MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Ladarryl A. Holland,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

August 18, 2023

Court of Appeals Case No. 23A-CR-430

Appeal from the Marion Superior Court

The Honorable Clayton A. Graham, Judge

The Honorable Mark F. Renner, Magistrate

Trial Court Cause No. 49D33-2209-CM-24637

Memorandum Decision by Judge Pyle

Judges Vaidik and Mathias concur.

Pyle, Judge.

Statement of the Case

[1] Ladarryl A. Holland ("Holland") appeals, following a bench trial, his conviction for Class A misdemeanor operating a vehicle while intoxicated ("OVWI") endangering a person.[1] Holland argues that there was insufficient evidence to support his conviction.[2] Concluding that the evidence was sufficient, we affirm the trial court's judgment.

[2] We affirm.

Issue

> Whether there was sufficient evidence to support Holland's conviction.

Facts

[3] After 10:00 p.m. on August 27, 2022, Speedway Police Sergeant Robert Fekkes ("Sergeant Fekkes") was driving in the left lane of West 10th Street in Marion

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[1] IND. CODE § 9-30-5-2(b).

[2] Holland also argues that there was insufficient evident to support his conviction for Class C misdemeanor OVWI. Although the trial court found Holland guilty of Class C misdemeanor OVWI, the record before us reveals that the trial court merged the Class C misdemeanor with the Class A misdemeanor and did not enter a judgment of conviction or sentence on the Class C misdemeanor. Accordingly, we need not address Holland's sufficiency argument on the Class C misdemeanor offense. *See Stubbers v. State*, 190 N.E.3d 424, 430-31 (Ind. Ct. App. 2022) (declining to address a defendant's sufficiency argument on a "merged" count upon which the trial court had found him guilty but upon which the trial court had not entered a judgment of conviction), *trans. denied*. However, we reiterate the *Stubbers* Court's advisement that when "a trial court does not enter judgment of conviction on a count that would implicate double jeopardy, there is no need to vacate, or even merge, that count." *Stubbers*, 190 N.E.3d at 431 n.2.

County, where the speed limit was forty miles per hour. Sergeant Fekkes noticed an SUV driving behind him and approaching the sergeant at a "high rate of speed[.]" (Tr. Vol. 2 at 35). Holland, who was the driver of the SUV, drove in the right lane and passed Sergeant Fekkes at a speed of approximately fifty-five miles per hour. Holland "then changed from the right lane to [the] left lane, without signaling[,] to pass another vehicle that was in the right lane of travel." (Tr. Vol. 2 at 36).

[4] Sergeant Fekkes initiated a traffic stop and, when speaking with Holland, the sergeant "immediately detected the odor of an alcohol[ic] beverage" emanating from Holland. (Tr. Vol. 2 at 37). Sergeant Fekkes also noticed that Holland "had red glossy eyes and [was] slurring his speech." (Tr. Vol. 2 at 37). Sergeant Fekkes had Holland exit his car and stand at the rear of his vehicle. Holland "appeared to have [an] unsteady balance" and "sat on the rear bumper of his vehicle while [Sergeant Fekkes] spoke with him." (Tr. Vol. 2 at 38). Sergeant Fekkes administered the horizontal gaze nystagmus field sobriety test, and Holland failed the test. Sergeant Fekkes did not administer any other field sobriety tests due to the "terrible conditions of the roadway[.]" (Tr. Vol. 2 at 41).

[5] After Holland had refused the implied consent chemical test, Sergeant Fekkes obtained a warrant for a blood draw, and he took Holland to the hospital for the blood draw. Another officer on the scene conducted an inventory search of Holland's vehicle and found "empty beer bottles" and "an open bottle of Vodka" on the backseat floorboard. (Tr. Vol. 2 at 42). A forensic scientist,

Savannah Chris ("Forensic Scientist Chris"), with the Indianapolis Marion County Forensic Services Agency subsequently tested Holland's blood sample and wrote a lab report. The result of testing revealed that Holland's "ethyl alcohol concentration of the blood was 0.190 grams of ethanol per 100 millimeters of blood." (Tr. Vol. 2 at 61).

[6] The State charged Holland, in relevant part, with Class A misdemeanor OVWI endangering a person and Class C misdemeanor OVWI.[3] The trial court held a bench trial in January 2023. The State presented Sergeant Fekkes, the nurse who drew Holland's blood at the hospital, and Forensic Scientist Chris as witnesses, who all testified to the facts as set forth above.

[7] During Forensic Scientist Chris' testimony, Holland objected to the admission of the lab report based on the State's delayed filing of its notice of intent, under INDIANA CODE § 35-36-11-2, to use the report as evidence at trial. The trial court sustained Holland's objection. However, Forensic Scientist Chris, who had personally conducted the analysis of Holland's blood sample, testified that his blood showed an "ethyl alcohol concentration of the blood was 0.190 grams of ethanol per 100 millimeters of blood." (Tr. Vol. 2 at 61).

[3] The State also charged Holland with Class A misdemeanor driving with a suspended license and Class C misdemeanor operating a motor vehicle without ever receiving a license, and the trial court granted Holland's Trial Rule 41(B) motion to dismiss these two charges after the State had rested its case. Additionally, the State charged Holland with Class A misdemeanor unlawful carrying of a handgun, but the State dismissed that charge during the bench trial.

[8] During closing argument, Holland argued that the State had failed to prove that he had been intoxicated or that he had endangered anyone. Holland also argued that there was uncertainty with the chain of custody for the blood vials and the propriety of the testing procedures. He also asserted that any uncertainty about whether the proper procedure had been followed created reasonable doubt.

[9] The trial court found Holland guilty of Class A misdemeanor OVWI endangering a person and Class C misdemeanor OVWI. The trial court immediately "merge[d]" the Class C misdemeanor with the Class A misdemeanor and did not enter a judgment of conviction on the Class C misdemeanor. (Tr. Vol. 2 at 80). When discussing the endangerment element of Holland's Class A misdemeanor conviction, the trial court specifically explained that Sergeant Fekkes had observed Holland driving at a "high rate of speed" and then had seen Holland making a "lane change without signaling" and that "both [we]re evidence of an unsafe operation of the vehicle that absolutely endanger[ed] other individuals on the motorway, including the officer himself." (Tr. Vol. 2 at 78). The trial court also noted that the evidence of intoxication included Sergeant Fekkes' "initial observations" that Holland had an "odor of alcohol, red and glassy eyes, slurred speech, unsteady balance" and then Holland's later failure of the field sobriety test. (Tr. Vol. 2 at 78). Additionally, the trial court rejected Holland's argument about the uncertainty of the blood sample procedures and stated that it was "satisfied that the testimony established that the blood drawn at [the hospital] from Mr. Holland

was the blood tested at the laboratory by [Forensic Scientist] Chris was that of Mr. Holland." (Tr. Vol. 2 at 79). The trial court then noted that the "test [had been] properly run" and had "revealed 0.19 grams of alcohol per 100 milliliters." (Tr. Vol. 2 at 79).

[10] At Holland's sentencing hearing, the trial court noted that it was sentencing Holland on only his Class A misdemeanor OVWI endangering a person conviction. The trial court imposed a sentence of 365 days with 361 days suspended to probation.

[11] Holland now appeals.

Decision

[12] Holland argues that the evidence was insufficient to support his Class A misdemeanor OVWI endangering a person conviction. 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) (emphasis in original). 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.

[13] The OVWI statute provides that "a person who operates a vehicle while intoxicated commits a Class C misdemeanor." I.C. § 9-30-5-2(a). However,

the "offense . . . is a Class A misdemeanor if the person operates a vehicle in a manner that endangers a person." I.C. § 9-30-5-2(b).

[14] Holland does not dispute that he was driving. Instead, he argues that there was insufficient evidence to show that he was intoxicated or that he endangered a person. We disagree.

[15] "Intoxicated" means being "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(1). "Impairment can be established by evidence of: (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; (6) failure of field sobriety tests; and (7) slurred speech." *A.V. v. State*, 918 N.E.2d 642, 644 (Ind. Ct. App. 2009), *trans. denied.* "Proof of a person's blood alcohol content is not required to establish intoxication." *Matlock v. State*, 944 N.E.2d 936, 941 (Ind. Ct. App. 2011).

[16] To prove endangerment, the State must provide evidence beyond intoxication. *A.V.*, 918 N.E.2d at 644, 645-46. The element of endangerment can be established by evidence that the defendant's manner of operating the vehicle could have endangered any person, including the public, the police, or the defendant. *Id.* at 644. "Endangerment does not require that a person other than the defendant be in the path of the defendant's vehicle or in the same area to obtain a conviction." *Id.* Additionally, "excessive speed, regardless of the

driving conditions or [the defendant's] proximity [to] others, is sufficient to establish endangerment of a person[.]" *Id.* at 646.

[17] Here, our review of the record reveals that the State presented sufficient evidence to satisfy both the intoxicated and endangerment elements of Holland's conviction. Specifically, Sergeant Fekkes observed Holland speeding in his vehicle on West 10th Street after 10:00 p.m. Holland was driving approximately fifty-five miles per hour on a forty-mile-per-hour street. Holland sped past Sergeant Fekkes' vehicle and then changed lanes without signaling to pass another vehicle. When Sergeant Fekkes stopped and spoke to Holland, the sergeant "immediately detected the odor of an alcohol[ic] beverage" emanating from Holland and also noticed that Holland "had red glossy eyes and [was] slurring his speech." (Tr. Vol. 2 at 37). As Holland stood at the rear of his vehicle to speak to the sergeant, Holland "appeared to have [an] unsteady balance" and then "sat on the rear bumper of his vehicle while [Sergeant Fekkes] spoke with him." (Tr. Vol. 2 at 38). Additionally, Holland failed a field sobriety test, and an officer found empty beer cans and an open vodka bottle in the back of Holland's car. Moreover, Forensic Scientist Chris testified that the analysis of Holland's blood showed that he had a blood alcohol content of 0.19.[4] We conclude, as did the trial court in Holland's bench trial, that there

[4] Within Holland's sufficiency argument, he also appears to challenge the admission of Forensic Scientist Chris' testimony regarding his blood alcohol level based on the "chain of custody" of the blood sample. (Holland's Br. 4, 14). We will not address this argument because there was proof of intoxication even without the testimony regarding Holland's blood alcohol content. *See Matlock*, 944 N.E.2d at 941 (explaining

was sufficient evidence to show that Holland was intoxicated and endangered a person. *See, e.g.*, *A.V.*, 918 N.E.2d at 644-46 (holding that the intoxication element was supported by evidence that the defendant had smelled of alcohol, had red eyes, and had failed a field sobriety test and that the endangerment element was supported by evidence that the defendant had been speeding by driving fifty-one miles per hour in a thirty-five-mile-per-hour zone). Accordingly, we affirm Holland's conviction.

[18] Affirmed.

Vaidik, J., and Mathias, J., concur.

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that "[p]roof of a person's blood alcohol content is not required to establish intoxication"). Moreover, Holland did not raise a chain of custody objection to Forensic Scientist Chris' testimony. *See Hunter v. State*, 72 N.E.3d 928, 932 (Ind. Ct. App. 2017) (explaining that "[a]ny grounds for objections not raised at trial are not available on appeal"), *trans. denied*.