to another person. [I.C. § 35-44.1-3-1\(c\)](#).

[10] Smith's sole contention on appeal is that "[t]here was no evidence that [he] knew he was being attacked by off-duty officers or intended to resist arrest and batter them. As stated above, Smith acted only in self-defense. This was his only intent and the State failed to present any evidence to the contrary."

Appellant's Br. at 13. We do not agree.

[11] The State presented ample evidence that Smith knew that both officers were law enforcement officers at the time of the offenses. While neither officer was in uniform, Officer Talkington was driving a marked police vehicle, and he activated his emergency lights when he first encountered Smith. Officer Land testified that Westport is a very small town and that Smith knew that he was a part-time law enforcement officer. And both Officer Land and Officer Talkington identified themselves as officers in their encounters with Smith leading up to his arrest. Smith's argument on appeal amounts to a request that we reweigh the evidence, which we will not do. The State presented sufficient evidence to support Smith's convictions.

[12] Affirmed.

May, J., and Bradford, J., concur.