

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Barbara J. Simmons
Batesville, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Sierra A. Murray
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Joseph C. Ross,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 22, 2023

Court of Appeals Case No.
22A-CR-1886

Appeal from the Marion Superior
Court

The Honorable Elizabeth Christ,
Judge

Trial Court Cause No.
49D24-2108-CM-23975

Memorandum Decision by Judge Bradford
Judges May and Mathias concur.

Bradford, Judge.

Case Summary

- [1] Beech Grove Police Officer Brian Dellarosa observed a vehicle strike a curb, make several lane changes without using a turn signal, and run a red light, forcing oncoming traffic to stop. Dellarosa initiated a traffic stop, at which point he discovered Joseph Ross to be the driver. Ross appeared to be intoxicated, so Dellarosa transported him to Eskenazi Hospital for blood work. Ross's blood-alcohol concentration ("BAC") measured 0.173 grams of alcohol per 100 milliliters of blood. The State charged Ross with Class A misdemeanor operating a vehicle while intoxicated endangering a person and Class C misdemeanor operating a vehicle while intoxicated. Following a bench trial, the trial court sentenced Ross to 365 days of incarceration with 359 days suspended to probation. Ross challenges the sufficiency of the evidence supporting his conviction for endangering a person when he operated a vehicle while intoxicated.

Facts and Procedural History

- [2] On August 3, 2021, Officer Dellarosa was patrolling near Beech Grove High School. While there, he observed a vehicle strike a curb as it turned from one street onto another. Officer Dellarosa followed the vehicle and as the vehicle continued, he observed the vehicle move from the far-right lane to the far-left lane without using a turn signal. Shortly thereafter, Officer Dellarosa watched the vehicle run a red light at an intersection, forcing oncoming vehicles "to stop in the middle of traffic to allow [the vehicle] through." Tr. Vol. II p. 42.

- [3] At that point, Officer Dellarosa initiated a traffic stop and identified the driver as Ross. Ross had an abusive attitude towards Officer Dellarosa, bloodshot and watery eyes, slurred speech, and was unsteady on his feet. Officer Dellarosa believed Ross to be intoxicated and Ross admitted that he had had “one beer.” Tr. Vol. II p. 44. Officer Dellarosa then transported Ross to Eskenazi Hospital to undergo blood work.
- [4] Upon arriving at the hospital, Officer Dellarosa turned the investigation over to Indianapolis Metropolitan Police Officer Curtis Johnson. Officer Johnson read Ross his *Miranda*¹ rights and Indiana’s implied consent law. Ross consented to a chemical test and a nurse drew a sample of Ross’s blood. The chemical test showed that Ross’s BAC was 0.173 g/100 ml.
- [5] The State charged Ross with Class A misdemeanor operating a vehicle while intoxicated endangering a person and Class C misdemeanor operating a vehicle while intoxicated. Following a bench trial, the trial court found Ross guilty of both counts and merged the Class C misdemeanor with the Class A misdemeanor.

Discussion and Decision

- [6] Ross argues that the evidence is insufficient to sustain his conviction for operating a vehicle while intoxicated in a manner endangering a person.

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

“When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict.” *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We will neither assess witness credibility nor “weigh the evidence to determine whether it is sufficient to support a conviction.” *Id.* When presented with conflicting evidence, we “must consider it most favorably to the trial court’s ruling.” *Id.* We will affirm the conviction “unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.” *Id.* “It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence.” *Id.* “The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.” *Id.*

[7] A person commits Class A misdemeanor operating a vehicle while intoxicated endangering a person when “a person operates a vehicle while intoxicated [...] in a manner that endangers a person.” Ind. Code § 9-30-5-2. Ross argues that the State failed to prove that he endangered a person. The State proves endangerment by presenting “evidence showing that the defendant’s condition or operating manner could have endangered any person, including the public, the police, or the defendant.” *Staley v. State*, 895 N.E.2d 1245, 1249 (Ind. Ct. App. 2008), *trans. denied*.

[8] Ross’s intoxication resulted in unsafe driving practices that could have endangered the public, the police, or himself for two reasons. First, Ross neglected to use a turn signal when he crossed several lanes of traffic. Officer Dellarosa testified that Ross “was in the far-right lane of Emerson Avenue[,]”

and there “were cars in all the lanes” when he crossed “four lanes [...] with no signal.” Tr. Vol. II p. 41. Second, Ross’s “running the red light” when there “were oncoming cars” forced those cars “to stop in the middle of traffic to allow him through.” Tr. Vol. II p. 42. Ross’s conduct clearly could have endangered the public, the police, or himself. *See Staten v. State*, 946 N.E.2d 80, 84 (Ind. Ct. App. 2011) (concluding that the defendant endangered a person when his vehicle drifted left of the center line and drove through a stop sign without stopping or slowing down), *trans. denied*.

[9] In claiming that the State’s evidence of endangerment is insufficient, Ross relies on *Outlaw v. State*, 918 N.E.2d 379 (Ind. Ct. App. 2009), *adopted by Outlaw v. State*, 929 N.E.2d 196 (Ind. 2010). That case, however, is easily distinguished. In *Outlaw*, the defendant was pulled over for an unilluminated license plate and, while there was sufficient evidence to show that he was intoxicated, there was no evidence that he had operated his vehicle in an unsafe manner. 918 N.E.2d at 382. As a result, this Court held that the evidence was insufficient to establish that the defendant had endangered a person. *Id.* Unlike the evidence in *Outlaw*, the evidence here clearly establishes that Ross changed lanes without signaling when there were cars in all lanes and ran a red light, forcing oncoming traffic to stop to avoid a collision.

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

May, J., and Mathias, J., concur.