MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Rickey D. James,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

September 21, 2023

Court of Appeals Case No. 23A-CR-00846

Appeal from the Allen Circuit Court

The Honorable Jesus R. Treviño, Magistrate;
The Honorable Wendy Davis, Judge.

Trial Court Cause No. 02C01-2210-F6-001220

Memorandum Decision by Judge Felix
Judges Crone and Brown concur.

Felix, Judge.

Statement of The Case

[1] On October 1, 2022, police found Rickey D. James pulled over on the side of the road following a collision with a guardrail. Thereafter, James was charged with and convicted of operating while intoxicated ("OWI"). James appeals this conviction, alleging insufficient evidence to support the conviction. We affirm.

Facts and Procedural History

[2] In the early hours of October 1, 2022, two eyewitnesses watched a car strike a guardrail on Coliseum Boulevard in Fort Wayne, Indiana. (Tr. Vol. 2 at 16, 36.) Following the collision, the vehicle fled the scene driving the wrong direction on Coliseum Boulevard. (Tr. Vol. 2 at 16–17.) In a 911 call, one witness described the incident and vehicle to the police. (Tr. Vol. 2 at 36.) Police officers responded to the call and found a vehicle matching the description stopped on the side of Coliseum Boulevard just a short distance from the reported collision. (Tr. Vol. 2 at 36–37.) James was sitting in the driver's seat of the vehicle. (Tr. Vol. 2 at 37.)

[3] Upon their arrival, officers found James exhibiting signs of intoxication. James had slurred speech and the scent of alcohol on his breath. (Tr. Vol. 2 at 39.) Additionally, James appeared disheveled, and his pants were unzipped. (Tr. Vol. 2 at 41.) Finally, James admitted that he had been drinking 30 minutes prior to the arrival of police. (Tr. Vol. 2 at 40.)

[4] Officers conducted a field sobriety test. They asked James to complete a "walk-and-turn test," but he had difficulty displaying simple motor skills. (Tr. Vol. 2 at 43–44.) After stumbling through the walk-and-turn, James refused to complete any other field sobriety tests. (Tr. Vol. 2 at 45.)

[5] On October 6, 2022, the State charged James with OWI in violation of Indiana Code Section 9-30-5-3(a)(1). (Appellant's App. at 2.) After a bench trial on February 21, 2023, the trial court found James guilty of a felony OWI based on having a previous conviction for OWI. (Appealed Order at 1.) Since the parties at trial stipulated to the previous offense, only the underlying OWI conviction is at issue on appeal.

Discussion and Decision

[6] In reviewing sufficiency of evidence claims, we apply "a deferential standard, in which we neither reweigh the evidence nor judge witness credibility." *Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020) (citing *Perry v. State*, 638 N.E.2d 1236, 1242 (Ind. 1994)). Rather, our task is "to decide whether the facts favorable to the verdict represent substantial evidence probative of the elements of the offense[]." *Drane v. State*, 867 N.E.2d 144, 147 (Ind. 2007). Therefore, a conviction will be affirmed "if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt." *Powell*, 151 N.E.3d at 263 (Ind. 2020) (citing *Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018)).

[7] To convict James of OWI, the State must prove: (1) the defendant operated a vehicle; (2) while intoxicated. *Jellison v. State*, 656 N.E.2d 532, 535 (Ind. Ct. App. 1995). Circumstantial evidence is sufficient to prove both elements. *Id.* (citing *Taylor v. State*, 560 N.E2d 100, 102 (Ind. Ct. App. 1990), *trans. denied*). First, the State can show a defendant operated a vehicle by demonstrating they were "in actual physical control" of a vehicle on a public highway. *Dorsett v.* State, 921 N.E. 2d 529, 530 (Ind. Ct. App. 2010) (citing *Hiegel v. State*, 538 N.E.2d 265, 268 (Ind. Ct. App. 1989)). Also, "[t]o establish the offense of driving while intoxicated, the State is required to establish that the defendant was impaired, regardless of his blood alcohol content." *Miller v. State*, 641 N.E.2d 64, 69 (Ind. Ct. App. 1994) (citing *Hurt v. State*, 553 N.E. 2d 1243 (Ind. Ct. App. 1990)), *trans. denied*.

[8] There are many ways to show impairment from intoxication. "Impairment can be established by evidence of (1) the consumption of significant amounts of alcohol; (2) impaired attention and reflexes; (3) watery or bloodshot eyes; (4) the odor of alcohol on the breath; (5) unsteady balance; (6) failure of field sobriety tests; (7) slurred speech." *Poortenga v. State*, 99 N.E.3d 691, 698 (Ind. Ct. App. 2018) (quoting *Fought v. State*, 898 N.E.2d 447, 451 (Ind. Ct. App. 2008). Evidence showing some of these factors of impairment can "be legally sufficient to sustain a finding of intoxication." *Id.*

[9] The facts presented at trial provided the factfinder with sufficient evidence to conclude James operated a vehicle while intoxicated. First, there is no dispute that James was in control of a vehicle. James did not address this issue on

appeal. Rather, he claims there was insufficient evidence to show he was intoxicated.

[10] Police found James after responding to a call about a dangerous driver. Two witnesses watched James strike a guardrail with his car and drive in the wrong direction on Coliseum Boulevard. (Appellee's Br. at 4–5; Tr. Vol. 2 at 16–17.) After one witness described the vehicle and incident in a 911 call, police officers began searching Coliseum Boulevard for the car in question. (Appellee's Br. at 5; Tr. Vol. 2 at 36.) Police found James pulled over in his car, which matched the description from the 911 call, "less than a mile" from the damaged guardrail. (Tr. Vol. 2 at 36.)

[11] James's initial conversation with police officers revealed multiple signs of alcohol use and impairment. Upon engaging James, officers detected slurred speech and the odor of "stale" alcohol on his breath. (Tr. Vol. 2 at 39.) Additionally, police noticed James's eyes were "bloodshot and watery." *Id.* As the conversation continued, James admitted that he consumed alcohol 30 minutes prior to police contact. *Id.* at 40.

[12] Next, a field sobriety test showed James had inhibited motor skills. James "almost fell" when asked to walk a straight line and complete a turn. (Tr. Vol. 2 at 45.) After he almost fell, James refused, without offering any explanation, to complete any further physical sobriety tests. *Id.* at 45–47, 67. Therefore, the trial court was provided with sufficient circumstantial evidence showing James operated his vehicle while intoxicated.

[13] Although acknowledging that he cannot ask this Court to reweigh the evidence, that, ultimately, is what James asks us to do. For instance, instead of determining that the smell of alcohol on his person tends to show that he drank alcohol shortly before the arrival of the police, he asks the Court to accept his story that he accidentally poured alcohol on himself while transporting a keg earlier in the evening. Any alternative interpretation of the evidence which may tend to show that he was not intoxicated is nothing more than asking us to reweigh or re-evaluate the evidence. However, "[i]t is the factfinder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction." *Drane*, 867 N.E.2d at 146 (citing *Wright v. State*, 828 N.E.2d 904 (Ind. 2005)).

[14] Since the evidence presented at trial "supports a reasonable inference of guilt," it was appropriate for the trial court to reach a verdict "based on circumstantial evidence alone." *Maul v. State*, 731 N.E.2d 438, 439 (Ind. 2000). We find the evidence sufficient to warrant a conviction and, therefore, affirm the trial court's decision.

[15] Affirmed.

Crone, J., and Brown, J., concur.