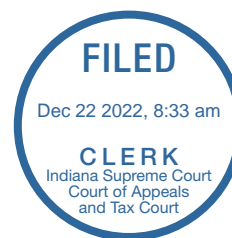


MEMORANDUM DECISION

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.



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IN THE COURT OF APPEALS OF INDIANA

Anthony Virgil Cole,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

December 22, 2022
Court of Appeals Case No.
22A-CR-1366
Appeal from the Marion Superior
Court
The Honorable David Certo, Judge
The Honorable David Hooper,
Magistrate
Trial Court Cause No.
49D19-2001-CM-4375

Crone, Judge.

Case Summary

- [1] Anthony Virgil Cole appeals his conviction for class A misdemeanor operating a vehicle while intoxicated. He contends that the State presented insufficient evidence to support his conviction. Finding the evidence sufficient, we affirm.

Facts and Procedural History

- [2] On January 24, 2020, Cole was driving at the intersection of 16th Street and Fenton Avenue in Indianapolis when he rear-ended a vehicle that was stopped to make a left turn. Cole informed the police officer who arrived at the scene, Indianapolis Metropolitan Police Department (IMPD) Officer Kenneth Megara, that he skidded into the other vehicle due to the wet pavement. Officer Megara did not believe that wet pavement was the cause of the accident after he

noticed the odor of burnt marijuana on Cole's breath. Cole was transported to the hospital for a blood draw.

[3] IMPD Officer Jamie Thorn met Cole at the hospital. Cole admitted to Officer Thorn that he had smoked a large marijuana cigarette an hour before the crash, but he denied drinking any alcohol. Officer Thorn smelled the odor of burnt marijuana on Cole's breath, and he also observed that Cole's eyes were red and bloodshot. Officer Thorn administered three standard field sobriety tests. Cole passed the horizontal gaze nystagmus test, but he failed the nine-step walk-and-turn test and the one-leg-stand test. Officer Thorn then administered two marijuana-specific impairment tests. Cole failed both of those tests. Officer Thorn determined that Cole was impaired.

[4] Cole consented to a blood draw. Both THC and its metabolite THC carboxy were found in his blood. Specifically, there were fifteen nanograms per milliliter of THC in Cole's blood and over 100 nanograms per milliliter of THC carboxy metabolite in his blood.

[5] The State charged Cole with class A misdemeanor operating a vehicle while intoxicated and class C misdemeanor operating a vehicle with a controlled substance or its metabolite in his system. Following a bench trial, the trial court found Cole guilty as charged. At the sentencing hearing, the trial court vacated the class C misdemeanor conviction and sentenced Cole to four days executed with 361 days suspended to probation for the class A misdemeanor. This appeal ensued.

Discussion and Decision

[6] Cole challenges the sufficiency of the evidence to support his conviction. In reviewing a claim of insufficient evidence, we do not reweigh the evidence or judge the credibility of witnesses, and we consider only the evidence that supports the judgment and the reasonable inferences arising therefrom. *Bailey v. State*, 907 N.E.2d 1003, 1005 (Ind. 2009). It is “not necessary that the evidence ‘overcome every reasonable hypothesis of innocence.’” *Drane v. State*, 867 N.E.2d 144, 147 (Ind. 2007) (quoting *Moore v. State*, 652 N.E.2d 53, 55 (Ind. 1995)). “We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt.” *Bailey*, 907 N.E.2d at 1005.

[7] To convict Cole of class A misdemeanor operating a vehicle while intoxicated, the State was required to prove that he operated a vehicle while intoxicated in a manner that endangered a person. Ind. Code § 9-30-5-2(b). Cole solely challenges the evidence that he was intoxicated. “Intoxicated” includes being “under the influence of” alcohol, a controlled substance, or a drug other than alcohol or a controlled substance “so that there is an impaired condition of thought or action and the loss of normal control of a person’s faculties.” Ind. Code § 9-13-2-86. Impairment can be established by evidence of the following: (1) the consumption of a significant amount of an intoxicant; (2) impaired attention and reflexes; (3) watery or bloodshot eyes; (4) the odor of an intoxicant on the breath; (5) unsteady balance; and (6) slurred speech. *Awbrey v. State*, 191 N.E.3d 925, 929 (Ind. Ct. App. 2022).

[8] Here, Cole admitted to smoking a large marijuana cigarette an hour before he failed to avoid crashing into the back of a turning vehicle. At the time of the accident, his eyes were red and bloodshot, and he smelled of burnt marijuana. Officer Thorn testified that Cole demonstrated impaired attention and reflexes when he failed two of the three standard field sobriety tests, and he also failed two marijuana-specific impairment tests. Moreover, toxicology reports indicated Cole had a significant amount of THC and metabolite THC carboxy in his blood.¹

[9] Cole's emphasis on evidence that he was cooperative with police and that he passed one of the field sobriety tests² is simply a request for us to reweigh the evidence, which we will not do. The State presented sufficient evidence to establish, beyond a reasonable doubt, that Cole was intoxicated when he operated his vehicle. Accordingly, we affirm his conviction.

[10] Affirmed.

May, J., and Weissmann, J., concur.

¹ The metabolite level in Cole's blood was above the laboratory's "upper quantitation limit." Tr. Vol. 2 at 75.

² Although the evidence indicates that Cole passed the horizontal nystagmus test, Officer Thorn explained that this would be typical of someone who consumed marijuana as opposed to alcohol or other controlled substances. Tr. Vol. 2 at 93.