MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Amanda O. Blackketter

Blackketter Law, LLC
Shelbyville, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Daylon L. Welliver
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Edwin Joseph Rigaud
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

July 3, 2023

Court of Appeals Case No. 22A-CR-2545

Appeal from the Decatur Superior Court

The Honorable Kenneth R. Bass, Magistrate

Trial Court Cause No. 16D01-2203-CM-251

Memorandum Decision by Judge Foley
Judge Vaidik concurs.
Judge Tavitas concurs in result without opinion.

Foley, Judge.

[1] Edwin Rigaud ("Rigaud") appeals his conviction for misdemeanor reckless driving,[1] entered after he drove past a stationary school bus with an extended stop arm. The evidence presented was sufficient to support the conviction. Thus, we affirm.

Facts and Procedural History

[2] Shortly after 4 p.m. on March 3, 2022, a school bus stopped on State Road 46 in order to let off some of the children. The bus driver signaled her intent to stop by activating the flashing yellow lights approximately one hundred and fifty feet prior to stopping. Then, she engaged the red lights and stop arm and came to a complete stop. From the opposite direction came a dark sport utility vehicle, driven by Rigaud, followed by another bus.[2] The driver of the second bus slowed when he caught sight of the school bus lights, and, indeed, saw Rigaud brake as if he were going to stop. He did not stop, and continued past the school bus, despite the extended stop arm.

[3] The second bus driver called the police and followed Rigaud. A deputy of the Decatur County Sheriff's Office arrived and stopped Rigaud's car. Rigaud indicated that "he believed there was [sic] two lanes and that he could pass in the right lane." Tr. Vol. II p. 34. In fact, the second "lane" was "just a shoulder. It's an emergency lane." *Id.* On March 2, 2022, the State charged

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[1] Ind. Code § 9-21-8-52(b).

[2] Rigaud had apparently recently passed this bus as well, though there is nothing in the record to suggest that the second bus was stopped at the time.

Rigaud with recklessly passing a school bus, a Class A misdemeanor. The trial court conducted a bench trial on September 29, 2022. The trial court found Rigaud guilty and imposed a sentence consisting of a fine and court costs. This appeal ensued.

Discussion and Decision

[4] The sole issue Rigaud raises on appeal is whether the evidence was sufficient to sustain his conviction. Sufficiency of evidence claims "warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility." *Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020) (citing *Perry v. State*, 638 N.E.2d 1236, 1242 (Ind. 1994)). We consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. *Id.* (citing *Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018), *cert. denied*). "We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt." *Id.* at 263. We affirm the conviction "unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict." *Sutton v. State*, 167 N.E.3d 800, 801 (Ind. Ct. App. 2021) (quoting *Drane v. State*, 867 N.E.2d 144, 146-47 (Ind. 2007)).

[5] "A person who operates a vehicle and who recklessly passes a school bus stopped on a roadway or a private road when the arm signal device specified in IC 9-21-12-13 is in the device's extended position commits a Class A misdemeanor." Ind. Code § 9-21-8-52(b). As a culpability standard, Indiana Code defines "recklessly" as engaging "in the conduct in plain, conscious, and unjustifiable disregard of harm that might result[,] and the disregard involves a substantial deviation from acceptable standards of conduct." I.C. § 35-41-2-29(c).

[6] Rigaud focuses on the standard of culpability, arguing that the evidence was insufficient to establish the requisite mental state. Rigaud directs us to two cases, though we note that neither of them involved the overtaking of a school bus. First, he points to *State v. Boadi*, 905 N.E.2d 1069, 1070 (Ind. Ct. App. 2009), a case in which a driver failed to come to a stop at a red light.[3] The *Boadi* court concluded that "failing to stop at an intersection cannot, without more, constitute criminally reckless conduct." *Boadi*, 905 N.E.2d at 1074. While we agree with Rigaud that the case is instructive, we find it distinguishable. The key difference is not, as the State suggests, that *Boadi* dealt with homicide, but, rather, that the evidence supporting the finding of

[3] *Boadi* was a rare case in that Boadi himself was acquitted via directed verdict. Accordingly, it was the State that brought the appeal under Indiana Code Section 35-38-4-2(4). In such circumstances we only consider pure questions of law. And, because the State is prohibited from retrying the former defendant after his or her acquittal, such considerations are largely academic. As we noted in *Boadi*, "[a]lthough the issue in this case is now moot, we hope to provide guidance for future cases." *Boadi*, 905 N.E.2d at 1071 (citing *State v. Martin*, 885 N.E.2d 18, 19 (Ind. Ct. App. 2008).

recklessness was so minimal. *Boadi* stands for the proposition that an actus reus alone does not suffice as proof of a crime that requires a specific level of culpability. But in the instant matter there was testimony that Rigaud was driving at between fifty and fifty-five miles per hour, that he braked when he saw that the school bus was stopped, and that he chose to proceed anyway. Indeed, his statements to the police officer that pulled him over indicate that he knew he was passing a stopped school bus but believed that he was justified in doing so by the idea that there was a second lane. We deduce his recklessness not from the mere fact that he passed the school bus, but from the fact that he clearly observed the school bus and its flashing lights, contemplated stopping, and then decided that he was not required to: a conscious disregard of risk.

[7] The second case is *Whitaker v. State*, 778 N.E.2d 423 (Ind. Ct. App. 2002), *trans. denied*. *Whitaker* involved a reckless homicide wherein a truck driver, exceeding the speed limit, crashed into a vehicle that was braking into a left-hand turn. We reversed Whitaker's conviction, concluding, after a survey of the applicable case law, that "relatively slight deviations from the traffic code, even if they technically rise to the level of 'reckless driving,' do not necessarily support a reckless homicide conviction if someone is subsequently killed." 778 N.E.2d at 426. Unlike Rigaud, however, Whitaker was "not substantially deviating from acceptable driving standards." *Id*. at 427. Moreover, we reasoned, the question of whether Whitaker was following the victim's car too closely was "a subjective and difficult question to answer . . ." because "[t]here is no precise definition of what constitutes a 'reasonable and prudent' following distance,

which as defined by the statute requires instantaneous and ever-changing mental calculations as to the speed of both vehicles, the time interval between them, and the condition of the highway." *Id.* "By contrast," we observe that passing a school bus which is both stopped and outwardly signaling that it is stopped for purposes of letting off children, is "inherently dangerous, no matter the circumstances . . . ." *Id.* Ascertaining the impermissibility of such conduct requires no "mental calculations." *Id.*

[8] If a person is driving on the same road as a school bus and *observes* that the school bus is flashing red lights and has its stop arm extended, that person must stop driving. To do otherwise, with limited exception, is reckless. Children board and disembark from school buses when those buses are stopped with an extended stop arm. That is why the legislature has codified laws prohibiting the passing of a school bus under those conditions. More to the point, any reasonable motorist knows that there is a risk of striking a child when passing a stopped school bus. To decide to pass the bus anyway is, necessarily, to consciously disregard that risk. By definition, that is reckless. The trial court did not err by reaching the same conclusion.

[9] Affirmed.

Vaidik, J., concurs.

Tavitas, J., concurs in result without opinion.