

MEMORANDUM DECISION

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IN THE Court of Appeals of Indiana

Kevin Lee Mischler,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

August 12, 2024

Court of Appeals Case No.
24A-IF-103

Appeal from the Newton Superior Court
The Honorable Daniel J. Molter, Judge

Trial Court Cause No.
56D01-2308-IF-1098

Memorandum Decision by Judge Foley
Judges Vaidik and Weissmann concur.

Foley, Judge.

[1] Kevin Lee Mischler (“Mischler”) appeals, following a bench trial, challenging the trial court’s determination that he committed the traffic offense of following too closely, a Class C infraction.¹ Mischler presents two issues for our review:

- I. Whether sufficient evidence supported the judgment; and
- II. Whether the trial court engaged in improper burden shifting based on its remarks after closing arguments.

[2] We affirm.

Facts and Procedural History

[3] On August 30, 2023, the State filed a traffic citation against Mischler, alleging he committed the Class C infraction of following too closely. The matter progressed to a bench trial, which was held on December 15, 2023. At trial, the State presented a single witness, Deputy Joseph Mosley of the Newton County Sheriff’s Department (“Deputy Mosley”). Deputy Mosley testified that, on August 26, 2023, he was on patrol and “received a call about a [sedan] that had just been struck by a commercial . . . truck that [Mischler] was driving.” Tr. Vol. 2 p. 5. It was “a clear day, the sun was out,” and the road “was not wet[.]” *Id.* at 9. After the collision, the sedan and the truck continued driving south on U.S. 41, with the driver of the sedan following the truck, “trying to get

¹ Ind. Code § 9-21-8-14(b).

the truck to stop[.]” *Id.* at 5. Deputy Mosley responded to the area in his marked police vehicle. The driver of the sedan kept trying to get Deputy Mosley’s attention “to make sure [he] understood” which truck was involved in the collision. *Id.* at 7. Deputy Mosley activated the lights and sirens on his marked police vehicle. Deputy Mosley explained that it “took a little time” for Mischler to see Deputy Mosley, but that Mischler eventually pulled over. *Id.* Deputy Mosley then approached Mischler and “explained to him what was going on[.]” *Id.* at 8. Mischler “looked kind of confused” about the traffic stop. *Id.* By that point, the driver of the sedan had pulled over. The driver of the sedan also approached Mischler and “explained to him the situation.” *Id.*

[4] The State sought to elicit information about Deputy Mosley’s conversation with Mischler, which led to the following exchange:

Q. So you initiated . . . this traffic stop; you’re talking to [Mischler,] . . . [and] the [sedan] driver that was struck allegedly . . . was there as well. And . . . can you . . . tell us basically what you said to [Mischler] at that time?

A. Um, at that time I said, yes, so assuming you . . . hit his vehicle, and he said that you were behind him, and that pretty much you hit the vehicle, [Mischler] said he didn’t see the vehicle at all. And I said, “well sir, [he] said that you/he/you both were in the left lane and somehow you hit his vehicle from behind.” And um, [the sedan driver] said that [Mischler] was following him pretty closely and that’s what I explained to [Mischler] and . . . from there . . . we looked at the truck [and] we tried to assess damage . . . and then . . . he was shown the damage on the other vehicle as well. Um, so from there that was the interaction and

then . . . I received [Mischler's] information, driver's information, things like that—as well as the [sedan driver's].

[Defense Counsel]: Your Honor, . . . I didn't want to interrupt [Deputy Mosley] . . . I would just ask to strike anything about what the driver of the [sedan] said . . . as hearsay. So, I think there was a reference to “he was following too close.” But that was from someone who's not here.

[Trial Court]: Right. I'll not consider that. But, as far as the other [testimony], that's all investigative gathering of information.

[Defense Counsel]: Right. That's . . . the only statement that I heard that I would have any objection to.

[State]: [W]ell . . . taken[,] Judge. We're . . . not asserting it for the truth of the matter of whether it was true or not[.] [Whether Mischler] was driving too closely remains to be determined.

Id. at 9. Thereafter, Deputy Mosley testified that he saw what appeared to be recent damage on the bumpers of the sedan and the truck. As for the sedan, the damage consisted of scratches on the “bottom bumper” of the driver's side. *Id.* at 10. There was also damage on the front passenger's side bumper of Mischler's truck, “right at the edge, under the headlight.” *Id.* at 12. Deputy Mosley said he took pictures of the damage, which were contained in his police report. The State sought to admit the report, which was State's Exhibit 1. The court admitted the exhibit, with Mischler having “[n]o objection.” *Id.* at 11.

[5] The police report at one point stated: “CALLER ADVISED WAS STRUCK FROM BEHIND APPROX 3 TIMES BY [THE TRUCK].” Ex. Vol. 1 p. 7.

The police report also contained the following notes from Deputy Mosley:

I . . . was dispatched to the area of US-41 and CR700S in reference to a hit and run accident. [The driver of the sedan] followed [Mischler] into Benton County while attempting to get [Mischler’s] attention to stop. I conducted a traffic stop on [Mischler] . . . in Benton County near US-41/SR42 split. Contact was made with [Mischler] . . . who was unaware that he had struck another vehicle. [Mischler] advised that he was driving and did not notice the [sedan] in front of him. Contact was then made with [the driver of the sedan,] . . . who advised that his [sedan] was hit by [Mischler]. . . . [The driver] advised that he was driving southbound on US-41 in the left lane when [Mischler] struck his left rear bumper multiple times. [The driver] advised that he attempted to get [Mischler’s] attention[.]

Id. at 8.

[6] The State later asked Deputy Mosley about his conversation with the driver of the sedan, which led to the following exchange:

Q. Okay. And did you have a discussion with the [v]ictim?

A. Yes, sir.

Q. What did he say?

A. He said that he was driving and . . . out of nowhere, he just felt a bump. And he looked behind him and there was the truck that actually hit him. So he, I guess, he said [he] went over to the

right and tried to get [Mischler's] attention . . . and then he got behind [Mischler] and started following him from there.

Q. Did, was there . . . evidence or is there an observation on your part as to how fast these vehicles were traveling during the time of the accident?

A. I can't say there was a speed; I didn't.

Q. Very good. And . . . based on the totality of the circumstances and your experience as a Law Enforcement Officer, what is your understanding and belief as to what took place that day?

A. My understanding is that . . . the Defendant hit the rear of the . . . [sedan]. Being that the damage on the front right end [of the truck] is consistent with the damage that was sustained to the rear of the [sedan].

Tr. Vol. 2 pp. 13–14.

[7] On cross-examination, Deputy Mosley acknowledged that he had not personally witnessed a collision and did not know how fast either vehicle had been traveling. *See id.* at 15. Deputy Mosley also acknowledged that he did not “know the spacing between the vehicles leading up to the accident[.]” *Id.* At one point, Mischler confirmed the damage was to the “back of the driver’s side” of the sedan and the “front passenger side” of the truck. *Id.* Mischler asked whether the nature of the damage “ma[de] sense” to Deputy Mosley based on “someone being directly behind another vehicle,” and Deputy Mosley said: “Makes perfect sense if the vehicle behind him . . . veered into the left

median[.]” *Id.* Mischler asked if the damage was also “consistent with someone coming over from the right lane to the left lane and bumping into the person behind them,” and Deputy Mosley said: “That’s a possibility.” *Id.* at 16.

- [8] Toward the end of Mischler’s closing remarks, he said: “[W]e are here on whether or not the State can prove by [a] preponderance of the evidence . . . that . . . Mischler was following too closely to a vehicle, and I just don’t think they can prove any of the statutory elements that are necessary.” *Id.* at 21. The trial court then remarked: “Well, I think that given the fact that the evidence is undisputed might have something to do with it. So, right there, your only witness. So, the Court will enter judgment of conviction for Following [T]oo Closely . . . [and] enter [a] fine and Court costs.” *Id.* Mischler now appeals.

Discussion and Decision

- [9] Indiana Code section 9-21-8-14(b) prohibits a person from following too closely, stating: “A person who drives a motor vehicle may not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of both vehicles, the time interval between vehicles, and the condition of the highway.” If a person follows too closely, the person “commits a Class C infraction.” Ind. Code § 9-21-8-49(a); *cf.* I.C. § 9-21-8-49(b) (elevating the violation to a Class A infraction if the violation results in bodily injury).
- [10] The State has the burden of “prov[ing] the commission of an infraction . . . by a preponderance of the evidence.” I.C. § 34-28-5-1(d). Thus, here, the State was

obligated to prove that Mischler “more likely than not” followed the sedan too closely. *Escamilla v. Shiel Sexton Co.*, 73 N.E.3d 663, 670 (Ind. 2017).

I. Sufficiency of the Evidence

[11] Mischler claims there was insufficient evidence supporting the trial court’s determination that he committed the infraction. When reviewing this type of challenge, we do not reweigh evidence or judge witness credibility. *Rosenbaum v. State*, 930 N.E.2d 72, 74 (Ind. Ct. App. 2010), *trans. denied*. “Rather, we look to the evidence that best supports the judgment and all reasonable inferences to be drawn therefrom.” *Id.* So long as there is “substantial evidence of probative value supporting the . . . judgment, it will not be overturned.” *Id.* That is, we will reverse only if no reasonable fact-finder could conclude from the evidence that the defendant more likely than not committed the infraction. *See id.*

[12] Mischler asks us to focus on language in the statute related to “the speed of both vehicles, the time interval between vehicles, and the condition of the highway.” I.C. § 9-21-8-14(b). Mischler acknowledges that “there is no brightline rule” regarding “what [the State] must show in order to establish [a] violation” of this statute. Appellant’s Br. p. 7. However, Mischler contends that the State “must show *some* evidence relative to the elements laid out in the [s]tatute.” *Id.* According to Mischler, we must reverse the judgment because Deputy Mosley—the sole witness—did not observe the collision and could not testify about the speed of the sedan or truck, or the time interval between them. Mischler notes that the State “focused on the existence of a collision.” *Id.* He

argues that the “[e]xistence of a collision is not an element under the [s]tatute and should not have been considered by the [t]rial [c]ourt.” *Id.* Mischler adds that, even if it was proper to consider “the [c]ollision as potential evidence of [a] violation of the statute,” because of the location of the vehicle damage, the evidence of the collision “actually goes against the State’s theory[.]” *Id.* at 8.

[13] In challenging the sufficiency of the evidence, Mischler overlooks that the evidence favorable to the judgment includes the sedan driver’s version of the events. Indeed, as the State points out, the sedan driver’s remarks were contained in the police report and later relayed through Deputy Mosley’s testimony. Although Mischler initially objected to Deputy Mosley’s testimony containing the sedan driver’s statements, Mischler later failed to object to this type of testimony—and, at one point, Mischler told the trial court that he had “[n]o objection” to the admission of State’s Exhibit 1. Tr. Vol. 2 p. 11. State’s Exhibit 1 provided evidence that the sedan “was driving southbound on US-41 in the left lane when [Mischler] struck [the sedan’s] left rear bumper multiple times.” Ex. Vol. 1 p. 8. Further, Deputy Mosley testified that the sedan driver said he “was driving and . . . out of nowhere, he just felt a bump[.]” Tr. Vol. 2 p. 13. At that point, the driver “looked behind him and there was the truck that actually hit him”—Mischler’s truck. *Id.* In light of the foregoing evidence—and regardless of direct evidence establishing the speed of the sedan and the truck, or the time interval involved—the trial court could reasonably infer that Mischler followed more closely than was reasonable and prudent. Mischler’s

arguments to the contrary amount to requests to reweigh evidence, which we decline. All in all, we identify sufficient evidence supporting the judgment.

II. Burden of Proof

- [14] Mischler briefly argues that the trial court “impermissibly shifted” the burden of proof and, thereby, misapplied the preponderance of the evidence standard. Appellant’s Br. p. 8. Mischler directs us to the trial court’s remarks about the “only witness” and “the fact that the evidence [was] undisputed[.]” Tr. Vol. 2 p. 21. Mischler argues that the remarks indicated that the trial court “ma[de] its ruling based on the fact that the State was the only party to present a witness.” Appellant’s Br. p. 8. However, we disagree. The remarks instead strike us as a reference to the strength of the State’s case, with there being no testimony before the court that the sedan made a sudden lane change or otherwise was the cause of the collision. Thus, we cannot say the remarks are indicative of improper burden shifting.

Conclusion

- [15] There was sufficient evidence for the trial court to determine that Mischler followed too closely, and we do not identify improper burden shifting at trial.
- [16] Affirmed.

Vaidik, J., and Weissmann, J., concur.

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