

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Richard Arnet Kendrick, Jr.,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

November 30, 2022

Court of Appeals Case No.
22A-CR-803

Appeal from the Marion Superior
Court

The Honorable James B. Osborn,
Judge

Trial Court Cause No.
49D21-2011-CM-34741

Pyle, Judge.

Statement of the Case

[1] Richard Kendrick, Jr., (“Kendrick”) appeals his conviction, following a bench trial, of Class A misdemeanor operating a vehicle while intoxicated endangering a person.¹ His sole argument is that there is insufficient evidence to support his conviction. Concluding that there is sufficient evidence to support Kendrick’s conviction, we affirm the trial court’s judgment.

[2] We affirm.

Issue

Whether there is sufficient evidence to support Kendrick’s conviction for Class A misdemeanor operating a vehicle while intoxicated endangering a person.

Facts

[3] The facts most favorable to the verdict reveal that at approximately 10:00 p.m. on October 24, 2020, Indianapolis Metropolitan Police Department Officer Erica Eder (“Officer Eder”) noticed that Kendrick was following the vehicle in front of him too closely. Officer Eder then observed Kendrick twice attempt to pass the vehicle in front of him in a no-passing zone. When the vehicle in front of Kendrick began to turn, Kendrick drove into the oncoming lane of traffic to pass the vehicle.

¹ INDIANA CODE § 9-30-5-2. The trial court also convicted Kendrick of Class C misdemeanor operating a vehicle while intoxicated but vacated that conviction because of double jeopardy concerns.

- [4] At this point, Officer Eder initiated a traffic stop of Kendrick's vehicle. When Officer Eder approached the vehicle, she smelled the odor of alcohol emanating from Kendrick. Officer Eder also noticed that Kendrick was exhibiting poor manual dexterity, his speech was slurred, and his eyes were glossy and droopy. Kendrick failed three field sobriety tests, and one hour and twenty minutes after the traffic stop had occurred, Kendrick's blood alcohol level was .077.
- [5] The State charged Kendrick with Class A misdemeanor operating a vehicle while intoxicated endangering a person. After hearing the evidence as set forth above, the trial court convicted Kendrick as charged.
- [6] Kendrick now appeals.

Decision

- [7] Kendrick argues that there is insufficient evidence to support his conviction. We disagree.
- [8] Our standard of review for sufficiency of the evidence claims is well-settled. We consider only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We do not reweigh the evidence or judge witness credibility. *Id.* We will affirm the conviction unless no reasonable fact finder could find the elements of the crime proven beyond a reasonable doubt. *Id.* The evidence is sufficient if an inference may be reasonably drawn from it to support the verdict. *Id.* at 147.

- [9] In order to convict Kendrick of Class A misdemeanor operating a vehicle while intoxicated endangering a person, the State was required to prove beyond a reasonable doubt that Kendrick operated a vehicle while intoxicated in a manner that endangered a person. *See* IND. CODE § 9-30-5-2. The State is required to submit proof of endangerment that goes beyond mere intoxication. *A. V. v. State*, 918 N.E.2d 642, 644 (Ind. Ct. App. 2009), *trans. denied*.
- [10] The element of endangerment can be established by evidence that the defendant’s manner of operating the vehicle could have endangered any person, including the public, the police, or the defendant. *Id.* “Endangerment does not require that a person other than the defendant be in the path of the defendant’s vehicle or in the same area to obtain a conviction.” *Id.* This Court has previously explained that “[a]n officer does not have to wait until the defendant crosses the centerline and adds another victim to the statistics of those who have died in drunk driving incidents.” *Staley v. State*, 895 N.E.2d 1245, 1251 (Ind. Ct. App. 2008), *trans. denied*. “Thus, it is sufficient that the defendant’s condition renders driving unsafe.” *Id.*
- [11] Kendrick’s sole argument is that there is insufficient evidence to support his conviction because he “endangered no one that night.” (Kendrick’s Br. 9). In support of his argument, Kendrick directs us to *Outlaw v. State*, 918 N.E.2d 379 (Ind. Ct. App. 2009), *adopted by Outlaw v. State*, 929 N.E.2d 196, 196 (Ind. 2010). In the *Outlaw* case, a police officer did not stop Outlaw for erratic or unlawful driving. Rather, the officer stopped Outlaw because Outlaw had an improperly illuminated license plate. Because there was no evidence that an

intoxicated Outlaw had operated his vehicle in an unsafe manner, we concluded that the State had failed to present sufficient evidence that Outlaw had operated his vehicle while intoxicated in a manner that endangered a person. *Id.* at 382. We therefore reversed Outlaw's conviction. *Id.*

[12] However, the facts before us are distinguishable from those in *Outlaw*. Here, Officer Eder stopped Kendrick at 10:00 p.m. because Kendrick was following the vehicle in front of him too closely, twice attempted to pass that vehicle in a no-passing zone, and drove into the oncoming lane of traffic to pass that vehicle when it turned. This evidence is sufficient to establish that Kendrick endangered any person, including the public, the police, or himself and to support his conviction for Class A misdemeanor operating a vehicle while intoxicated endangering a person. *See A.V.*, 918 N.E.2d at 645 (concluding that the defendant's excessive speed was sufficient to establish endangerment of a person and to support a conviction for Class A misdemeanor operating a vehicle while intoxicated endangering a person).

[13] Affirmed.

Bradford, C.J., and Vaidik, J., concur.