

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Homer W. Faucett III,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

July 27, 2022

Court of Appeals Case No.
22A-CR-10

Appeal from the Marion Superior
Court

The Honorable Jose D. Salinas,
Judge
The Honorable John Christ,
Magistrate

Trial Court Cause No.
49D23-2007-CM-22274

Pyle, Judge.

Statement of the Case

[1] Homer Faucett III (“Faucett”) appeals, following a bench trial, his convictions and infraction for Class A misdemeanor operating a motor vehicle while intoxicated and endangering a person,¹ Class C misdemeanor operating a vehicle while intoxicated,² and Class C infraction failure to signal for turn or lane change.³ Faucett argues that there was insufficient evidence to support his convictions. At the outset, we conclude that Faucett’s Class A misdemeanor and Class C misdemeanor convictions violate double jeopardy principles, and we remand with instructions to vacate the Class C misdemeanor conviction. We also conclude that there was sufficient evidence to support Faucett’s remaining convictions and affirm those convictions.

[2] We affirm in part, reverse in part, and remand with instructions.

Issue

Whether there is sufficient evidence to support Faucett’s two convictions and determination that he was liable for the infraction.

Facts

[3] In July 2020, Homecroft Police Department Officer David Hodge (“Officer Hodge”), while driving on I-465 at approximately 3:00 a.m., saw a car traveling

¹ IND. CODE § 9-30-5-2.

² *Id.*

³ I.C. § 9-21-8-25.

well above the posted speed limit. In addition, the driver failed to signal for a lane change. Officer Hodge began pacing the car. While pacing the car, Officer Hodge observed that the car was traveling approximately eighty-seven miles per hour and switched lanes without signaling. Officer Hodge then initiated a traffic stop of the car.

[4] Officer Hodge approached the car from its passenger side and pointed his flashlight into the passenger side window. Officer Hodge saw Faucett, who was in the driver's seat, holding his arms up to the roof of his car. After approximately twenty to thirty seconds, Faucett noticed Officer Hodge and his flashlight and rolled down his passenger side window. Officer Hodge asked Faucett for his license and registration. During this exchange, Officer Hodge observed that Faucett had bloodshot, glassy eyes and slurred speech. Additionally, after Faucett had rolled down his passenger side window, Officer Hodge immediately detected the smell of alcohol and asked Faucett to step out of his car. In response, Faucett attempted multiple times to exit his car, but he struggled to do so because he had not released his seat belt. After Faucett had exited the car, he staggered onto the highway while leaving his driver side door open. Officer Hodge quickly assisted Faucett to the shoulder of the highway and closed Faucett's driver side door. Officer Hodge then attempted to conduct a field sobriety test on Faucett, but Faucett refused to cooperate. Faucett's tone of voice became aggressive and angry. Officer Hodge placed Faucett in handcuffs and drove Faucett to the hospital. At the hospital, a nurse drew Faucett's blood and gave the blood sample to the police.

[5] Later that month, the State charged Faucett with Class A misdemeanor operating a motor vehicle while intoxicated and endangering a person, Class C misdemeanor operating a vehicle while intoxicated, and Class C infraction failure to signal for turn or lane change.⁴ The trial court held a bench trial in November 2021. The trial court heard the facts as set forth above. Additionally, Officer Hodge testified that Faucett had been driving approximately eighty-seven miles per hour in a fifty-five mile per hour zone. Also, Forensic Scientist Savanna Chris (“Scientist Chris”) testified that she had tested Faucett’s blood, and the results revealed an ethyl alcohol concentration of 0.267 grams of alcohol per 100 milliliters of blood.

[6] At the conclusion of the bench trial, the trial court found Faucett guilty of Class A misdemeanor operating a motor vehicle while intoxicated and endangering a person and Class C misdemeanor operating a vehicle while intoxicated. Additionally, the trial court found that Faucett had committed Class C infraction failure to signal for turn or lane change. The trial court sentenced Faucett to three hundred and sixty-five (365) days in the Marion County Jail with three hundred and sixty-three (363) days suspended to probation for his operating a motor vehicle while intoxicated and endangering a person conviction. The trial court also sentenced Faucett to sixty (60) days in the Marion County Jail with fifty-eight (58) days suspended to probation for his

⁴ The State also charged Faucett with Class A misdemeanor operating a vehicle with an alcohol concentration equivalent to .15 or more and Class C infraction speeding. At the conclusion of Faucett’s bench trial, the trial court found Faucett not guilty of these charges.

operating a motor vehicle while intoxicated conviction. The trial court ordered these sentences to be served concurrently. Finally, the trial court issued a \$25 fine for Faucett's failure to signal for turn or lane change infraction.

[7] Faucett now appeals.

Decision

[8] Faucett argues that there was insufficient evidence to support his Class A misdemeanor operating a motor vehicle while intoxicated and endangering a person and Class C misdemeanor operating a vehicle while intoxicated convictions. He also argues that there was insufficient evidence to support the trial court's determination that he was liable for failing to signal for a turn or lane change.

[9] At the outset, we address sua sponte the double jeopardy implications of Faucett's Class A and Class C misdemeanor convictions. Because Class C misdemeanor operating a vehicle while intoxicated is a lesser included offense of Class A misdemeanor operating a motor vehicle while intoxicated and endangering a person, we remand to the trial court with instructions to vacate the Class C misdemeanor conviction. *See* I.C. 35-38-1-6. We now address the sufficiency of the Class A misdemeanor conviction and the liability determination for the Class C infraction.

[10] Faucett argues that there was insufficient evidence to support his convictions. Our standard of review for sufficiency of the evidence claims is well settled. We consider only the probative evidence and reasonable inferences supporting

the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We do not reweigh the evidence or judge witness credibility. *Id.* We will affirm the conviction unless no reasonable fact finder could find the elements of the crime proven beyond a reasonable doubt. *Id.* at 146-47. The evidence is sufficient if an inference may be reasonably drawn from it to support the verdict. *Id.* at 147.

[11] INDIANA CODE § 9-30-5-2(a) provides that “a person who operates a vehicle while intoxicated commits a Class C misdemeanor.” However, the offense is “a Class A misdemeanor if the person operates a vehicle in a manner that endangers a person.” IND. CODE § 9-30-5-2(b).

[12] Faucett first argues that “[t]here is an insufficient amount of evidence that . . . Faucett was intoxicated[.]” (Faucett’s Br. 8). We disagree. Intoxicated means “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.” I.C. § 9-13-2-86. “Impairment can be established by evidence of the following: (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.” *Outlaw v. State*, 918 N.E.2d 379, 381 (Ind. Ct. App. 2009) (internal quotations and citations omitted).

[13] Here, our review of the record reveals that Faucett exhibited multiple signs of intoxication. Officer Hodge testified that Faucett did not notice him standing at Faucett’s passenger side window with a flashlight for twenty to thirty seconds. Additionally, Officer Hodge testified that he smelled alcohol on Faucett’s

person, saw Faucett staggering when exiting his car, and noticed that Faucett had slurred speech. Additionally, Scientist Chris testified that her analysis of Faucett's blood revealed an ethyl alcohol concentration of 0.267 grams of alcohol per 100 milliliters of blood. *See Temperly v. State*, 933 N.E.2d 558, 567 (Ind. Ct. App. 2010) (holding that evidence of intoxication is sufficient where a defendant had a blood alcohol content of 0.244 and his blood had been drawn within the time period permitted by statute).

[14] Faucett also argues that there was insufficient evidence that he endangered a person. Faucett contends that there was no testimony of endangerment “other than Officer Hodge saying [Faucett’s] speed created a danger to others.” (Faucett’s Br. 13). Faucett further argues that Officer Hodge’s testimony was “vague in some places[.]” (Faucett’s Br. 11). We note that “[t]he State [is] required to submit proof of endangerment that went beyond mere intoxication in order for the defendant to be convicted of operating while intoxicated, as a Class A misdemeanor.” *Dorsett v. State*, 921 N.E.2d 529, 533 (Ind. Ct. App. 2010). The element of endangerment can be established by evidence showing that the defendant’s condition or operating manner could have endangered any person, including the public, the police, or the defendant. *Id.* at 532.

[15] Here, our review of the record reveals that Officer Hodge testified that he paced Faucett’s car with his own. When keeping pace with Faucett’s car, Officer Hodge was traveling at approximately eighty-seven miles per hour. Officer Hodge also testified that the speed limit in this zone was fifty-five miles per hour. Driving more than thirty miles per hour faster than the speed limit and

failing to signal before changing lanes on a highway at 3:00 a.m. while intoxicated is certainly beyond mere intoxication for the purposes of endangerment. *See A. V. v. State*, 918 N.E.2d 642, 647 (Ind. Ct. App. 2009) (holding that evidence of speeding was sufficient to prove the endangerment element), *trans. denied*.

[16] Finally, Faucett argues that there was insufficient evidence of Faucett's failure to signal before switching lanes. Faucett makes this argument solely by arguing that Officer Hodge's testimony regarding Faucett's failure to signal was insufficient evidence. However, the uncorroborated testimony of a single witness is sufficient to support a conviction. *Thompson v. State*, 612 N.E.2d 1094, 1098 (Ind. Ct. App. 1993).

[17] Ultimately, Faucett's arguments amount to a request to reweigh the evidence or judge witness credibility, which we will not do. *See Drane*, 867 N.E.2d at 146. Based on our review of the evidence presented at the bench trial, we conclude that there was sufficient evidence from which a reasonable factfinder could have found Faucett guilty of the misdemeanor and liable for the infraction. Accordingly, we affirm the judgment of the trial court.

[18] Affirmed in part, reversed in part, and remanded with instructions.

Robb, J., and Weissmann, J., concur.