

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Gorgi Pavlov,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

March 25, 2021

Court of Appeals Case No.
20A-CR-1783

Appeal from the Tippecanoe
Superior Court

The Honorable Michael A.
Morrissey, Judge

Trial Court Cause No.
79D06-1809-CM-3970

Crone, Judge.

Case Summary

- [1] Gorgi Pavlov appeals his convictions for class B misdemeanor leaving the scene of an accident and class A misdemeanor operating a vehicle with an alcohol concentration equivalent (ACE) of 0.15 or more grams of alcohol per 100 milliliters of blood, arguing that neither conviction is supported by sufficient evidence. Concluding that both convictions are supported by sufficient evidence, we affirm.

Facts and Procedural History

- [2] The facts most favorable to the convictions show that around 1:30 a.m. on August 18, 2018, Britta Phillips was at her home on South Ninth Street in Lafayette when she heard a loud crash outside. She looked out her front window and saw an SUV “up over the curb.” Tr. Vol. 2 at 11. As the vehicle drove away, Phillips observed that it had a flat tire. She then reported the vehicle to the police.
- [3] While police were trying to locate the vehicle, they received additional information from another person who had observed a suspicious vehicle and followed it to Pheasant Run Apartments. Police went to the apartment complex, where they located a Nissan Rogue SUV with a missing tire, an exposed rim, and “pretty extensive damage to the front right end.” *Id.* at 17. A license plate search revealed that the vehicle was registered to Pavlov.
- [4] Police went to Pavlov’s apartment and knocked on his door. Pavlov answered and identified himself. He said that he had arrived home a half hour earlier and

had been sleeping. One of the officers asked Pavlov what had happened, and Pavlov replied, “[S]o what happened was I hit a pole while I was driving home.” State’s Ex. 5R at 00:21-28.¹ Police informed Pavlov of his *Miranda* rights, and he indicated that he understood them. Pavlov stated that he did not recall the location of the pole but that he had been driving from Ninth Street. He explained that “suddenly [he] lost control” and “the steering wheel slipped” causing him to “hit a pole.” *Id.* at 01:38-55. He admitted that he “didn’t even bother to stop” because he “thought [he] was okay to drive home.” State’s Ex. 5 at 33:17-23, 40:09-14. He claimed that he drank only two beers at around 5:00 or 6:00 p.m. and that when he got home, he went right to bed without drinking any alcohol. State’s Ex. 5R at 02:18-22, 02:39-3:08.

- [5] Two officers noted that Pavlov smelled of alcohol, his eyes were bloodshot, his speech was slurred, and his balance was unstable. Pavlov agreed to perform field sobriety tests and failed all three tests. He also consented to a chemical test. A blood draw at St. Elizabeth’s Hospital indicated that he had a blood alcohol level of 0.169 grams per 100 milliliters of blood. Tr. Vol. 2 at 43. Subsequent testing of his blood by the Indiana Department of Toxicology showed a blood alcohol level of 0.177 grams per 100 milliliters of blood. *Id.* at

¹ State’s Exhibit 5R is the redacted version of the video taken by an officer’s body camera, which was played at trial. A longer version was also admitted into evidence as State’s Exhibit 5. The trial court reviewed both versions before making its findings.

63. An ACE of 0.177 grams correlates with six and a half to seven and three-quarters standard drinks of alcohol.² *Id.* at 79.

[6] An officer located a Duke Energy pole with “fresh damage” and “paint transfer that matched” Pavlov’s vehicle on Ninth Street about 400 to 500 yards from where Phillips had seen the SUV over the curb. *Id.* at 30. The officer also observed yellow tar on Pavlov’s vehicle that matched the tar on the pole. *Id.* at 32.

[7] In August 2018, the State charged Pavlov with class A misdemeanor operating a vehicle while intoxicated endangering a person, class A misdemeanor operating a vehicle with an ACE of 0.15 or more, and class B misdemeanor leaving the scene of an accident. Following a bench trial in July 2020, the trial court found Pavlov not guilty of the first charge and guilty of the remaining charges. In September 2020, the trial court sentenced Pavlov to concurrent sentences of 359 days for operating a vehicle with an ACE of 0.15 or more and 180 days for leaving the scene of an accident. The sentence was suspended to unsupervised probation that could be terminated after 180 days upon Pavlov’s completion of all probation requirements. This appeal ensued.

² A standard drink contains fourteen grams of ethanol. Tr. Vol. 2 at 80.

Discussion and Decision

- [8] In reviewing a claim of insufficient evidence, we do not reweigh the evidence or judge the credibility of witnesses, and we consider only the evidence that supports the judgment and the reasonable inferences arising therefrom. *Bailey v. State*, 907 N.E.2d 1003, 1005 (Ind. 2009). It is “not necessary that the evidence ‘overcome every reasonable hypothesis of innocence.’” *Drane v. State*, 867 N.E.2d 144, 147 (Ind. 2007) (quoting *Moore v. State*, 652 N.E.2d 53, 55 (Ind. 1995)). “We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt.” *Bailey*, 907 N.E.2d at 1005.

Section 1 –Sufficient evidence supports Pavlov’s conviction for leaving the scene of an accident.

- [9] Pavlov was charged with class B misdemeanor leaving the scene of an accident, which is defined in Indiana Code Section 9-26-1-1.1. Section 9-26-1-1.1 provides as follows:

(a) The operator of a motor vehicle *involved in an accident shall* do the following:

(1) Except as provided in section 1.2 of this chapter, the operator *shall immediately stop the operator’s motor vehicle*:

(A) at the scene of the accident; or

(B) as close to the accident as possible;

in a manner that does not obstruct traffic more than is necessary.

(2) Remain at the scene of the accident until the operator does the following:

(A) Gives the operator's name and address and the registration number of the motor vehicle the operator was driving to any person involved in the accident.

(B) Exhibits the operator's driver's license to any person involved in the accident or occupant of or any person attending to any vehicle involved in the accident.

....

(4) *If the accident involves a collision with an unattended vehicle or damage to property other than a vehicle, the operator shall, in addition to the requirements of subdivisions (1) and (2):*

(A) *take reasonable steps to locate and notify the owner or person in charge of the damaged vehicle or property of the damage; and*

(B) *if after reasonable inquiry the operator cannot find the owner or person in charge of the damaged vehicle or property, the operator must contact a law enforcement officer or agency and provide the information required by this section.*

(b) An operator of a motor vehicle who knowingly or intentionally fails to comply with subsection (a) commits leaving the scene of an accident, a Class B misdemeanor.

(Emphases added.) The State charged Pavlov as follows:

On or about August 18, 2018, in Tippecanoe County, State of Indiana, Gorgi Pavlov, being the driver of a vehicle that was involved in an accident, involving a collision with an unattended vehicle OR other property being the property of Duke Energy, did knowingly or intentionally fail to stop the vehicle at the scene of said accident, or as close as possible thereto OR having stopped at the scene of the accident, failed to take reasonable steps to locate and notify the owner or the person in charge of the damaged property[.]

Appellant's App. Vol. 2 at 18.

- [10] Pavlov asserts that there was insufficient evidence that he “left the scene of an accident resulting in damage to property.” Appellant's Br. at 8. He contends that a successful prosecution for leaving the scene of an accident must prove damage to the property of another and the State presented no evidence that there was an accident causing damage to the property of another. In support, he cites *Allen v. State*, 844 N.E.2d 534, 536 (Ind. Ct. App. 2006), *trans. denied*. There, Allen was driving a van and rear-ended a vehicle stopped at a red light. Allen stopped his van, got out and spoke to the driver of the vehicle, and then returned to his van and drove away. The driver of the other vehicle wrote down Allen's license plate number and immediately drove to the police station, where an officer observed fresh damage to her vehicle. When police located Allen, he admitted that he had been involved in the accident but claimed that it was not his fault and it did not damage the other car, so he left.

[11] Allen was convicted under Indiana Code Section 9-26-1-2, now repealed,³ which specifically applied to

[t]he driver of a motor vehicle involved in an accident that does not result in injury or death of a person or the entrapment of a person in a motor vehicle and that does not involve the transportation of hazardous materials *but that does result in damage to a vehicle that is driven or attended by a person*[.]

(Emphasis added.) The statute required such a driver to immediately stop at the scene and remain at the scene until, upon request, the driver gave the driver's name and address and vehicle registration number, provided proof of financial responsibility, and exhibited the driver's license. Allen challenged his conviction on the ground that the State failed to prove that he knew the other vehicle had sustained damage in the accident. In addressing his argument, the *Allen* court observed that the elements of the offense under Section 9-26-1-2 "include damage to another vehicle and the defendant's knowledge of the same." 844 N.E. 2d at 536. The *Allen* court concluded that the State was not required to prove that Allen had actual knowledge that the other vehicle was damaged. *Id.* Rather, the *Allen* court held that the State must produce sufficient evidence to support a reasonable inference that Allen should have known that the other vehicle was damaged by the collision with his vehicle. *Id.* at 537.

³ Ind. Pub. Law 217-2014 § 106, eff. Jan. 1, 2015.

Because the circumstantial evidence supported such a reasonable inference, the court affirmed Allen's conviction. *Id.*

[12] Pavlov's reliance on *Allen* is unavailing. The statute there applied specifically to an accident that resulted in damage to a vehicle that is driven or attended by a person. Also, that statute and similar statutes were repealed at the same time Section 9-26-1-1.1 was enacted. The other statutes that were repealed at that time included Section 9-26-1-4, which applied specifically to the driver of a motor vehicle that caused damage to the property of another person, other than damage to a vehicle. Accordingly, *Allen* is irrelevant to the issue raised here.

[13] Instead, we turn to the charging information and the statutory language to determine whether the State was required to prove damage to property in Pavlov's case. We begin by noting that the charging information provides alternative grounds to convict Pavlov under the statute. The State alleged that Pavlov was involved in an accident, that accident being a collision with Duke Energy's property, and knowingly or intentionally failed to stop his vehicle at the scene of the accident. Appellant's App. Vol. 2 at 18. Alternatively, the State alleged that Pavlov was involved in an accident, that accident being a collision with Duke Energy's property, and knowingly or intentionally failed to take reasonable steps to locate and notify the owner or the person in charge of

the damaged property.⁴ *Id.* In his appellant’s brief, Pavlov focuses almost entirely on the second alternative, and baldly claims at the end of his argument that “there is no evidence that this incident was the type of accident for which the law requires a person to stop.” Appellant’s Br. at 10. In his reply brief, he adds that unless there was damage to the property of another, there was no reason to stop, and that if he did stop, it is unclear how long he was expected to stay at the scene. Thus, he argues his failure to stop at the scene of the accident is not a crime under the statute unless there was damage to property. We think his argument ignores the clear and unambiguous language of the statute.

[14] “Our primary goal in interpreting statutes is to determine and give effect to the Legislature’s intent.” *Adams v. State*, 960 N.E.2d 793, 798 (Ind. 2012). “The best evidence of that intent is a statute’s text.” *Id.* “If a statute is clear and unambiguous, courts do not apply any rules of construction other than giving effect to the plain and ordinary meaning of the language.” *Study v. State*, 24 N.E.3d 947, 952 (Ind. 2015) (quoting *Sloan v. State*, 947 N.E.2d 917, 922 (Ind. 2011)) *cert. denied*; Ind. Code § 1-1-4-1 (providing that in the construction of statutes, “[w]ords and phrases shall be taken in their plain, or ordinary and usual, sense.”). “In determining the plain and ordinary meaning of a term, courts may use English language dictionaries as well as consider the relationship with other words and phrases.” *H.M. v. State*, 993 N.E.2d 1162,

⁴ The trial court did not specify which basis it found Pavlov guilty of this offense other than to state that Pavlov admitted to striking the pole with his vehicle and to calling his insurance carrier to report the accident when he arrived home. Appellant’s App. Vol 2 at 66.

1164 (Ind. Ct. App. 2013). In addition, we consider both what the statute “does say” and what it “does not say.” *Mi.D. v. State*, 57 N.E.3d 809, 812 (Ind. 2016) (quoting *State v. Dugan*, 793 N.E.2d 1034, 1036 (Ind. 2003)).

[15] Subsection 9-26-1-1.1(b) provides that failure to comply with subsection (a) constitutes class B misdemeanor leaving the scene of an accident. This language unambiguously provides that the failure to comply with any part of (a) constitutes the crime. Subdivision (a)(1) applies to the operator of a motor vehicle “involved in an accident.” We observe that there is no other condition for its application other than involvement in an accident. Subdivision (a)(4) applies “[i]f the accident involves ... damage to property other than a vehicle.” Based on the unambiguous statutory language, damage to property is not required under (a)(1) but is required under (a)(4). As to Pavlov’s argument that unless there was damage to the property of another, there was no reason to stop, it seems reasonable to require an operator of a vehicle involved in an accident with property of another to stop long enough to be able to assess whether the accident had damaged that property. If there is no damage, the driver may leave because subsection (a)(4) would not apply. If there is damage, then the driver must comply with the requirements under subdivision (a)(4).

[16] Here, Pavlov was charged with being involved in an accident and failing to stop at the scene of the accident. Thus, one way for the State to obtain a conviction for class B misdemeanor leaving the scene of an accident, as charged, was to prove that Pavlov was involved in an accident and failed to stop. Here, the evidence favorable to Pavlov’s conviction is that he admitted to police that he

hit a pole and did not stop after hitting the pole; Phillips heard a loud crash and saw an SUV with a flat tire up over the curb; there was extensive damage to Pavlov's vehicle; the police officer testified that the pole had recent damage; there was paint on the pole that matched the paint on his vehicle; and the yellow tar on his vehicle matched the yellow tar on the pole. Thus, there was sufficient evidence to establish that Pavlov was in an accident and failed to stop and therefore is guilty of the offense as charged.⁵

[17] Even if we were to accept Pavlov's argument that failing to stop at the scene of an accident is not a crime unless there was damage to property of another, we would conclude that the State produced sufficient evidence of damage to property. We observe that damage is not defined in the statute. Merriam-Webster defines damage as "loss or harm resulting from injury to person, property, or reputation." MERRIAM-WEBSTER ONLINE DICTIONARY, <https://www.merriam-webster.com/dictionary/damage> (last visited Mar. 16, 2021) <https://perma.cc/8KRP-AXD9>. As mentioned, the police officer testified that the pole had recent damage, there was paint on the pole that matched the paint on Pavlov's vehicle, and the yellow tar on his vehicle matched the yellow tar on the pole. Although the officer did not describe what kind of damage he observed, the transfer of yellow tar and paint between the

⁵ Pavlov argues that a person may not be convicted of a crime based solely on a nonjudicial confession of guilt. See *Shinmook v. State*, 76 N.E.3d 841, 843 (Ind. 2017) ("[I]ndependent proof of the *corpus delicti* is required before the defendant may be convicted upon a nonjudicial confession."). Here, there was ample independent evidence to establish that Pavlov's vehicle collided with the pole.

pole and the vehicle support his testimony that there was damage to the pole. The State argues that the pole's loss of its tar sealant constitutes damage, and we agree. Further, the transfer of the vehicle's paint to the pole is cosmetic damage at the least, and Section 9-26-1-1.1 does not include an exclusion for cosmetic damage. Accordingly, we conclude that there was sufficient evidence from which a reasonable factfinder could conclude that the pole was damaged by the accident. Thus, we conclude that the evidence is sufficient to support Pavlov's conviction for leaving the scene of an accident and affirm his conviction.

Section 2 – Sufficient evidence supports Pavlov's conviction for operating a vehicle with an ACE of 0.15 or more.

[18] To convict Pavlov of class A misdemeanor operating a vehicle with an ACE of 0.15 or more, the State was required to prove beyond a reasonable doubt that he operated a vehicle with an ACE of at least 0.15 grams of alcohol per 100 milliliters of blood or 210 liters of his breath. Appellant's App. Vol. 2 at 17; Ind. Code § 9-30-5-1(b). Pavlov contends that although the evidence shows that he operated a vehicle and had an ACE greater than 0.15 grams, the evidence is insufficient to show that his ACE was greater than 0.15 grams when he operated the vehicle. In support, Pavlov likens his case to *Flanagan v. State*, 832 N.E.2d 1139, 1141 (Ind. Ct. App. 2005).

[19] There, a police officer observed Flanagan and another individual standing outside a disabled vehicle. The officer was transporting a prisoner and could not stop to assist the men. After the officer finished transporting the prisoner,

he returned to the disabled vehicle. He saw Flanagan and his companion walking toward a local convenience store and stopped to offer them a ride, which they accepted. The officer detected the odor of alcohol on Flanagan and observed that his speech was slurred and his eyes were red and watery. Based on these observations, the officer asked Flanagan to submit to a portable breath test, which Flanagan failed. After arresting Flanagan, police found beer cans in the back of the vehicle. Flanagan admitted that he had consumed beer.

[20] Although a jury found Flanagan guilty of operating while intoxicated, another panel of this Court reversed his conviction because there was no evidence as to how long the vehicle had been sitting on the side of the road before the officer saw it or when Flanagan had consumed alcohol. *Id.* at 1141-42. Without this evidence, the court explained, there were no circumstances to support a reasonable inference that Flanagan operated the vehicle while he was intoxicated. *Id.* The court noted that Flanagan easily could have consumed the beer after the vehicle broke down, and when the beer was gone, the men decided to walk to the store to call for assistance. *Id.* at 1141.

[21] *Flanagan* is distinguishable. Here, shortly after an individual reported Pavlov's vehicle and followed it to his apartment complex, police encountered Pavlov at his apartment door. Pavlov said he had arrived home half an hour earlier and had been sleeping. Pavlov repeatedly denied to officers that he had drank any alcohol after arriving home. The blood draw at the hospital showed that his ACE was 0.169 grams, and the Department of Toxicology report showed his ACE was 0.177 grams. Given the evidence that Pavlov was intoxicated shortly

after driving and that he denied drinking after he arrived home, a reasonable trier of fact could presume that Pavlov operated his vehicle with an ACE of 0.15 grams or more. Pavlov's argument to the contrary is merely an invitation to reweigh the evidence, which we must decline. We conclude that the evidence was sufficient to support Pavlov's conviction for operating a vehicle with an ACE of 0.15 grams or more. Accordingly, we affirm his conviction.

[22] Affirmed.

Najam, J., and Riley, J., concur.