



## **Case Summary**

Appellant-Defendant James L. Reynolds, Jr. appeals his conviction for Operating a Vehicle While Intoxicated While Having a Prior Conviction, a Class D felony.<sup>1</sup> We affirm.

## **Issue**

Reynolds raises one issue of whether there is sufficient evidence to support his conviction.

## **Facts and Procedural History**

On July 16, 2006, at approximately 1 a.m., Indiana State Trooper Joseph Winters along with probationary officer N. Gaffney observed Reynolds driving at the intersection of State Road 43 and Happy Hollow Road (also known as State Road 443) in Tippecanoe County, Indiana. The Troopers observed Reynolds drive northbound on State Road 43 past the intersection, then stop and drive his car in reverse for fifty feet, crossing over the middle of the road. After stopping again, Reynolds turned onto Happy Hollow Road. During this maneuver, oncoming traffic had to stop to avoid colliding with Reynolds's car. Based on these observations, the Troopers initiated a traffic stop.

Upon approaching the passenger side of Reynolds's car, Trooper Winters observed an open can of beer and brown paper sack in the car. When questioned, Reynolds admitted to consuming three or four beers, and his eyes were bloodshot and glassy. Based on these circumstances, Trooper Gaffney administered standard field sobriety tests to Reynolds under

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<sup>1</sup> Ind. Code § 9-30-5-3.

Trooper Winters's observation. Reynolds failed the horizontal gaze nystagmus test,<sup>2</sup> the one-leg-stand test, and the walk-and-turn test. Reynolds was then given the option to take a portable breathalyzer test. He agreed to do so, and the test indicated positive for the presence of alcohol. Trooper Gaffney then read Reynolds the Indiana Implied Consent Law, and Reynolds agreed to take a chemical test to determine his blood alcohol level. When Reynolds took the test at the jail, the Data Master indicated his blood alcohol content to be .12%.

On October 10, 2006, the State charged Reynolds with Operating a Vehicle While Intoxicated ("OWI"), as a Class A misdemeanor, Operating a Vehicle with at least .08 gram but less than .15 gram of Alcohol, as a Class C misdemeanor, OWI Having a Prior Conviction for OWI, a Class D felony, and traffic violations of Unsafe Movement and Open Container of Alcohol. On September 19, 2009, a jury trial was held on the first two counts, and the jury found Reynolds guilty as charged. The trial court entered judgment on Count I, OWI, as a Class A misdemeanor. Reynolds then admitted that he had a prior conviction for OWI, resulting in the conviction being a Class D felony. The trial court sentenced Reynolds to three years imprisonment, suspending one year and placing Reynolds with the Tippecanoe County Community Corrections for two years.

Reynolds now appeals.

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<sup>2</sup> The report filed indicated that Reynolds passed the HGN test but Trooper Winters testified that he believed that to be a typographical error in the report because he recalled witnessing Reynolds failing the test.

## Discussion and Decision

Reynolds contends that there is insufficient evidence to support his conviction. When reviewing the sufficiency of the evidence to support a conviction, we will consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). We will not assess the credibility of the witnesses or reweigh the evidence. Id. We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. Id.

To convict Reynolds as charged, the State had to prove that Reynolds operated a vehicle while intoxicated in a manner that endangered a person and that Reynolds had a prior OWI conviction in the prior five years. See Ind. Code §§ 9-30-5-2 and 3. Reynolds only contests the element of intoxication.

Reynolds's arguments of his physical inability to perform one of the tests and the invalidity of the Data Master test despite certificates of its proper functioning is simply a request that we reweigh the evidence and credit his testimony over the other evidence presented at trial. We decline such invitation. After weaving between both lanes while driving backwards on a State Road, Reynolds admitted to consuming three to four beers and had bloodshot, glassy eyes. He then failed three field sobriety tests, tested positive for alcohol on a portable breathalyzer test, and registered a .12% blood alcohol content level when tested at a jail. This evidence plus his admission to a prior conviction is sufficient to support Reynolds's conviction for Operating While Intoxicated, as a Class D felony.

Affirmed.

MAY, J., and BARNES, J., concur.