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ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

BARBARA J. SIMMONS
Oldenburg, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

IAN MCCLEAN
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

CHARLES DAVIS,)

Appellant-Defendant,)

vs.)

No. 49A02-0902-CR-135

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Terrance Kinnard, Judge Pro Tempore
Cause No. 49F13-0807-CM-169779

September 28, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Charles Davis appeals his conviction for Failure to Stop After an Accident Resulting in Property Damage, as a Class C misdemeanor, following a bench trial. Davis presents a single issue for review, namely, whether the evidence is sufficient to support his conviction.

We affirm.

FACTS AND PROCEDURAL HISTORY

On July 17, 2008, at approximately 9:00 p.m., Desiree Sadler was exiting the Kroger parking lot at 5173 West Washington Street in Indianapolis. Sadler was driving a Cadillac borrowed from her passenger's boyfriend. As Sadler was stopped for a light at the Kroger parking lot exit, a tractor-trailer pulled up on the left side of her vehicle and made a left turn onto Washington Street. While turning, the back of the semi's trailer hit the right side of Sadler's vehicle, scraping and denting the driver's door and front quarter panel. The damage from the impact prevented Sadler from opening her door. The semi did not stop but continued westbound on Washington Street.

At the time of the accident, Natalie Martin was driving around the Kroger parking lot, waiting for her husband to finish his shift. She witnessed the accident and followed the semi down Washington Street. Martin noted the semi's license number, the color of the tractor and the trailer, and the driver's appearance. She then turned her vehicle around in a Steak-n-Shake parking lot and returned to Kroger. In the Kroger parking lot, she gave Sadler a copy of the descriptions of the semi, the trailer, and its driver. When a police officer arrived, she also gave him a copy of the descriptions.

That same evening, Officer Richard Cox of the Indianapolis Metropolitan Police Department was dispatched to the Kroger parking lot to investigate a hit-and-run accident. Before reaching the lot, a new dispatch directed Officer Cox to go to the Target warehouse on the 1300 block of South Girl School Road. The second dispatch was the result of an anonymous tip that the driver in a hit-and-run accident was at the Target warehouse lot.

Once at the lot, Officer Cox saw Davis in the tractor's cab and asked him to step down. The officer asked Davis whether he had "been in the area of the Kroger [at] 5100 West Washington [S]treet." Transcript at 24-25. Davis said that he had not and that he "had come directly off of I-465 westbound on Washington [S]treet directly to the [T]arget lot and was never inside the I-465 loop and was never at the Kroger." Id. at 25. Officer Cox observed some damage on the side of Davis' trailer, but he could not tell whether the damage was new. The officer noted that Davis' was a Werner tractor. He recorded the plate number of the truck and trailer and left for the Kroger parking lot.

At the Kroger parking lot, Officer Cox spoke with Sadler and Martin. Sadler said that her vehicle had been parked when it was struck by a blue Werner tractor-trailer. Martin told the officer that she had also seen a Werner tractor-trailer hit Sadler's car. She gave him a piece of white paper on which she had written the license plate number of the trailer that had hit Sadler's vehicle, "the . . . owner plate number from the trailer of the truck, [and] the owner . . . plate number from the tractor of the truck" Id. at 26. Officer Cox "instantly" realized that the plate numbers matched those he had seen on Davis' tractor-trailer. Id. And Martin gave Officer Cox a description of the driver "as a

white male, short haircut, wearing a gray T-shirt, [and] black[-]rimmed glasses[.]” Id. Officer Cox realized that Davis matched Martin’s description of the hit-and-run driver.

Officer Cox asked Martin to follow him to the Target parking lot to identify the driver. There, Officer Cox shined his light on Davis and, at Martin’s request, asked Davis to show his side profile. Martin positively identified Davis as the driver of the hit-and-run semi. Officer Cox then arrested Davis and Mirandized him. After advising Davis of his Miranda rights, Officer Cox asked Davis why he had lied about being at the Kroger. Davis said that he had taken “a wrong turn when he left I-465. And he only went into the Kroger lot to turn around to get headed back westbound but he was not involved in a crash there.” Id. at 28. Davis also told Martin that he was a new driver in training and that his trainer had been in the bunk asleep at the time of the incident. Officer Cox spoke with the trainer, who confirmed that he had been in the bunk asleep.

The State charged Davis with failure to stop after an accident resulting in property damage, as a Class C misdemeanor. At trial, On December 4, 2008, the court held a bench trial.¹ At the close of evidence, the court stated:

I heard [Davis’] statements. So, in my mind I think it’s a close call but I think the [S]tate gets there. I think [Davis] did Fail to Stop Stop [sic] After an Accident that did not cause injury. And what got me there Mr. Davis was your own testimony. Prior to that, those things that you gave me I really was not sure. I’ll be honest with you. I listened to the State’s case and it left a gaping hole in my mind. Obviously, they don’t have any photos of the accident. Then there was the (INAUDIBLE) of this accident. It left a hole in my mind until you gave me more. And it was what you gave me that lead [sic] me to my conclusion. I will find the State has met

¹ The December 4, 2008, entry in the Chronological Case Summary (“CCS”) provides that a written plea agreement and a written waiver of rights was filed. The entry further reads as if Davis had pleaded guilty under a plea agreement. But the transcript in the record of appeal shows that Davis was convicted following an evidentiary bench trial. The CCS entry is in error.

its burden beyond a reasonable doubt. I do believe you Failed to Stop After [sic] the Scene of an Accident. So, I enter judgment of conviction for that.

Id. at 48. Following a hearing, the court sentenced Davis to sixty days, all suspended, and ordered him to pay court costs. Davis now appeals.

DISCUSSION AND DECISION

Davis contends that the State failed to present sufficient evidence to demonstrate that he failed to stop after an accident resulting in property damage, as a Class C misdemeanor. When reviewing a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the judgment and the reasonable inferences that may be drawn from that evidence to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

At the time of the accident, Indiana Code Section 9-26-1-2 provided, in relevant part:²

The driver of a vehicle involved in an accident that does not result in injury or death of a person or the entrapment of a person in a vehicle but that does result in damage to a vehicle that is driven or attended by a person shall do the following:

- (1) Immediately stop the vehicle at the scene of the accident or as close to the accident as possible in a manner that does not obstruct traffic more than is necessary.
- (2) Immediately return to and remain at the scene of the accident until the driver does the following:

² Indiana Code Section 9-26-1-2 was revised effective July 1, 2009. We apply the statute that was in effect at the time of the accident.

(A) Gives the driver's name and address and the registration number of the vehicle the driver was driving.

(B) Upon request, exhibits the driver's license of the driver to the driver or occupant of or person attending each vehicle involved in the accident.

The duties set out in Indiana Code Section 9-26-1-2 arise when a driver is involved in an accident that "does result in damage to a vehicle that is driven or attended by a person." Thus, the elements of the offense include damage to another vehicle and the defendant's knowledge of same. Allen v. State, 844 N.E.2d 534, 536 (Ind. Ct. App. 2006), trans. denied. A person who intentionally, knowingly, or recklessly violates Indiana Code Section 9-26-1-2(1) or (2) commits a Class C misdemeanor. Ind. Code § 9-26-1-9.

In Micinski v. State, 487 N.E.2d 150 (Ind. 1986), our supreme court held that circumstantial evidence was sufficient to prove knowledge of an injury:

This is not to say that the State must prove actual knowledge of an injury accident in order to obtain a conviction. That would make it virtually impossible to prove up a case of "hit-and-run[.]" Moreover, as Judge Miller said so well in his opinion below: "Such a requirement would reward the callous who refuse to stop and investigate." 479 N.E.2d at 636. The jury may infer that a defendant knew that an accident occurred or that people were injured from an examination of the circumstances of the event. Where conditions were such that the driver should have known that an accident occurred or should have reasonably anticipated that the accident resulted in injury to a person, the requisite proof of knowledge is present.

487 N.E.2d at 153 (latter emphasis added). As clearly stated by our supreme court, a defendant's knowledge that an accident occurred may be proved by circumstantial evidence. See id.

Here, Sadler saw a Werner tractor-trailer pull up on the left side of her vehicle as she was stopped, waiting to turn right onto Washington Street. When the Werner truck turned left onto Washington, part of the trailer hit the driver's side of her vehicle, scratching and denting the driver's door and front quarter panel. Martin, who was in the same parking lot at the time, also saw the trailer of a blue Werner tractor-trailer scrape Sadler's car as the semi turned left onto Washington Street. Both women testified that the impact made a loud noise, and Sadler testified that it "moved [her vehicle] over up against the curb itself." Transcript at 45. Martin followed the Werner semi, recorded the license plate number, and took note of the driver's appearance before returning to the scene of the accident.

Also, Davis initially lied to Officer Cox, stating that he had not been near a Kroger and, instead, had driven straight from I-465 to the Target warehouse where he was arrested. Only after his arrest did he admit that he had been at the Kroger lot to turn around. At trial Davis said he had understood the officer to have asked whether Davis had been in Kroger. But Officer Cox testified that he had clearly asked whether Davis had been "in the area of the Kroger at 5100 block of West Washington [S]treet." Id. at 37. The officer also testified that, when he initially interviewed Davis before driving to the accident scene, Davis had clearly stated he "was never inside I-465." Id. at 38.

In sum, the collision with Sadler's vehicle was loud and caused her vehicle to move up against the curb. And Davis initially denied yet later admitted that he had been in the Kroger parking lot. Although the evidence showing that Davis knew of the accident was circumstantial, we conclude that a reasonable trier of fact could have

inferred Davis' knowledge of the accident after considering all of the evidence. Davis' contention that the State failed to prove that element of the offense amounts to a request that we reweight the evidence, which we cannot do. See Jones, 783 N.E.2d at 1139. We conclude that the evidence is sufficient to support Davis' conviction.

Affirmed.

KIRSCH, J., and BARNES, J., concur.