MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Timothy L. Sallee, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

June 12, 2023

Court of Appeals Case No. 23A-CR-0001

Appeal from the Miami Superior Court

The Honorable J. David Grund, Judge

Trial Court Cause No. 52D01-2106-CM-429

Memorandum Decision by Judge May
Chief Judge Altice and Judge Foley concur.

May, Judge.

[1] Timothy L. Sallee, Jr., appeals his convictions of Class C infraction following too closely[1] and Class A misdemeanor operating while intoxicated endangering a person.[2] He argues the State did not present sufficient evidence to prove he followed too closely or endangered anyone. We affirm.

Facts and Procedural History

[2] On June 9, 2021, at around 1:30 a.m., Deputy Nathan Freeman of the Miami County Sheriff's Department sat on the side of the road running his stationary radar for speed enforcement. The speed limit in the area is forty miles per hour. Deputy Freeman heard an engine revving, looked over to see a white van, and clocked the van as traveling at sixty-one miles per hour.

[3] Deputy Freeman activated his overhead lights and pulled out to stop the van. When Deputy Freeman got closer to the van, he noticed the van was following very closely to the car in front of it – with less than two vehicle lengths between them. The car in front of the van applied its brakes in response to Deputy Freeman's siren, while the van had a delayed reaction that caused the distance between the van and the car to close rapidly. The van finally began to slow and

[1] Ind. Code § 9-21-8-14 & Ind. Code § 9-21-8-49(a).

[2] Ind. Code § 9-30-5-2(a) & (b).

did not hit the car. The van pulled over about half a mile from where Deputy Freeman initially activated his lights.

[4] After the van pulled over, Deputy Freeman approached the driver's side door. The driver, later identified as Sallee, lowered the window "around four or five, six inches." (Tr. Vol. II at 12.) Deputy Freeman asked for Sallee's license and registration. Sallee avoided looking at him and did not respond verbally to anything Deputy Freeman said. Sallee grabbed his wallet and began looking for his license. Sallee's movements were slow and deliberate. "Most people when you ask for their driver's license they [] know exactly where it is at . . . . [Sallee] was very slow, methodical in pulling each card out of each spot." (*Id.*) Sallee began to hand Deputy Freeman what appeared to be a credit or debit card and, once he realized his mistake, then picked up a second wallet and continued searching for his license. Sallee eventually looked at Deputy Freeman and his eyes appeared to be "pink or reddish." (*Id.* at 14.) Deputy Freeman detected an odor of alcohol emanating from the van, but he was unsure if the source was Sallee or his passenger.

[5] Deputy Freeman directed Sallee to exit the van. Sallee did not immediately comply, so Deputy Freeman had to ask Sallee multiple times to exit the van before he eventually did. As Sallee exited the van, he fell back and had to lean into the driver's seat to catch himself. Sallee's balance appeared to be unsteady as he walked toward Deputy Freeman's patrol car. Deputy Freeman detected an odor of alcohol emanating from Sallee. Deputy Freeman asked Sallee if he would be willing to do some field sobriety tests, which Sallee declined. Deputy

Freeman then placed hand restraints on Sallee and put him in the patrol car. On the way to jail, Deputy Freeman advised Sallee of his rights and informed him about implied consent. He then asked Sallee if he would submit a chemical test, and Sallee declined. During the car ride, Sallee became increasingly belligerent. Sallee told Deputy Freeman "[he] didn't know [his] job" and that he "would have [his] badge." (*Id*. at 18.) At the jail, Sallee was combative and jail staff placed him in a padded cell.

[6] On June 15, 2021, the State charged Sallee with Class A misdemeanor operating a vehicle while intoxicated endangering a person, Class C misdemeanor operating a vehicle while intoxicated,[3] Class C infraction failure to yield right-of-way to emergency vehicle,[4] Class C infraction following too closely, and Class C infraction speeding.[5] On May 25, 2022, the trial court held a bench trial. On May 27, 2022, the trial court found Sallee guilty of Class A misdemeanor operating a vehicle while intoxicated endangering a person, Class C misdemeanor operating a vehicle while intoxicated, Class C infraction following too closely, and Class C infraction speeding. Because of double jeopardy concerns, the trial court did not enter a conviction of Class C misdemeanor operating a vehicle while intoxicated. On December 13, 2022, the trial court imposed a 180-day sentence.

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[3] Ind. Code § 9-30-5-2(a).

[4] Ind. Code § 9-21-8-35(a) & Ind. Code § 9-21-8-49(a).

[5] Ind. Code § 9-21-5-2(a) & (b).

Discussion and Decision

[7] Sallee contends the State did not present sufficient evidence he committed Class C infraction following too closely or Class A misdemeanor driving while intoxicated endangering a person. When reviewing sufficiency of evidence claims, this court will

> neither reweigh the evidence nor judge witness credibility. Rather we consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. We will affirm a conviction 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.

Dowell v. State, 206 N.E.3d 1167, 1170 (Ind. Ct. App. 2023) (quoting *Powell v. State*, 151 N.E.3d 256, 262-63 (Ind. 2020) (internal citations omitted)).

[8] Indiana Code section 9-21-8-14(b) states: "A person who drives a motor vehicle may not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of both vehicles, the time interval between vehicles, and the condition of the highway." There is no bright line rule for what is a "reasonable and prudent" following distance. *Whitaker v. State*, 778 N.E.2d 423, 427 (Ind. Ct. App. 2002), *trans. denied*.

> [O]ne lawfully using the highway has the right to assume that automobiles will not be run at an unlawful or dangerous rate of speed, but that they will be operated at such a rate of speed and with such care as reasonable prudence requires, in view of all the conditions and circumstances.

Rentschler v. Hall, 69 N.E.2d 619, 624 (Ind. Ct. App. 1946).

[9] Salle contends he did not hit the car in front of him and, thus, he did not follow it too closely. However, hitting the car in front is not an element of the infraction. Deputy Freeman has been employed with the Miami County Sheriff's Department for thirteen years. When observing Sallee driving his van, Deputy Freeman determined Sallee was driving too close to the car in front of him. Deputy Freeman reached this determination from his years of experience. His determination of Sallee's driving too closely was demonstrated when Sallee had a delayed reaction to the police car's overhead lights, which caused the space between Sallee's van and the car in front to close rapidly.

[10] "When determining whether the elements of an offense are proven beyond a reasonable doubt, a fact-finder may consider both the evidence *and the resulting reasonable inferences.*" *Thang v. State*, 10 N.E.3d 1256, 1260 (Ind. 2014) (emphasis in original). Here, the fact-finder could consider Deputy Freeman's testimony as well as reasonable inferences. It was around 1:30 in the morning. It is dark at this time and drivers may not be able to see an obstruction in the road until it is close, causing sudden braking. It is reasonable for a fact-finder to infer a prudent driver should allot more distance between their car and other cars to accommodate this condition of the highway. Sallee's argument is an invitation for us to reweigh the evidence and judge the credibility of witnesses, which we cannot do. *See Dowell*, 206 N.E.3d at 1170 (appellate court cannot reweigh evidence or judge the credibility of witnesses). Thus, the evidence was

sufficient to prove beyond a reasonable doubt that Sallee committed the Class C infraction.

[11] Sallee also challenges his conviction of Class A misdemeanor operating while intoxicated endangering a person. To be convicted of Class A misdemeanor operating while intoxicated endangering a person, the State must prove beyond a reasonable doubt that the defendant operated a vehicle while intoxicated in a manner that endangers a person. Ind. Code § 9-30-5-2(a) & (b). Sallee contends he did not endanger anyone because he drove during the early hours of the morning when there was little traffic.

[12] To prove endangerment, the State must provide evidence beyond intoxication. *Outlaw v. State*, 918 N.E.2d 379, 381-82 (Ind. Ct. App. 2009), *expressly adopted by Outlaw v. State*, 929 N.E.2d 196 (Ind. 2010). Endangerment may be established by evidence that the defendant's driving endangered the public, the police, or the defendant. *Staley v. State*, 895 N.E.2d 1245, 1249 (Ind. Ct. App. 2008), *trans. denied*. Additionally, "excessive speed, regardless of the driving conditions or her proximity of others, is sufficient to establish endangerment of a person[.]" *A.V. v. State*, 918 N.E.2d 642, 646 (Ind. Ct. App. 2009), *trans. denied*.

[13] Here, Deputy Freeman's radar measured Sallee's speed as sixty-one miles per hour in a forty miles per hour zone. Deputy Freeman also observed Sallee following within two vehicle lengths of the car ahead of him. When Deputy Freeman activated his overhead lights to initiate a traffic stop, the car ahead of

Sallee immediately braked whereas Sallee had a delayed reaction, and Sallee's delayed reaction caused the distance between the vehicles to close rapidly. Sallee's argument is an invitation for this court to reweigh the evidence and judge the credibility of witnesses, which we cannot do. *See Dowell*, 206 N.E.3d at 1170 (appellate court cannot reweigh evidence or judge the credibility of witnesses). Sallee's excessive speed alone is sufficient to prove he endangered others or himself. *See A.V.*, 918 N.E.2d at 646 (holding excessive speed sufficient to demonstrate endangerment). Given that Sallee was speeding and driving too closely late at night, the evidence supports his conviction. *See Lehman v. State*, 203 N.E.3d 1097, 1105 (Ind. Ct. App. 2023), *trans. denied*.

Conclusion

[14] The State presented sufficient evidence to prove Sallee committed Class C infraction driving too closely and Class A misdemeanor operating while intoxicated endangering a person. Therefore, we affirm.

[15] Affirmed.

Altice, C.J., and Foley, J., concur.