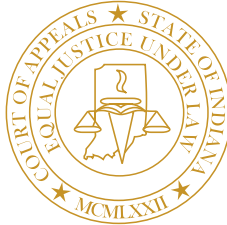


MEMORANDUM DECISION

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE Court of Appeals of Indiana

Samuel D. Rifner,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



August 12, 2024

Court of Appeals Case No.
24A-CR-313

Appeal from the Marion Superior Court
The Honorable Albert Serrano, Judge Pro Tem
Trial Court Cause No.
49D25-2212-CM-34465

Memorandum Decision by Judge May
Judges Brown and Pyle concur.

May, Judge.

- [1] Samuel D. Rifner appeals his conviction of Class A misdemeanor operating a vehicle while intoxicated endangering a person.¹ He argues the State did not present sufficient evidence he committed the crime because it did not provide evidence of his blood alcohol content. Because Indiana law does not require such evidence be presented to prove a person's intoxication and because the other evidence of intoxication was sufficient, we affirm.

Facts and Procedural History

- [2] At approximately 3:00 a.m. on December 25, 2022, a pedestrian flagged down Indianapolis Metropolitan Police Department ("IMPD") Officer Samuel McKnight to report a maroon truck "[d]irectly in the center of the roadway" at the intersection of "Sturm and Oriental." (Tr. Vol. II at 39.) Officer McKnight found the vehicle at that location, and it was blocking traffic. He saw that the engine was running but "didn't see any lights." (*Id.*) When Officer McKnight approached the vehicle, he observed Rifner, who appeared to be "kind of slumped over" in the driver's seat. (*Id.* at 40.) Officer McKnight began to open the driver's door and "the moment [Officer McKnight] opened the door the truck took off southbound." (*Id.*)

¹ Ind. Code § 9-30-5-2(b).

- [3] Rifner drove the truck through a nearby neighborhood, “struck some parked cars[,]” and then “ran off the road on the west side of the road into a house.” (*Id.* at 40-1.) The porch of the house “was mostly obliterated to where there was possible structure damage as [it] was kind of leaning over” and was not safe. (*Id.* at 42.) Officer McKnight “gave loud verbal commands [telling Rifner] to exit the vehicle” but Rifner did not respond. (*Id.* at 41.) Officer McKnight approached the truck and “had to open the door and assist and remove [Rifner] from the vehicle” because he “couldn’t get out on his own.” (*Id.* at 42.) When Rifner was out of the vehicle, Officer McKnight observed that Rifner “couldn’t stand on his own” and Officer McKnight and IMPD Officer Casey Egan had to “[h]old him up.” (*Id.*) Rifner was “slurring his words” and “[h]is eyes were red and glassy like.” (*Id.*) In addition, Officer McKnight “immediately could smell the odor of alcohol” on Rifner’s breath. (*Id.*)
- [4] Because it was “cold and snowy” and Rifner was unable to stand on his own, Officer McKnight did not perform field sobriety tests. (*Id.* at 49.) He also did not perform the horizontal gaze nystagmus test because Officer McKnight could not get Rifner to “keep his eyes open or really be attentive enough to even focus on the test.” (*Id.*) Rifner told Officer McKnight that he had consumed “three Modelos” earlier that evening. (*Id.* at 60.)
- [5] Based on the incident, the State charged Rifner with Class A misdemeanor operating a vehicle while intoxicated endangering a person. After a bench trial

on November 8, 2023, the trial court found Rifner guilty as charged. The trial court sentenced Rifner to 365 days with 361 days suspended to probation.

Discussion and Decision

- [6] Rifner argues the State did not present sufficient evidence to prove he committed Class A misdemeanor operating a vehicle while intoxicated endangering a person. When faced with challenges to the sufficiency of evidence, we apply a “well settled” standard of review that leaves determinations of the weight of the evidence and credibility of the witnesses to the fact-finder. *Teising v. State*, 226 N.E.3d 780, 783 (Ind. 2024). “We consider only the evidence most favorable to the trial court's ruling and will affirm a defendant’s conviction unless ‘no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.’” *Id.* (quoting *Jenkins v. State*, 726 N.E.2d 268, 270 (Ind. 2000)).
- [7] To prove Rifner committed Class A misdemeanor operating a vehicle while intoxicated endangering a person, the State had to present evidence Rifner was operating a vehicle while intoxicated and he “operate[d] a vehicle in a manner that endangers a person.” Ind. Code § 9-30-5-2(b). Pursuant to Indiana Code section 9-13-5-86, a person is intoxicated if he is, as is relevant here, under the influence of alcohol “so that there is an impaired condition of thought and action and the loss of normal control of a person’s faculties.” The State may prove impairment through evidence of several factors, including: “(1) the consumption of a significant amount of alcohol; (2) impaired attention and

reflexes; (3) watery or bloodshot eyes; (4) the odor of alcohol on the breath; (5) unsteady balance; and (6) slurred speech.” *Wilkinson v. State*, 70 N.E.3d 392, 400 (Ind. Ct. App. 2017) (quoting *Outlaw v. State*, 918 N.E.2d 379, 381 (Ind. Ct. App. 2009), *adopted & incorporated by* 929 N.E.2d 196 (Ind. 2010) (citing Ind. Appellate Rule 58(A)(1)). “Proof of intoxication does not require proof of blood alcohol content[.]” *Gatewood v. State*, 921 N.E.2d 45, 48 (Ind. Ct. App. 2010), *trans. denied*.

[8] Rifner specifically contends there is insufficient evidence to prove he drove while intoxicated because the State did not present the results of a test indicating his blood alcohol content. He asserts that, besides his admission that he had consumed three beers and the odor of alcohol on his breath, the other evidence of impairment - slurred speech, red eyes, inability to stand - “could easily be consistent with the aftermath of a significant accident.” (Br. of Appellant at 11.) Additionally, he argues his inability to control his vehicle and his crashes into parked cars and a house could be explained by the snow and ice on the road as well as an alleged mechanical malfunction in his vehicle.

[9] Officer McKnight found Rifner slumped over in his driver’s seat while the vehicle was blocking traffic. When Officer McKnight attempted to open the vehicle’s door, Rifner drove away, hitting multiple parked cars and a porch. When Officer McKnight was able to remove Rifner from the vehicle, Rifner smelled of alcohol, had bloodshot eyes, was slurring his speech, and was unable to stand on his own. In addition, Rifner told Officer McKnight that he had consumed “three Modelos[.]” (Tr. Vol. II at 60.) Based on all of these factors,

the trier of fact reasonably could have concluded that Rifner was intoxicated. Rifner's argument proposing alternative explanations for some of these factors is an invitation for us to reweigh the evidence and judge the credibility of witnesses, which we cannot do. *See Teising*, 226 N.E.3d at 783 (appellate court cannot reweigh the evidence or judge the credibility of witnesses). Therefore, we conclude the State presented sufficient evidence to prove Rifner committed Class A misdemeanor operating a vehicle while intoxicated endangering a person. *See, e.g., Matlock v. State*, 944 N.E.2d 936, 941-2 (Ind. Ct. App. 2011) (State presented sufficient evidence that Matlock committed Class A misdemeanor driving a vehicle while intoxicated endangering a person based on evidence that Matlock "smelled of alcohol, had to lean against his vehicle in order to remain standing, had bloodshot and glassy eyes, and [had] slurred speech.").

Conclusion

[10] The State presented sufficient evidence that Rifner committed Class A misdemeanor operating a vehicle while intoxicated endangering a person. Accordingly, we affirm.

[11] Affirmed.

Brown, J., and Pyle, J., concur.

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