

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

James M. Wainman,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 19, 2022

Court of Appeals Case No.
22A-CR-1074

Appeal from the Switzerland
Circuit Court

The Honorable W. Gregory Coy,
Judge

Trial Court Cause No.
78C01-1912-CM-528

Bailey, Judge.

Case Summary

- [1] James Wainman (“Wainman”) appeals following the denial of his motion to correct error, which challenged his conviction for Operating a Vehicle While Intoxicated, Endangering a Person, as a Class A misdemeanor.¹ We affirm.

Issues

- [2] Wainman presents two issues for review:
- I. Whether the trial court, in conducting a bench trial, imposed upon Wainman the burden of proving his lack of impairment; and
 - II. Whether there is sufficient evidence that Wainman was intoxicated when he operated his vehicle.

Facts and Procedural History

- [3] On December 17, 2017, during an afternoon without rain or snow, Switzerland County Sheriff’s Deputy Nicholas Kitts was dispatched to the site of a single vehicle accident. Wainman had driven his truck off State Road 56 and proceeded approximately 50 to 60 yards from the roadway to traverse a perpendicular street and enter a culvert. The truck had come to a stop after

¹ Ind. Code § 9-30-5-2(b).

knocking over a sign and crashing into a utility pole, causing significant front-end damage to the vehicle. There were no visible skid marks on the roadway.

[4] Deputy Kitts observed Wainman “staggering around” outside the wrecked truck, and questioned Wainman about his sobriety. (Tr. Vol. II, pg. 9.) Wainman denied using alcohol but stated that he had a prescription of “some kind.” (*Id.*) Wainman’s speech was slow, and he appeared lethargic. Deputy Kitts indicated that he would like to have Wainman perform the Horizontal Gaze Nystagmus field sobriety test, but Wainman responded that he had experienced a head injury. Deputy Kitts observed no current injury to Wainman and surmised that Wainman referred to a prior head injury. Nonetheless, Deputy Kitts elected not to proceed with the nystagmus test. Deputy Kitts then asked Wainman to perform a walk and turn test. Wainman exhibited such poor balance that Deputy Kitts stopped the test to prevent injury to Wainman.

[5] Wainman was transported to King’s Daughters’ Hospital in Madison, where he was examined. He had suffered broken ribs but scored within the normal range in neurological testing. Wainman had sustained a head abrasion but otherwise exhibited no acute head injury. The results of blood testing indicated the presence of Methamphetamine, Zolpidem, and Alprazolam.

[6] On December 13, 2019, the State charged Wainman with Operating a Vehicle While Intoxicated, Endangering a Person.² On March 1, 2022, at the conclusion of a bench trial, Wainman was found guilty of this offense. The trial court imposed upon Wainman a sentence of twelve months, with six months suspended to probation. Wainman filed a motion to correct error, which was denied. He now appeals.

Discussion and Decision

Burden of Proof

[7] Pursuant to Indiana Code Section 9-30-5-2(b), a person who operates a vehicle while intoxicated, and does so in a manner that endangers a person, commits a Class A misdemeanor. Indiana Code Section 9-13-2-86 defines “intoxicated” to include being “under the influence of a controlled substance (as defined in IC 35-48-1) ... so that there is an impaired condition of thought and action and the loss of normal control of a person’s faculties.”

[8] Wainman testified and admitted that he had used Methamphetamine “days before” the accident. (Tr. Vol. II, pg. 28.) According to Wainman, any signs of impairment that he exhibited on the day of the accident were attributable to physical trauma sustained in that event. He now argues that the trial court engaged in burden-shifting, requiring Wainman to establish an innocent

² The State also alleged that Wainman had committed two Class C misdemeanor driving offenses. The Class C misdemeanor charges were subsequently dismissed by the trial court.

explanation for his demeanor as opposed to requiring the State to prove impairment beyond a reasonable doubt.

- [9] It is a fundamental principle of American jurisprudence that the State, not the defendant, bears the burden of proving each element of a charged crime beyond a reasonable doubt. *Galloway v. State*, 938 N.E.2d 699, 708 (Ind. 2010) (citing Ind. Code § 35-41-4-1(a); *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 1073 (1970)). Wainman points to comments made by the trial court as indicative of the trial court engaging in burden shifting. After the presentation of evidence, the trial court observed that Wainman had told officers he suspected he had broken ribs, and this was confirmed upon medical examination. The trial court characterized Wainman as “fairly self-aware in that regard.” (Tr. Vol. II, pg. 33.) The trial court continued:

I don’t think that he can [sic] indicated that the sole reason for his being wobbly and the like at the scene was because of some head injury; he had a very – it [sic] seemed to be very self-aware.”

(*Id.*)

- [10] The trial court thrice acknowledged the State’s burden of proof. In pronouncing Wainman guilty, the trial court twice stated that the prosecution had proven its case. Again, in the written order, the trial court indicated that the State had proven its charge against Wainman beyond a reasonable doubt. “There is a strong presumption on appeal that a trial court has acted correctly and has properly followed the applicable law. ... It is presumed that the trial

court applied the correct burden of proof.” *Moran v. State*, 622 N.E.2d 157, 159 (Ind. 1993) (internal citations omitted). Reversal of a conviction is not warranted unless the questioned remarks of the judge “disclose use of an erroneous standard with clarity and certainty sufficient to overcome the presumption.” *Id.* at 159-60. Here, although the judge’s comments may not be a model of clarity, when they are considered in their context, they constitute a statement that the trial court found Wainman’s testimony unpersuasive. The remarks are insufficient to overcome the presumption that the trial court applied the correct burden of proof.

Sufficiency of the Evidence of Impairment

[11] Wainman concedes that he operated a vehicle on December 17, 2017, and that he was endangered when the vehicle left the roadway and crashed. He argues that the State failed to present sufficient evidence that he was impaired at that time.

When challenging the sufficiency of the evidence to support a conviction, a reviewing court neither weighs the evidence nor judges the credibility of witnesses. *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). Instead, we look to the evidence most favorable to the trial court’s [judgment] and reasonable inferences to be drawn therefrom. *Id.* A conviction will be affirmed unless “no rational fact-finder” could have found the defendant guilty beyond a reasonable doubt. *Hampton v. State*, 873 N.E.2d 1074, 1079 (Ind. Ct. App. 2007).

Tuggle v. State, 9 N.E.3d 726, 736 (Ind. Ct. App. 2014), *trans. denied*.

[12] The State introduced into evidence the results of Wainman’s toxicology tests; that is, Wainman had Methamphetamine, Zolpidem, and Alprazolam in his blood on December 17, 2017. Deputy Kitts testified that Wainman was staggering and spoke in a slow and lethargic manner. Deputy Kitts further testified that Wainman exhibited such poor balance that the walk and turn test was terminated because, in Deputy Kitts’ opinion, it could not be safely completed. Moreover, “highly erratic driving” may be indicative of impairment. *Matlock v. State*, 944 N.E.2d 936, 941 (Ind. Ct. App. 2011). Here, there was evidence that, on a clear afternoon, Wainman drove his truck 50 to 60 yards off State Road 56, leaving no skid marks. The cruise control was set at 55 miles per hour. The truck crossed a perpendicular road, entered a culvert, knocked down a sign, and struck a tree. Wainman’s focus upon the length of time between his admitted use of Methamphetamine and the accident merely presents an invitation to reweigh the evidence. The State presented sufficient evidence to establish, beyond a reasonable doubt, that Wainman was impaired when he operated his vehicle.

Conclusion

[13] Wainman failed to overcome the presumption that the trial court applied the correct burden of proof. Sufficient evidence supports Wainman’s conviction.

[14] Affirmed.

Riley, J., and Vaidik, J., concur.