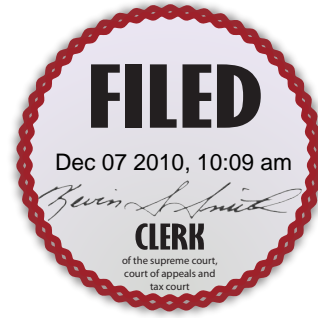


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

ELLEN M. O’CONNOR
Marion County Public Defender Agency
Indianapolis, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

ELLEN H. MEILAENDER
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

EMILIO MITCHELL,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 49A02-1005-CR-480

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Lisa F. Borges, Judge
Cause No. 49G04-0902-MR-26056

December 7, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Emilio Mitchell appeals his conviction for Resisting Law Enforcement,¹ a class D felony, arguing that the evidence is insufficient to support the conviction. Finding sufficient evidence, we affirm.

FACTS

In the early evening of February 13, 2009, Indianapolis Metropolitan Police Department officers were engaging in undercover surveillance of Mitchell and his friend, Frank Williams, as part of an ongoing homicide investigation. Mitchell's vehicle was backed into a parking space in an Indianapolis parking lot. Mitchell was in the driver's seat and Williams was in the front passenger's seat.

Officers Stephen Fitzpatrick and Scott Campbell received the order to arrest the men. They put on their police vests, which say "Police" in large white letters across the front, and hung their large police badges around their necks. The officers drove up in separate vehicles to where Mitchell's vehicle was parked. The officers' headlights were turned on, and there were also several streetlights in the area and lights from other vehicles. The lighting in the area was "very, very good." Tr. p. 158.

Officers Fitzpatrick and Campbell exited their vehicles, drew their guns, and began loudly yelling "police officer, show me your hands, police officer, show me your hands" and "police, get your hands up, police, get your hands up." Id. at 158-59, 212. Mitchell made eye contact with both officers and looked "directly" at them. Id. at 160, 214. Mitchell then put the car in drive and accelerated quickly towards Officer

¹ Ind. Code §35-44-3-3.

Campbell, forcing him to jump out of the way. Officer Campbell fired two shots into the vehicle as he did so. Williams jumped or fell out of the vehicle as Mitchell was driving away, and when he was apprehended, he said that the “police” were shooting at them and that “the police shot my buddy.” Id. at 325. Mitchell was apprehended shortly thereafter after exiting his vehicle.

On February 19, 2009, the State charged Mitchell with murder, conspiracy to commit murder, attempted murder, and class D felony resisting law enforcement. The State subsequently dismissed the murder and conspiracy charges, and a jury trial was held on the attempted murder and resisting charges beginning on March 22, 2010. The jury found Mitchell not guilty of attempted murder and guilty of class D felony resisting law enforcement. On April 7, 2010, the trial court imposed a three-year sentence, and Mitchell now appeals.

DISCUSSION AND DECISION

Mitchell’s sole argument on appeal is that the evidence is insufficient to support his conviction. In reviewing claims of insufficient evidence, we neither reweigh the evidence nor assess witness credibility, and will affirm unless no rational factfinder could have found the defendant guilty beyond a reasonable doubt. Clark v. State, 728 N.E.2d 880, 887 (Ind. Ct. App. 2000). To convict Mitchell of class D felony resisting law enforcement, the State was required to prove beyond a reasonable doubt that he knowingly or intentionally fled from a law enforcement officer in a vehicle after that

officer had identified himself by visible or audible means and ordered the person to stop. I.C. § 35-44-3-3.

The record reveals that Officers Fitzpatrick and Campbell drove up to where Mitchell's vehicle was parked. The officers exited their vehicles, both wearing vests that said "Police" in large white letters on the front and large police badges around their necks. The light in the area was "very, very good." Tr. p. 158. They both loudly—"screaming at the top of our lungs"—identified themselves as police officers and ordered Mitchell and Williams to put their hands up. *Id.* at 159, 212. Mitchell made eye contact with the officers and looked directly at them. Then he put his vehicle in drive and accelerated towards Officer Campbell. Mitchell then drove away from the police officers even as Officer Campbell fired two shots at the vehicle.

In addition to hearing the officers' testimony, the jury was able to view pictures of the officers as they appeared that night to see how clearly identifiable they were at the time of the incident. Additionally, the jurors viewed the crime scene video taken that night to assess the quality of the lighting at the scene. We find the evidence sufficient to support the jurors' reasonable inference that Mitchell knew that Officers Campbell and Fitzpatrick were, in fact, law enforcement officers, and fled from them anyway. Mitchell's arguments to the contrary amount to a request that we reweigh the evidence and assess witness credibility, which we will not do. In short, the evidence is sufficient to support Mitchell's conviction.

The judgment of the trial court is affirmed.

VAIDIK, J., and BARNES, J., concur.