MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Lori Walton,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 16, 2022

Court of Appeals Case No.
22A-CR-1012

Appeal from the
Marion Superior Court

The Honorable
Amy M. Jones, Judge
The Honorable
David M. Hooper, Magistrate

Trial Court Cause No.
49G34-2010-CM-31140

Foley, Judge.

[1] Lori Walton ("Walton") was convicted after a bench trial of operating while intoxicated endangering a person[1] as a Class A misdemeanor and was sentenced to 365 days with 363 days suspended to probation and credit for time served. Walton appeals her conviction and argues that the evidence presented at trial was not sufficient to support her conviction because there was insufficient evidence to prove that she was operating the vehicle. Because we find that the evidence presented was sufficient to support Walton's conviction, we affirm.

Facts and Procedural History

[2] On June 15, 2020, police were dispatched to the scene of a single vehicle accident in the 9300 block of Pendleton Pike in Marion County. Officer Aaron Tate ("Officer Tate") of the Lawrence Police Department was the first officer to arrive at the scene and observed two women standing outside of the vehicle, one of which was later identified as Walton. Walton was on her cell phone when Officer Tate approached. The vehicle was off the road in the grassy area near the Monarch Beverage facility and had struck both the curb and a small tree. Officer Tate documented the scene and gathered information for the report. He only spoke with Walton to refer her to speak with Officer Jason Heiney ("Officer Heiney"), also from the Lawrence Police Department, who had responded to the accident scene.

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[1] Ind. Code § 9-30-5-2.

[3] Officer Heiney approached Walton to speak with her about the accident. Walton told Officer Heiney that she had been driving the vehicle, and when Officer Heiney asked how the vehicle went off the road, Walton told him that she "had been having trouble seeing while driving because it was so dark." Tr. Vol. II at 36. She also told Officer Heiney that she might have been looking down at her phone. Walton told Officer Heiney that she had been taking her friend, who was the passenger in the vehicle, to her friend's residence in New Palestine.

[4] Officer Heiney had been trained in detecting both alcohol intoxication and drug intoxication. In speaking with Walton, Officer Heiney observed signs of possible intoxication, including that her balance was unsteady, her speech was thick, and her pupils were "abnormally constricted" for being in a dark area at nighttime. *Id*. at 30. Walton also had difficulty keeping her eyes open, seemed drowsy, and appeared to nod off at one point in their conversation. Officer Heiney did not observe any injuries to Walton, and she stated that she had not suffered any recent head trauma. After observing these signs of intoxication, Officer Heiney administered field sobriety tests to Walton. When Walton performed these tests, Officer Heiny observed signs consistent with impairment from narcotic drugs. Walton consented to a blood draw, which was done at Eskenazi Hospital. The blood was later tested and came back positive for both fentanyl and norfentanyl.

[5] On October 7, 2020, the State charged Walton with operating while intoxicated endangering a person as a Class A misdemeanor, operating while intoxicated as

a Class C misdemeanor, and operating with a schedule I or II controlled substance or its metabolite in the body as a Class C misdemeanor. On April 8, 2022, a bench trial was held, and the trial court found Walton guilty of all three counts but vacated the convictions on counts two and three and entered judgment on only the conviction for Class A misdemeanor operating while intoxicated endangering a person. The trial court sentenced Walton to 365 days and suspended 363 of those days to probation and gave her credit for one actual day and one day of good time credit. Walton now appeals.

Discussion and Decision

[6] Walton argues that there was insufficient evidence to support her conviction for Class A misdemeanor operating while intoxicated. When there is a challenge to the sufficiency of the evidence, "[w]e neither reweigh evidence nor judge witness credibility." *Gibson v. State*, 51 N.E.3d 204, 210 (Ind. 2016), *reh'g denied*, *cert. denied*. Instead, we consider only that evidence most favorable to the judgment together with all reasonable inferences drawn therefrom. *Cook v. State*, 143 N.E.3d 1018, 1021 (Ind. Ct. App. 2020) (citing *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007)), *trans. denied*. "It is the factfinder'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." *Id.* at 1021–22. When confronted with conflicting evidence, appellate courts must consider the evidence most favorable to the trial court's ruling. *Id*. at 1022. "We will affirm the judgment if it is supported by substantial evidence of probative value even if there is some conflict in that evidence." *Gibson*, 51 N.E.3d at 210 (internal

quotation marks, ellipses, and brackets omitted). Further, "[w]e will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Love v. State*, 73 N.E.3d 693, 696 (Ind. 2017).

[7] To convict Walton of operating while intoxicated endangering a person as a Class A misdemeanor, the State was required to prove beyond a reasonable doubt that she operated a vehicle while intoxicated in a manner that endangered a person. Ind. Code § 9-30-5-2. On appeal, Walton only challenges the sufficiency of the evidence to prove that she operated the vehicle. She does not challenge the sufficiency of the evidence to support the other elements of her conviction.

[8] To operate is defined in the Indiana Code as "to navigate or otherwise be in actual physical control of a vehicle . . . ." I.C. § 9-13-2-117.5. Looking to the evidence most favorable to the judgment as we must do, sufficient evidence was presented to prove that Walton was operating the vehicle. Officer Heiney testified that Walton told him at the scene of the accident that she had been driving the vehicle. Walton also explained to Officer Heiney that the accident may have occurred because it was so dark, and she had been having trouble seeing while driving and that she may have looked down at her phone. She further admitted to the officer that she was driving because she was taking her friend home. Further, Walton acknowledged at trial that, at the scene of the accident, she had told Officer Heiney she had been driving but testified that she

has only done so to cover for her friend so that the friend would not get in trouble. Tr. Vol. II at 43–44.

[9] On appeal, Walton argues that the State failed to prove that she was operating the vehicle because her friend stated in a previously-taped statement admitted at trial that the friend was actually driving the vehicle and because Walton testified at trial that the friend was actually driving the vehicle. Walton's arguments on appeal are merely requests for us to reweigh the evidence, which we cannot do. "'It is for the trier of fact to resolve conflicts in the evidence and to decide which witnesses to believe or disbelieve.'" *Moore v. State*, 27 N.E.3d 749, 755–56 (Ind. 2015) (quoting *Murray v. State*, 761 N.E.2d 406, 409 (Ind. 2002)). The trial court was free to accept the testimony of Walton and her friend, but it did not. It is not our place on appeal to reweigh the evidence or the credibility determinations made by the trial court. We, therefore, conclude that sufficient evidence was presented to support Walton's conviction for operating a vehicle while intoxicated endangering a person as a Class A misdemeanor.

[10] Affirmed.

Robb, J. and Mathias, J., concur.