

## 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

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Michelle Daugherty,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

March 30, 2021

Court of Appeals Case No.  
20A-CR-1210

Appeal from the Warrick Superior  
Court

The Honorable J. Zach Winsett,  
Judge

The Honorable Benjamin R.  
Aylsworth, Magistrate

Trial Court Cause No.  
87D01-1805-CM-616

**Bailey, Judge.**

## Case Summary

- [1] Michele Daugherty (“Daugherty”) was convicted in a bench trial of Operating a Vehicle While Intoxicated, as a Class C misdemeanor.<sup>1</sup> She presents the sole issue of whether there is sufficient evidence of her intoxication to support the conviction. We affirm.

## Facts and Procedural History

- [2] On May 22, 2018, at approximately 2:00 p.m., Newburgh Police Sergeant Ryan McIntosh (“Sergeant McIntosh”) observed Daugherty driving a vehicle with expired plates and exceeding the speed limit. Sergeant McIntosh executed a traffic stop and, when he approached Daugherty, he smelled alcohol on her breath. Sergeant McIntosh observed that Daugherty’s eyes were “red, watery, and glassy” and he detected slurring in her speech. (Tr. pg. 13.) Inside Daugherty’s vehicle, there was a cup with a straw and liquid inside it. The liquid had the smell of alcohol and the appearance of red wine.
- [3] Sergeant McIntosh performed two field sobriety tests, one of which Daugherty failed. Daugherty was offered a breathalyzer test but was unable or unwilling to provide a full breath sample. Newburgh Police Officer Drew Decker

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<sup>1</sup> Ind. Code § 9-30-5-2(a).

(“Officer Decker”) arrived to assist Sergeant McIntosh, and transported Daugherty to Deaconess Hospital for a blood alcohol test.

- [4] Daugherty was arrested and charged with three Class C misdemeanor offenses: Operating a Vehicle While Intoxicated, Operating a Vehicle with a Blood Alcohol Content of .08 or greater,<sup>2</sup> and Operating a Vehicle with a Controlled Substance in the person’s blood.<sup>3</sup> On May 22, 2020, Daugherty was tried in a bench trial. The trial court excluded from evidence the results of Daugherty’s blood test. Daugherty was found guilty of Operating a Vehicle While Intoxicated and acquitted of the remaining charges. On May 28, 2020, she was sentenced to sixty days imprisonment, all suspended to probation. Daugherty now appeals.

## Discussion and Decision

- [5] A person who operates a vehicle while intoxicated commits a Class C misdemeanor offense. Ind. Code § 9-30-5-2(a). Daugherty concedes that she was driving a vehicle but argues that the State presented insufficient evidence that she did so while intoxicated.
- [6] Indiana Code Section 9-13-2-86 provides that a person is “intoxicated” when he or she is under the influence of alcohol or another substance “so that there is an

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<sup>2</sup> I.C. § 9-30-5-1(a).

<sup>3</sup> I.C. § 9-30-5-1(c).

impaired condition of thought and action and the loss of normal control of a person's faculties." Proof of intoxication does not require proof of blood alcohol content; it is sufficient to show that the defendant was impaired. *Ballinger v. State*, 717 N.E.2d 939, 943 (Ind. Ct. App. 1999). Evidence of impairment may include: "(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; [and] (7) slurred speech." *Id.*

When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences *supporting* the verdict. It is the fact-finder'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. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable factfinder would find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the [judgment].

*Drane v. State*, 867 N.E.2d 144, 146-47 (Ind. 2007) (internal quotation marks and citations omitted) (emphasis in original).

[7] Sergeant McIntosh testified that Daugherty had slurred speech and "red, watery, glassy" eyes. (Tr. pg. 13.) He further testified that Daugherty had staggered slightly so that he "had her lean against her vehicle." (*Id.* at 44.)

According to Sergeant McIntosh, when he conducted a horizontal gaze nystagmus test, Daugherty presented “six of six clues” of intoxication. (*Id.* at 15.) Officer Decker also testified that Daugherty had exhibited slurred speech and “a bit” of a stagger. (*Id.* at 84.) The officer retrieved a cup from the vehicle floorboard that had a “strong odor of alcohol” and he “believed” it to be red wine. (*Id.* at 85.) From this evidence, a reasonable factfinder could conclude that Daugherty was intoxicated.

- [8] Daugherty acknowledges the officers’ testimony but argues that it is contradicted by video footage from Sergeant McIntosh’s body camera. Daugherty asks that we observe that the site of the traffic stop was hilly. She insists that the footage demonstrates that her movements were appropriate for the terrain and she neither stumbled nor slurred her speech.

[F]or video evidence, the same deference is given to the trial court as with other evidence, unless the video evidence at issue indisputably contradicts the trial court’s findings. A video indisputably contradicts the trial court’s findings when no reasonable person can view the video and come to a different conclusion.

*Love v. State*, 73 N.E.3d 693, 700 (Ind. 2017).

- [9] We have reviewed the body camera footage of Daugherty’s traffic stop, which provides audio from the entire encounter and, in general, a view of Daugherty’s upper body. Consistent with Daugherty’s description, it reveals no gross aberration of her movement or speech. That said, the recording was not made from a stationary location. Too, a recording is not a substitute for human

perceptions as to subtleties of movement and cadence of speech. Moreover, the trial court heard testimony that Daugherty's breath smelled of alcohol and her cup of liquid smelled and looked like alcohol.<sup>4</sup> There is no indisputable conflict here. At bottom, Daugherty requests that we reweigh the evidence before the trial court. This we cannot do. *Drane*, 867 N.E.2d at 146.

## Conclusion

[10] Sufficient evidence supports Daugherty's conviction for Operating a Vehicle While Intoxicated.

[11] Affirmed.

May, J., and Robb, J., concur.

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<sup>4</sup> In the body camera footage, Daugherty is heard identifying the liquid as red wine belonging to a friend.