

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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Jose Luis Lopez Interiano,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

January 22, 2024

Court of Appeals Case No.  
23A-CR-1557

Appeal from the Shelby Superior  
Court

The Honorable Jennifer K.  
Kinsley, Magistrate

Trial Court Cause No.  
73D02-2209-CM-667

**Memorandum Decision by Judge Mathias**  
Judges Tavitas and Weissmann concur.

**Mathias, Judge.**

[1] Jose Luis Lopez Interiano appeals his conviction for Class C misdemeanor operating a vehicle while intoxicated. Interiano raises a single issue for our review, namely, whether the State presented sufficient evidence to support his conviction. We affirm.

## **Facts and Procedural History**

[2] In the late evening hours of September 15, 2022, Shelby County Sheriff's Department Officer Jeffery DeWitt observed a white truck being operated in Shelby County with one headlight out and the license plate not properly illuminated. Officer DeWitt initiated a traffic stop of the vehicle, approached the driver's side door, and observed that Interiano had been operating the vehicle.

[3] Officer DeWitt observed that Interiano's eyes "were glassy and bloodshot," and Officer DeWitt smelled the odor of alcoholic beverages emanating from inside the vehicle. Tr. p. 44. After checking Interiano's license, Officer DeWitt observed the truck move "several feet" forward and then stop again. *Id.* at 45. Officer DeWitt, suspecting that Interiano may have been impaired, asked Interiano to exit the vehicle.

[4] Officer DeWitt asked Interiano if he had been drinking, and Interiano replied, "a little bit." *Id.* Up close, Officer DeWitt could smell the odor of alcohol on Interiano. Officer DeWitt then administered three field sobriety tests. First, he administered the horizontal gaze nystagmus test. Interiano failed that test as his eyes were unable to follow Officer DeWitt moving a pen from side to side.

Second, Officer DeWitt administered the “walk and turn test.” *Id.* at 52.

Interiano failed that test, as he was unable to walk in a straight line or take the correct number of steps. Third, Officer DeWitt administered the “one leg stand test.” *Id.* at 53. Interiano failed that test, as well. Throughout the interaction, Officer DeWitt conversed with Interiano in English without difficulty.

[5] Officer DeWitt suspected Interiano of operating a vehicle while intoxicated and informed Interiano of Indiana’s Implied Consent Law. Interiano agreed to a blood draw. The ensuing results of the blood draw showed that Interiano had a blood alcohol level of 0.067 grams per one-hundred milliliters blood.

[6] The State charged Interiano with Class A misdemeanor operating a vehicle while intoxicated. After an ensuing bench trial at which Officer DeWitt and a toxicology expert testified, the trial court found Interiano guilty of Class C misdemeanor operating a vehicle while intoxicated. The court entered its judgment of conviction and sentenced Interiano accordingly. This appeal ensued.

## **Discussion and Decision**

[7] On appeal, Interiano asserts that the State failed to present sufficient evidence to support his conviction. For sufficiency of the evidence challenges, we consider only probative evidence and reasonable inferences that support the judgment of the trier of fact. *Hall v. State*, 177 N.E.3d 1183, 1191 (Ind. 2021). We will neither reweigh the evidence nor judge witness credibility. *Id.* We will

affirm a conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Id.*

[8] It is a Class C misdemeanor to operate a vehicle while intoxicated. [Ind. Code § 9-30-5-2\(a\) \(2022\)](#). Intoxication may be established by a showing of impairment. *Pickens v. State*, 751 N.E.2d 331, 335 (Ind. Ct. App. 2001).

Evidence of impairment, in turn, includes: “(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.*

[9] The State presented sufficient evidence of Interiano’s impairment at the time he was operating the vehicle. Officer DeWitt testified that Interiano had bloodshot eyes and smelled of alcohol at the time of the traffic stop. Officer DeWitt further testified that Interiano failed all three field sobriety tests, which demonstrated Interiano’s inability to focus, maintain his balance, and follow simple instructions. Interiano admitted to having had at least some alcohol prior to operating the vehicle, and his blood alcohol content was later measured to be 0.067 grams per one-hundred milliliters blood. That evidence is sufficient to establish Interiano’s impairment and, thus, his conviction. *See, e.g., Naas v. State*, 993 N.E.2d 1151, 1153 (Ind. Ct. App. 2013) (holding that the State presented sufficient evidence that a motorist was intoxicated when the State’s evidence showed that the motorist had “red watery eyes, slurred speech, unsteady balance and had the odor of an alcoholic beverage upon his person”).

[10] Still, Interiano argues that the field sobriety tests were “unreliable” and cannot be within the evidentiary basis of his conviction. Appellant’s Br. at 8. But Interiano did not object to the admissibility of Officer DeWitt’s testimony regarding the field sobriety tests, and he therefore may not argue on appeal that that evidence was inadmissible or otherwise improperly considered. Further, insofar as Interiano’s argument here is that his failure of the field sobriety tests should be given little weight, that is not a proper argument for appellate review. We will consider only the evidence most favorable to the trial court’s judgment without reweighing that evidence, and that includes Interiano’s failure of the field sobriety tests.

[11] Much of Interiano’s argument on appeal is premised on his assertion that he does not speak English well, and, thus, his interaction with Officer DeWitt, which was in English, should not be considered. But Officer DeWitt testified that he had no problem communicating with Interiano in English. As such, Interiano’s argument here is, again, simply a request for this Court to reweigh the evidence, which we will not do.

[12] For all of the above-stated reasons, we affirm Interiano’s conviction for Class C misdemeanor operating a vehicle while intoxicated.

[13] Affirmed.

Tavitas, J., and Weissman, J., concur.