MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

John J. Hatzfeld,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 8, 2021

Court of Appeals Case No. 20A-CR-1622

Appeal from the Huntington Superior Court

The Honorable Davin G. Smith, Judge

Trial Court Cause No. 35C01-1907-F6-214

Bradford, Chief Judge.

Case Summary

[1] On July 19, 2019, John Hatzfeld veered off of State Road 5 and crashed his motorcycle. The road was heavily trafficked, and Lisa Thomas noticed the motorcycle and Hatzfeld in the ditch on the side of the road as she drove by. Police and paramedics arrived and observed that Hatzfeld had bloodshot eyes and slurred speech and was having difficulty walking uphill without assistance. Additionally, he admitted to sheriff's deputies and paramedics that he had been driving the motorcycle and drinking earlier in the day. After being transported to a hospital, Hatzfeld had his blood drawn around two hours after deputies arrived on the scene. Test results indicated that Hatzfeld's blood alcohol content was between 0.14 and 0.162. Hatzfeld was subsequently charged with with Level 6 felony operating while intoxicated ("OWI") with a prior conviction, Class A misdemeanor endangerment, Class C misdemeanor operating with at least 0.08 but less than 0.15 BAC, and Class C misdemeanor OWI. Following trial, a jury found Hatzfeld guilty of all charged misdemeanors. Given Hatzfeld's prior conviction for operating while intoxicated within the previous five years, his conviction was elevated to a Level 6 felony before sentencing. On appeal, Hatzfeld challenges the sufficiency of the evidence to sustain his conviction, claiming that the blood test was invalid pursuant to Indiana Code section 9-30-6-2 and that the State failed to prove that he was intoxicated while operating the vehicle. We affirm

Facts and Procedural History

[2] Around 5:30 p.m. on July 19, 2019, while driving on State Road 5 in Huntington County, Thomas noticed a motorcycle in the knee-high grass off the side of the road. Soon after, Thomas noticed that Hatzfeld was in the grass, attempting to get the motorcycle started. Thomas also observed Hatzfeld attempt to walk out of the ditch to the side of the road, falling with each attempt. Thomas called for police and paramedics shortly after first noticing Hatzfeld.

[3] Sheriff's deputies from Huntington County responded shortly thereafter, along with an ambulance from Parkview hospital. Deputy David Scott arrived to find Hatzfeld in the ditch, sitting on his motorcycle still trying to start it. Hatzfeld admitted to the deputies that he had been driving. Deputies noticed that Hatzfeld was slurring his words; that his eyes were bloodshot, glassy, and red; and that he smelled of alcohol. Hatzfeld also admitted to drinking earlier in the day, but later denied that he had been drinking. The motorcycle showed damage to its front fender and the light and turn signal on the right side were sheared off. Deputies on the scene found it necessary to help Hatzfeld walk from the ditch to the road, despite the fact that none of the deputies had any difficulty walking in the same area. A deputy also found a road sign that was knocked down in the area of the crash.

[4] Hatzfeld was transported to Parkview Hospital due to an abrasion on his forehead and concern for other potential injuries. While at the hospital, Hatzfeld told a paramedic that he had been forced off the roadway after a deer ran out in front of him. The paramedic noted that Hatzfeld seemed unsteady

and had an abrasion on his forehead but was otherwise able to carry on a conversation. When Brittany Wagers arrived at the emergency room to administer a blood draw, Hatzfeld told her, "the h[***] you ain't, I am a Jehovah['s] Witness." Tr. Vol. III p. 226. Wagers observed that Hatzfeld slurred his words, rambled on from subject to subject when conversing, and "reek[ed]" of alcohol. Tr. Vol. III p. 228. Eventually, after informing Hatzfeld of the consequences of refusing a blood draw, Deputy Weicht obtained a warrant for a blood draw, and, at 7:49 p.m., around two hours after deputies had been dispatched to the scene of the motorcycle crash, Wagers administered a blood draw. The test results at the hospital indicated that Hatzfeld's blood alcohol content ("BAC") was 0.17 g/100ml. Additionally, the blood samples were sent to the Indiana Department of Toxicology for further testing. The tests results showed a blood alcohol content of 0.151 g/100ml, with a range of plus or minus 0.011, meaning Hatzfeld's BAC was anywhere from 0.140 to 0.162 g/100ml.

[5] On July 22, 2019, the State charged Hatzfeld with Level 6 felony OWI with a prior conviction, Class A misdemeanor endangerment, Class C misdemeanor operating a vehicle with at least 0.08 but less than 0.15 BAC, and Class C misdemeanor OWI. Hatzfeld's three-day trial began on July 14, 2020, and a jury found Hatzfeld guily as charged for each misdemeanor. Following that verdict, Hatzfeld stipulated to the fact that he had previously been convicted of operating a vehicle with an alcohol concentration equivalent ("ACE") of 0.15 or more. On August 17, 2020, the trial court merged all Hatzfeld's

misdemeanor charges into the Level 6 felony OWI charge, entered a judgment of conviction, and sentenced Hatzfeld to two years of incarceration with one year suspended to probation.

Discussion and Decision

[6] On appeal, Hatzfeld challenges the sufficiency of the evidence to sustain his conviction. "Upon a challenge to the sufficiency of evidence to support a conviction, a reviewing court does not reweigh the evidence or judge the credibility of the witnesses, and respects the jury's exclusive province to weigh conflicting evidence." *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005) (internal quotations omitted). "[A]ppellate courts must consider only the probative evidence and reasonable inferences supporting the verdict." *Id*. "Expressed another way, [appellate courts] must affirm if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt." *Id.* We will not reweigh the evidence or assess the credibility of witnesses. *Cox v. State*, 774 N.E.2d 1025, 1028 (Ind. Ct. App. 2002). "A verdict may be sustained based on circumstantial evidence alone if that circumstantial evidence supports a reasonable inference of guilt." *Maul v. State*, 731 N.E.2d 438, 439 (Ind. 2000).

[7] Indiana Code section 9-30-5-2 states "a person who operates a vehicle while intoxicated commits a Class C misdemeanor." An OWI conviction is elevated to a Level 6 felony with a prior, qualifying conviction. Ind. Code. § 9-30-5-

3(a)(1). "The state is required to establish the defendant was impaired, regardless of the blood alcohol content." *Fields v. State*, 888 N.E.2d 304, 307 (Ind. Ct. App. 2008) (citing *Miller v. State*, 641 N.E.2d 64, 69 (Ind. Ct. App. 1994)).

> Evidence of the following can establish impairment: (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; (7) slurred speech.

Ballinger v. State, 717 N.E.2d 939, 943 (Ind. Ct. App. 1999).

[8] Hatzfeld contends that the state offered insufficient evidence to support his conviction for Level 6 felony OWI. Specifically, Hatzfeld argues that the state did not prove that he was intoxicated *while* operating the vehicle, only proving that he was intoxicated when he interacted with deputies and paramedics. We are unconvinced. In *Flanagan v. State*, the case which Hatzfeld relies on, officers arrived not knowing how long a car had been stalled on the side of the road, eventually determined that the driver of the vehicle was now intoxicated, and found empty beer cans in the back of the vehicle. 832 N.E.2d 1139, 1140 (Ind. Ct. App. 2005). Flanagan's conviction was overturned because the state had presented insufficient evidence to prove that Flanagan was intoxicated while operating the vehicle. *Id* at 1141. We believe that our decision in Flanagan can easily be distinguished from this case. Unlike *Flanagan*, where there were beer cans in the seats of the car and a potentially long period had elapsed between when officers first observed the stalled car and when they arrived on the

scene to talk to Flanagan, here, there is no evidence that Hatzfeld consumed alcohol after crashing his motorcycle. Further, there is evidence for the jury to rely on to infer that the crash was discovered shortly after the accident took place. For instance, the crash took place sometime before 5:30 p.m., in full daylight, and took down a traffic sign. Further, the jury was shown photographic exhibits showing how the motorcycle was situated after the crash and was free to infer from them that the motorcycle would have been easily visible to any passing motorist on the busy road. Finally, Hatzfeld was attempting to exit the ditch and restart his inoperable motorcycle when he was discovered by Thomas and when officers arrived on the scene. From this, the jury was free to infer that Hatzfeld would not have attempted to restart the motorcycle for very long before concluding that it was futile. In short, the jury was free to infer from the circumstantial evidence that not much time passed between Hatzfeld's crash and when he was observed by Thomas.

[9] Hatzfeld also argues that, because Indiana Code section 9-30-6-2 states "[a] test administered under this chapter must be administered within three (3) hours after the law enforcement officer had probable cause to believe the person committed an offense under 1C 9-30-5[,]" and because evidence was not submitted as to exactly when he was driving, the 7:49 p.m. test is invalid for being past the three hour limit. We disagree. "Where a statute is unambiguous [we] will read each word and phrase in its plain, ordinary, and usual sense, without having to resort to rules of construction to decipher meanings." *City of Mitchell v. Phelix*, 17 N.E.3d 971, 975 (Ind. Ct. App.

2014). Here, the meaning of Indiana Code section 9-30-6-2 is plain, once an officer has probable cause, the three-hour timer begins. Hatzfeld's insistence that we start the three-hour time limit from the time of his driving has no basis in the statute. Further, this argument ignores the fact that he was not ultimately convicted of operating a vehicle with an illegal BAC, but of OWI. Even if we assume that the BAC evidence was erroneously admitted, the jury heard ample evidence of Hatzfeld's intoxication beyond his BAC, namely evidence of Hatzfeld's bloodshot eyes, slurred speech, and difficulty walking; that he reeked of alcoholic beverage; and his admission to consuming alcohol earlier in the day. *See, e.g., Barker v. State*, 695 N.E.2d 925, 931 (Ind. 1998) ("[t]he improper admission of evidence is harmless error when the conviction is supported by such substantial independent evidence of guilt as to satisfy the reviewing court that there is no substantial likelihood that the questioned evidence contributed to the conviction.")

[10] The judgment of the trial court is affirmed.

Kirsch, J., and May, J., concur.