

MEMORANDUM DECISION

Pursuant to [Ind. Appellate Rule 65\(D\)](#), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT

Janet Lynn Wheeler
Hoover Hull Turner, LLP
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana
Tyler Banks
Supervising Deputy Attorney
General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Shane E. Ehr,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 2, 2022

Court of Appeals Case No.
21A-CR-2505

Appeal from the Adams Superior
Court

The Honorable Samuel K. Conrad,
Judge

Trial Court Cause No.
01D01-2009-F6-167

Mathias, Judge.

- [1] Shane E. Ehr appeals his convictions for Level 6 felony obstruction of justice and Class A misdemeanor operating while intoxicated following a jury trial.

Ehr raises a single issue for our review, namely, whether the State presented sufficient evidence to support his convictions. We affirm.

Facts and Procedural History

- [2] Ehr lives next door to his brother, Chance, and his brother's wife, Casey, in Geneva. On September 1, 2020, Casey called the Geneva Police Department and reported that Ehr was driving a Jeep through her yard and damaging property. Geneva Sheriff's Department Deputy Bryce Kukelhan responded to the call. Upon arriving, "[i]t was evident" to him "that somebody had driven a vehicle through the yard" Tr. Vol. 2, p. 144.
- [3] Deputy Kukelhan located Ehr in the backyard. Ehr was "sitting on . . . a swing" and "wasn't very polite" *Id.* at 145. Deputy Kukelhan recognized that Ehr appeared to be intoxicated. In particular, Deputy Kukelhan observed that Ehr "had spilled some alcohol down the front of himself"; that he "was actually holding a cup"; that he "smelled heavily of an alcoholic beverage"; and that he was "lethargic, belligerent, [had] slurred speech, [had an] abusive attitude," and had "[b]loodshot[,] glossy eyes." *Id.* at 146. Deputy Kukelhan instructed Ehr to leave the property, and he told Ehr that Ehr would be arrested if he came back. Ehr then left the property, and so did Deputy Kukelhan.
- [4] About twenty-five minutes later, Deputy Kukelhan returned to the property "on [his] own." *Id.* at 147. He parked down the street and observed "two vehicles that were in a yard facing North and South were now next to each other facing East. They had their headlights on, directed at [Casey and Chance's] house[.]

They were both running.” *Id.* Both of the vehicles that were pointed at the house were registered to Ehr, including a red Jeep.

[5] Deputy Kukelhan then observed Ehr “laying on a trampoline” in his yard and “screaming erratically.” *Id.* at 148. Ehr was also provoking Chance “to fight.” *Id.* Deputy Kukelhan went to talk to Ehr’s father, who lived in the same residence as Ehr. While talking, Deputy Kukelhan “could hear one of the vehicles running very loudly” and “thought it could blow up[,] . . . it was that loud, that obnoxious.” *Id.* at 149. Deputy Kukelhan then walked over to the vehicle and observed Ehr “leaned over in[to] the vehicle at least halfway if not more and . . . applying pressure to . . . the vehicle’s accelerator pedal with one of his hands.” *Id.* at 149. Ehr’s other hand was “[u]p near the steering wheel . . . holding . . . [t]he same cup that he had earlier.” *Id.* Deputy Kukelhan further observed that Ehr had “the same” signs of intoxication that he had had in the first encounter. *Id.* at 150. Everyone on the scene “w[as] in agreement that we felt like [Ehr] had [had] too much to drink.” *Id.*

[6] Deputy Kukelhan attempted to have Ehr perform field sobriety tests, but Ehr refused. Deputy Kukelhan attempted a portable breath test, but Ehr refused to cooperate. The deputy arrested Ehr and obtained a search warrant for a blood sample. However, Ehr refused to cooperate with the search warrant.

[7] The State charged Ehr with Level 6 felony obstruction of justice and with Class A misdemeanor operating while intoxicated. At his ensuing jury trial, Casey testified that she observed Ehr operate the red Jeep “through the yard” prior to

her initial call to law enforcement, and that, at that time, Ehr, whom she had known for sixteen years, appeared to be intoxicated. *Id.* at 181-83. Chance also testified that he observed Ehr “driving through my yard, running over my boys['] toys, saying rude” things and making “obscene gestures to my wife.” *Id.* at 188. After Deputy Kukelhan left the first time, Chance then observed Ehr “drive a vehicle after that” when he observed Ehr “dr[i]ve the [J]eep up next to” the other vehicle such that the headlights were directed at Casey and Chance’s residence. *Id.* at 189. Chance believed his brother to have been intoxicated at all relevant times. *Id.* at 188-89.

[8] After a trial, the jury found Ehr guilty as charged. The trial court then entered its judgment of conviction and sentenced Ehr accordingly. This appeal ensued.

Standard of Review

[9] Ehr’s only argument on appeal is that the State did not present sufficient evidence to support his convictions. As our Supreme Court has made clear:

For sufficiency of the evidence challenges, we consider only probative evidence and reasonable inferences that support the judgment of the trier of fact. On sufficiency challenges, we will neither reweigh evidence nor judge witness credibility. We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.

Hall v. State, 177 N.E.3d 1183, 1191 (Ind. 2021).

Discussion and Decision

[10] We begin our review of Ehr’s arguments on appeal with the sufficiency of the State’s evidence to support his conviction for Class A misdemeanor operating while intoxicated. To show that Ehr committed Class A misdemeanor operating while intoxicated, the State was required to prove beyond a reasonable doubt that Ehr “operate[d] a vehicle while intoxicated . . . in a manner that endangere[d] a person.” [Ind. Code § 9-30-5-2 \(2020\)](#). Ehr challenges only the State’s evidence regarding whether he “operated” a vehicle on the evening of September 1, 2020.

[11] To “[o]perate” a vehicle “means to navigate or otherwise be in actual physical control of a vehicle.” [I.C. § 9-13-2-117.5](#). In *Crawley v. State*, we identified four factors that could be used to determine whether a person “operated” a vehicle: “(1) the location of the vehicle when it is discovered; (2) whether the car was moving when discovered; (3) any additional evidence indicating that the defendant was observed operating the vehicle before he or she was discovered; and (4) the position of the automatic transmission.” [920 N.E.2d 808, 812 \(Ind. Ct. App. 2010\)](#), *trans. denied*. However, in addition to those factors, “[a]ny evidence that leads to a reasonable inference should be considered.” *Id.*

[12] According to Ehr, his conviction for Class A misdemeanor operating while intoxicated is founded on his use of his hand to push the vehicle’s accelerator. Based on this premise, Ehr asserts the State’s evidence showed the following insufficient circumstances: that he “was not inside the vehicle when Deputy Kukelhan began his OWI investigation”; that his “feet were planted firmly on

the ground outside the vehicle”; that Ehr had only “leaned in slightly” into the vehicle; that the “vehicle was found on private property”; that there was “no testimony” as to “how that vehicle was moved” on that property”; that “the vehicle was not moving” but was “in a parked position”; and that “[i]t is unknown how much time passed between when Casey and Chance initially observed” Ehr operating the vehicle through their yard and when he pushed his hand down on the accelerator. Appellant’s Br. at 10-11.

[13] We agree with the State that Ehr “entirely ignores the direct, eyewitness testimony of him driving a vehicle.” Appellee’s Br. at 10. Casey and Chance both testified that they observed Ehr driving a vehicle through their yard while he was intoxicated. Chance further testified that he observed Ehr move the Jeep into a position next to another vehicle such that both vehicles had their headlights pointing at Casey and Chance’s residence, and he made clear that Ehr was intoxicated at the time.

[14] Ehr further ignores the abundance of circumstantial evidence that he operated a vehicle while intoxicated. In particular, Deputy Kukelhan observed that someone had plainly driven through Casey and Chance’s yard when the deputy first arrived on the scene, and Ehr was present in the yard and visibly intoxicated at the time. Twenty-five minutes later, Deputy Kukelhan returned to the scene and observed that two of Ehr’s vehicles, including the Jeep, had been moved into a position that had their headlights pointing at Casey and Chance’s residence, and, again, Ehr was present nearby and visibly intoxicated. No one else moved the vehicles, and they did not move themselves. The State

presented more than sufficient evidence to support Ehr's Class A misdemeanor conviction.

[15] Ehr also asserts that we should vacate his Level 6 felony conviction of obstruction of justice for his refusal to cooperate with the terms of the search warrant on the ground that Deputy Kukelhan made "misleading" statements to the court in his affidavit in support of the warrant. Appellant's Br. at 12. But this argument is derivative of Ehr's argument on the operating-while-intoxicated conviction. That is, Ehr contends that Deputy Kukelhan misled the court when he did not make clear that the premise of the vehicle operation was that Ehr was "standing outside his vehicle with his two feet on the ground while the vehicle was in park" and Ehr reached inside and pressed the accelerator with his hand. Appellant's Br. at 12-13. As explained above, Ehr's understanding of the factual basis for Deputy Kukelhan's affidavit, and the State's evidence against him at this trial, simply ignores the record. We therefore reject Ehr's argument that his Level 6 felony conviction should be reversed.

[16] For all of the above reasons, we affirm Ehr's convictions for Level 6 felony obstruction of justice and Class A misdemeanor operating while intoxicated.

[17] Affirmed.

Brown, J., and Molter, J., concur.