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IN THE COURT OF APPEALS OF INDIANA

Leon D. Lehman,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 13, 2023

Court of Appeals Case No. 22A-CR-1449

Appeal from the Adams Superior Court

The Honorable Samuel K. Conrad, Judge

Trial Court Cause No. 01D01-2012-F6-226

Opinion by Judge Riley

Judge Bailey concurs

Judge Vaidik concurring in part and dissenting in part with separate opinion

Riley, Judge.

STATEMENT OF FACTS

[1] Appellant-Defendant, Leon Lehman (Lehman), appeals the trial court's judgment that he committed operating a vehicle while intoxicated endangering a person, a Class A misdemeanor, Ind. Code §§ 9-30-5-2(a), (b), and a light restriction violation, a Class C infraction, I.C. § 9-21-7-10.

[2] We affirm.

ISSUES

[3] Lehman presents this court with two issues, which we restate as:

(1) Whether the trial court abused its discretion by admitting evidence garnered from a traffic stop based on a light restriction infraction; and
(2) Whether the State met its burden of proof that Lehman committed the offense of operating a vehicle while intoxicated endangering a person and that he committed a light restriction infraction.

FACTS AND PROCEDURAL HISTORY

[4] On December 11, 2020, just before 8:00 p.m., Deputy Peter Amstutz (Deputy Amstutz) of the Adams County Sheriff's Department was on patrol in Berne, Indiana, traveling eastbound on Main Street. Deputy Amstutz observed Lehman, who was riding a motorcycle, turn right onto Main Street headed west. For approximately three seconds, Lehman's motorcycle was traveling straight at Deputy Amstutz, who observed a purple light visible from the front of the motorcycle. Deputy Amstutz knew this to be a violation of the Indiana

Traffic Code's prohibition against the display of non-white or non-amber lights on a vehicle. Lehman turned left going southbound onto Fulton Street. Deputy Amstutz followed Lehman onto Fulton Street, where the deputy activated his cruiser's lights and sirens. Fulton Street is not lit by streetlights. Lehman pulled over into the driveway of a residence.

[5] Deputy Amstutz exited his cruiser and engaged Lehman in conversation. As Deputy Amstutz spoke to Lehman, he could smell the odor of alcohol emanating from Lehman. Lehman's eyes were bloodshot and watery. Lehman admitted to having consumed alcohol but denied consuming illegal drugs. Lehman twice failed the horizontal gaze nystagmus (HGN) test, showing six out of six indicators for intoxication. Deputy Amstutz did not administer additional field sobriety tests due to Lehman's complaint of a leg injury that could affect the tests' results. Lehman consented to a breathalyzer test but did not provide a sufficient breath sample to complete the test. Lehman also consented to a blood test, which later revealed that his blood alcohol level was below the legal limit. Lehman's blood also tested positive for methamphetamine and amphetamine.

[6] On December 15, 2020, the State filed an Information, charging Lehman with two Counts of Level 6 felony operating a vehicle while intoxicated and with a Class C light restriction infraction. On May 5, 2021, Lehman filed a motion to suppress the evidence garnered from the December 11, 2020, traffic stop in which he argued that the initial traffic stop was improper because he did not commit the light restriction infraction. On June 14, 2021, the trial court held a

hearing on Lehman's motion to suppress. Deputy Amstutz testified that he saw a purple light visible from the front of Lehman's motorcycle as it drove towards him on Main Street and that that was why he decided to initiate the traffic stop. The dashboard video from Deputy Amstutz's cruiser was admitted into evidence which showed Lehman's motorcycle traveling toward Deputy Amstutz's cruiser on Main Street. Lehman testified that his motorcycle was equipped with purple LED lights and that the lights were on when Deputy Amstutz observed him on December 11, 2020. Lehman maintained that the purple LED lights were located underneath the motorcycle and in front of the engine block behind the front wheel fender and that none of these lights were visible from the front. Lehman had several images of his motorcycle admitted into evidence, including Exhibit H which showed a front view of the motorcycle with its headlights and LED lights illuminated. In Exhibit H, a purple light is visible above the front wheel fender. On June 25, 2021, the trial court entered its order denying Lehman's motion to suppress, concluding that Lehman's federal and state constitutional rights were not infringed upon by the traffic stop because Deputy Amstutz had observed Lehman committing a traffic infraction by displaying purple lights which were visible from the front of his motorcycle.

[7] On March 14, 2022, the State filed an Amended Information, charging Lehman with Class A misdemeanor operating a vehicle while intoxicated endangering a person, Class C misdemeanor operating a vehicle with a Schedule I or II controlled substance or its metabolite in the blood, and the Class C light

restriction infraction. On May 10, 2022, the trial court conducted Lehman's bench trial on the two criminal charges and the traffic infraction. Before the presentation of the evidence, the trial court noted for the record that, for purposes of preserving his right to appeal, Lehman was reasserting his motion to suppress. During Deputy Amstutz's testimony, the trial court granted Lehman a continuing objection to the admission of evidence garnered from the traffic stop based on the grounds argued in Lehman's motion to suppress. In addition to describing Lehman's condition at the scene of the traffic stop, Deputy Amstutz testified that, after interacting with Lehman, he believed that Lehman was intoxicated and impaired. At the close of the evidence, the trial court found Lehman guilty as charged.

[8] On May 24, 2022, the trial court sentenced Lehman only for his Class A misdemeanor operating a vehicle while intoxicated endangering a person conviction. The trial court sentenced Lehman to 365 days, with 270 days executed and the remainder suspended to probation.

[9] Lehman now appeals. Additional fact will be provided as necessary.

DISCUSSION AND DECISION

I. *Admission of the Evidence*

[10] Lehman argues that the trial court erred when it admitted evidence garnered from the traffic stop, which he contends violated his rights under our federal and state constitutions to be free from unreasonable search and seizure. Our

standard of review of the admission of evidence following the denial of a motion to suppress is well-settled:

> When ruling on the admission of evidence at trial following denial of a motion to suppress, a trial court must consider the foundational evidence presented at trial. It also considers evidence from the suppression hearing that is favorable to the defendant only to the extent it is uncontradicted at trial. A trial court is in the best position to weigh the evidence and assess witness credibility, and we review its rulings on admissibility for an abuse of discretion and reverse only if a ruling is clearly against the logic and effect of the facts and circumstances and the error affects a party's substantial rights. However, the ultimate determination of the constitutionality of a search or seizure is a question of law that we review de novo.

Casillas v. State, 190 N.E.3d 1005, 1012 (Ind. Ct. App. 2022) (quoting *Gerth v. State*, 51 N.E.3d 368, 372 (Ind. Ct. App. 2016)), *trans. denied*.

A. *Fourth Amendment*

[11] The Fourth Amendment to the United States Constitution provides in relevant part as follows:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]

U.S. CONST. amend. IV. A traffic stop based upon a suspected traffic infraction is considered a seizure for purposes of the Fourth Amendment. *Marshall v. State*, 117 N.E.3d 1254, 1258 (Ind. 2019). A traffic stop must be based upon an officer's reasonable suspicion, supported by articulable facts, that

criminal activity may be afoot. *Id*. at 1259. Generally, "'[a]n officer's decision to stop a vehicle is valid so long as his on-the-spot evaluation reasonably suggests that lawbreaking occurred.'" *Id*. (quoting *Meredith v. State*, 906 N.E.2d 867, 870 (Ind. 2009)). An officer's observation of a traffic infraction is a well-established basis for a valid traffic stop under the Fourth Amendment. *Quintanilla v. State*, 146 N.E.3d 982, 985 (Ind. Ct. App. 2020).

[12] Here, Deputy Amstutz testified at the suppression hearing and at trial that he initiated a stop of Lehman's motorcycle based on a suspected violation of Indiana's light restriction traffic statute, which provides as follows:

> Except [under circumstances not relevant here], a person may not drive or move a vehicle or equipment upon a highway with a lamp or device on the vehicle or equipment displaying light other than white or amber visible from directly in front of the center of the vehicle or equipment.

I.C. § 9-21-7-10(a). Deputy Amstutz testified at the suppression hearing and at trial that, as Lehman drove his motorcycle directly at him down Main Street, the deputy could see a purple light visible from the front of Lehman's motorcycle. This testimony alone provided a constitutionally valid basis for stopping Lehman. *See, e.g., Doctor v. State*, 57 N.E.3d 846, 854-55 (Ind. Ct. App. 2016) (concluding that officers' testimony that the occupants of a car could not be clearly seen through its windows provided reasonable suspicion under the Fourth Amendment for a traffic stop based on suspected tinted-window violation). In addition, Lehman admitted at the suppression hearing that his motorcycle was equipped with purple LED lights which were illuminated when

Deputy Amstutz observed him on December 11, 2020, and Exhibit H was admitted which showed that purple light was visible from the front of Lehman's motorcycle when the LED lights were illuminated. Lehman's arguments challenging the trial court's factual findings supporting its order denying his motion to suppress and directing us to other evidence which does not support the trial court's evidentiary ruling is essentially a request that we reweigh the evidence and reassess the credibility of the witnesses, which is contrary to our standard of review. *See Casillas*, 190 N.E.3d at 1012. We find no infringement of Lehman's Fourth Amendment right based on a valid traffic stop, and, therefore, we uphold the trial court's admission of the challenged evidence.

B. *Article 1, section 11*

[13] Lehman also asserts that the December 11, 2020, traffic stop violated his rights under the Indiana Constitution. Article 1, section 11 of our state constitution guarantees that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated[.]" The purpose of Article 1, section 11 is "to protect from unreasonable police activity those areas of life that Hoosiers regard as private." *State v. Quirk,* 842 N.E.2d 334, 339-40 (Ind. 2006). Although the Fourth Amendment and Article 1, section 11 contain similar language, they are interpreted separately and independently, and we liberally construe the section to protect the individual. *Hardin v. State*, 148 N.E.3d 932, 942-43 (Ind. 2020). The touchstone of Article 1, section 11 analysis is the reasonableness of the police's conduct under the totality of the circumstances. *Id*. In *Litchfield v.*

State, 842 N.E.2d 356 (Ind. 2005), our supreme court provided a framework for this totality-of-the-circumstances test which contemplates examination and balancing of three factors: "'1) the degree of concern, suspicion, or knowledge that a violation has occurred, 2) the degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities, and 3) the extent of law enforcement needs.'" *Id*. at 943 (quoting *Litchfield,* 842 N.E.2d at 361).

[14] Applying the *Litchfield* factors, we observe that the reason that Deputy Amstutz initiated the traffic stop was his observation of Lehman committing a light restriction violation by having purple lights on his motorcycle that were visible from directly in front of the center of his motorcycle. Deputy Amstutz's testimony and Exhibit H, the evidence which supports the trial court's suppression and evidentiary rulings, established a reasonable basis for the deputy's concern, suspicion, or knowledge that Lehman may have committed a traffic violation. *See Mitchell v. State,* 745 N.E.2d 775, 786 (Ind. 2001) (holding that a traffic stop is permitted under section 11 if the officer "reasonably suspects that the motorist is engaged in, about to engage in, illegal activity"); *see also Washington*, 898 N.E.2d at 1206 (concluding that an officer's observation of Washington repeatedly crossing the center line on his moped and operating the moped without wearing safety goggles while under eighteen years of age provided sufficient concern, suspicion, or knowledge for a traffic stop for purposes of a *Litchfield* analysis). Lehman concedes, and we agree, that the degree of intrusion involved in the initial stop was "relatively low." (Appellant's Br. p. 18). As to the third *Litchfield* factor, the needs of law

enforcement, Deputy Amstutz's conduct in initiating the traffic stop was reasonable to enforce a valid traffic law, the light restriction statute. *See Washington*, 898 N.E.2d at 1206 (concluding this factor weighed in favor of the State where the officer initiated a traffic stop to enforce traffic laws and the statutory requirement for young moped riders to wear goggles). Given the totality of these circumstances, we conclude that the December 11, 2020, traffic stop did not violate Lehman's Article 1, section 11 rights and that the trial court did not abuse its discretion in admitting the challenged evidence.[1]

II. *Sufficiency of the Evidence*

[15] Lehman also challenges the evidence supporting the trial court's judgment that he committed Class A misdemeanor operating a vehicle while intoxicated endangering a person and the Class C infraction of a light restriction violation. Our standard of review of a challenge to the sufficiency of the evidence supporting a criminal conviction is well-established: we do not reweigh the evidence or judge the credibility of the witnesses, and we affirm if there is "substantial evidence of probative value supporting each element of the crime from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt." *Prickett v. State*, 856 N.E.2d 1203, 1206 (Ind. 2006). We deploy the same standard of review when considering challenges to

[1] Given our resolution of this issue, we do not further address Lehman's argument challenging the trial court's factual findings supporting its suppression ruling, the State's argument that the traffic stop was also justified by Lehman's speeding, or the State's argument that the traffic stop, if initiated in violation of the Fourth Amendment or Article 1, section 11, was done in good faith.

the evidence supporting a traffic infraction. *See Baird v. State*, 955 N.E.2d 845, 848 (Ind. Ct. App. 2011) (reviewing the evidence supporting three traffic infractions without reweighing the evidence or assessing witness credibility and considering conflicting evidence most favorable to the trial court's ruling).

A. *Operating a Vehicle While Intoxicated Endangering a Person*

[16] A person who "operates a vehicle while intoxicated . . . in a manner that endangers a person" commits a Class A misdemeanor. I.C. §§ 9-30-5-2(a), (b). Lehman asserts that there was insufficient evidence that he was intoxicated when he operated his motorcycle on December 11, 2020. For our present purposes, a person is "intoxicated" if that person is under the influence of alcohol, a controlled substance, or a combination of alcohol and a controlled substance "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), (2), (5). Impairment may be proven by evidence establishing "(1) the consumption of a significant amount of [an intoxicant]; (2) impaired attention and reflexes; (3) watery or bloodshot eyes; (4) the odor of [an intoxicant] on the breath; (5) unsteady balance; and (6) slurred speech." *Awbrey v. State*, 191 N.E.3d 925, 929 (Ind. Ct. App. 2022) (quotations omitted). The State is not required to show a particular blood alcohol content to prove a that person is "intoxicated" under the statutory definition. *Miller v. State*, 641 N.E.2d. 64, 69 (Ind. Ct. App. 1994), *trans. denied*.

[17] Here, the State presented evidence at trial that when Deputy Amstutz stopped Lehman, the deputy observed that Lehman's eyes were bloodshot and watery,

Lehman smelled of alcohol, Lehman's speech was slurred, Lehman failed two HGN tests, and Lehman swayed while he took the HGN tests, all of which led Deputy Amstutz to believe that Lehman was intoxicated and impaired. Lehman's blood test showed the presence of amphetamine, methamphetamine, and alcohol, and he admitted at the scene of the traffic stop that he had consumed alcohol. This was sufficient evidence that he was intoxicated within the meaning of the statute. *See A.V. v. State*, 918 N.E.2d 642, 643-44 (Ind. Ct. App. 2009) (finding sufficient evidence of intoxication to support conviction for Class A misdemeanor operating a vehicle while intoxicated endangering a person where A.V. admitted consuming some alcohol that evening, her breath smelled of alcohol, her eyes were red, and she failed one HGN test), *trans. denied*; *Poortenga v. State*, 99 N.E.3d 691, 698 (Ind. Ct. App. 2018) (holding that there was sufficient evidence of intoxication where Poortenga admitted to consuming alcohol before his arrest, his eyes were glossy, he spoke very slowly, his vehicle smelled of alcohol, and he failed field sobriety tests, including the HGN, even where his ACE was under the legal limit); *Naas v. State*, 993 N.E.2d 1151, 1153 (Ind. Ct. App. 2013) (finding sufficient evidence of intoxication where Naas was calm and compliant but had red, watery eyes, slurred speech, unsteady balance, and smelled of alcohol, an officer opined he was intoxicated, and where a half-empty bottle of alcohol was found in his car). Lehman's attempt to distinguish *A.V.* on the basis that his blood test showed he was under the legal limit for alcohol mischaracterizes the facts of *A.V.*, which did not involve any blood test results, and it overlooks that the State was not required to show that Lehman was over the legal limit to prove that he was intoxicated.

See A.V., 918 N.E.2d at 643-44; *Miller*, 641 N.E.2d. at 69. Lehman's argument that he did not drive erratically or stumble and displayed normal manual dexterity is equally unpersuasive, as it is simply a request that we reweigh the evidence, which we will not do pursuant to our standard of review. *Prickett*, 856 N.E.2d at 1206.

[18] Lehman also asserts that the State failed to provide sufficient evidence of endangerment. This element may not be established merely by evidence that the defendant was intoxicated, but it is proven through evidence "showing that the defendant's condition or operating manner could have endangered any person, including the public, the police, or the defendant." *Outlaw v. State*, 918 N.E.2d 379, 381 (Ind. Ct. App. 2009), *adopted* 929 N.E.2d 196 (Ind. 2010). There is no requirement that a person other than the defendant be in the path of the defendant's vehicle or in the same area to support a conviction involving endangerment. *Id*. We have found evidence that a defendant was speeding to be sufficient evidence of endangerment to uphold a conviction for Class A misdemeanor operating a vehicle while intoxicated endangering a person. *See A.V.*, 918 N.E.2d at 646 n.1 (finding sufficient evidence of endangerment where A.V. drove fifty-one miles per hour in a thirty-five mile per hour zone).

[19] Here, Deputy Amstutz testified that he believed that Lehman drove his motorcycle above the posted thirty-mile-per-hour speed limit, that in his training and experience, Lehman was driving "slightly higher" than the thirty-five miles per hour Lehman admitted, and that, after driving the short distance to follow Lehman's turn southbound onto Fulton Street, the deputy observed

that Lehman was "already over a block and a half away from me." (Transcript Vol. II, pp. 93, 94). While we agree with Lehman that there is no bright-line rule concerning the precise extent of speeding that constitutes endangerment, we have no trouble finding sufficient evidence of endangerment here, where Lehman drove a motorcycle above the posted speed limit at night down an unlit side street in a residential area.

B. *Light Restriction Infraction*

[20] In order to prove a light restriction infraction, the State was required to show that Lehman drove his motorcycle "with a lamp or device on the vehicle or equipment displaying light other than white or amber visible from directly in front of the center of the vehicle or equipment." I.C. § 9-21-7-10(a). Here, Deputy Amstutz testified at trial that as Lehman drove toward him on Main Street, he could see "a blue light displayed from the front–bluish-purple displayed from the front." (Tr. Vol. II, p. 86). Exhibit H was admitted into evidence at trial showing Lehman's motorcycle from the front with its LED lights and headlights illuminated wherein a purple light is visible in the center of the motorcycle above the front wheel. This is the evidence that supports the trial court's judgment, and it is the only evidence that we will consider pursuant to our standard of review. *Baird*, 955 N.E.2d 848. Lehman's attacks on Exhibit H as not showing his motorcycle on the night in question and as not depicting his motorcycle from directly in front are also unpersuasive as inviting us to reweigh the evidence, which is also contrary to our standard of review. *Id*. Lastly, we cannot credit Lehman's argument that the infraction judgment must

be reversed because Deputy Amstutz's dashboard video conclusively contradicted his trial testimony. The video was admitted at the suppression hearing but was not specifically incorporated into the trial record, and, in any event, even if the video directly contradicted the deputy's testimony, the dashboard video and the deputy's testimony were not the only evidence of his guilt on the infraction, given the admission of Exhibit H. Accordingly, we also uphold the trial court's judgment that Lehman committed the light restriction violation.

CONCLUSION

[21] Based on the foregoing, we conclude that the trial court did not abuse its discretion by admitting evidence garnered from a constitutionally valid traffic stop and that the evidence supported the trial court's judgment.

[22] Affirmed.

[23] Bailey, J. concurs

[24] Vaidik, J. concurring in part and dissenting in part with separate opinion

Vaidik, Judge, concurring in part and dissenting in part.

[25] I concur in all respects but one. Operating while intoxicated is a Class C misdemeanor unless the defendant operates the vehicle "in a manner that endangers a person," which makes it a Class A misdemeanor. Ind. Code § 9-30-5-2. While I believe the State proved Class C misdemeanor operating while intoxicated, I do not agree it proved the endangerment element that elevates the crime to a Class A misdemeanor. Therefore, I must respectfully dissent in part.

[26] To be clear, I believe Lehman's intoxicated driving was dangerous. All intoxicated driving is dangerous. That's why the legislature made it a crime. The question here, though, is whether Lehman crossed the line from the danger that is inherent in all intoxicated driving to the heightened level of danger that is required to elevate the crime to a Class A misdemeanor. In finding he did, the majority relies on Deputy Amstutz's opinion that Lehman was driving "slightly" faster than thirty-five miles per hour in a thirty-mile-per-hour zone.

[27] I cannot say that traveling six or seven miles per hour over the speed limit, without swerving or other unsafe operation, increases the danger of intoxicated driving to such an extent that it justifies the jump from a Class C misdemeanor to a Class A misdemeanor. And from what I can tell, this Court has never said so. The majority cites *A.V. v. State* for the proposition that speeding can equal endangerment, but the defendant in that case was driving fifty-one in a thirty-five—sixteen miles per hour over the speed limit. 918 N.E.2d 642 (Ind. Ct. App. 2009), *trans. denied*; *see also Boyd v. State*, 519 N.E.2d 182 (Ind. Ct. App.

1988) (twenty-four miles per hour over the speed limit); *Hughes v. State*, 481 N.E.2d 135 (Ind. Ct. App. 1985) (thirty-two miles per hour over the speed limit).

[28] I would reverse Lehman's Class A misdemeanor conviction and remand this matter to the trial court with instructions to enter a Class C misdemeanor conviction and to resentence Lehman accordingly.