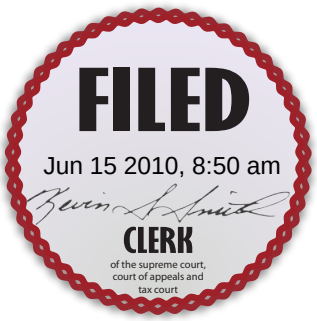

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IN THE
COURT OF APPEALS OF INDIANA

RODERICK M. WALSH,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 57A03-0911-CR-506
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE NOBLE SUPERIOR COURT
The Honorable Michael J. Kramer, Judge
Cause No. 57D02-0905-CM-000548
57D02-0905-IF-001610
57D02-0905-IF-001611
57D02-0905-IF-001612

JUNE 15, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Roderick W. Walsh appeals his conviction of Class A misdemeanor driving while intoxicated. We affirm.

ISSUES

Walsh raises two issues for our review, which we restate as:

I. Whether the State presented sufficient evidence to support the conviction.

II. Whether the absence of a jury instruction regarding the definition of "endangers" or "endangerment" constituted fundamental error by the trial court.

FACTS AND PROCEDURAL HISTORY

On May 21, 2009, Walsh visited his brother's house with a beer in one hand and a full twelve-pack in the other. Walsh had at least three beers before the two men left in Walsh's vehicle. While driving, Walsh bragged about the size of his vehicle's engine and demonstrated its power by continuously squealing his tires despite pleas from his brother, Anthony, to stop.

As he continued to drive, Walsh struck another vehicle in the rear. Walsh fled the scene at a speed faster than other traffic in the area. After Walsh traveled some distance from the accident scene, he stopped the car to check for damage. Thereafter, he and Anthony opened beers and continued driving. A concerned citizen, who had followed Walsh after he fled the accident scene, informed the authorities of his location. Based on the information provided by the citizen, police were able to locate and stop Walsh.

The police officer who made the stop observed that Walsh had red eyes, slurred speech, and poor balance. Walsh emanated an odor of alcoholic beverages, and there were open containers of beer in the car. Walsh admitted to rear ending another vehicle, but he refused to submit to a chemical test after being arrested.

The State charged Walsh with Class A misdemeanor driving while intoxicated and Class C misdemeanor failing to stop after an accident. A jury found Walsh guilty of both misdemeanors, and Walsh now appeals.

DISCUSSION AND DECISION

I. SUFFICIENCY OF THE EVIDENCE

Walsh contends that the State failed to present sufficient evidence to show that he operated his vehicle in a manner that endangers a person. Our standard of review for sufficiency claims is well settled. In reviewing sufficiency of the evidence claims, this court does not reweigh the evidence or assess the credibility of witnesses. *Davis v. State*,

791 N.E.2d 266, 269 (Ind. Ct. App. 2003), *trans. denied.* We consider only the evidence most favorable to the judgment, together with all reasonable and logical inferences drawn therefrom. *Id*. at 269-70. The conviction will be affirmed if there is substantial evidence of probative value to support the conclusion of the trier of fact. *Id*. at 270.

In order to prove that a person committed the Class A misdemeanor of driving while intoxicated, the State must show that the person operated a vehicle while intoxicated and the vehicle is operated in "a manner that endangers a person." Ind. Code § 9-30-5-2. Both Walsh and the State recognize that there is a split in this court as to whether the State satisfies its burden of proving endangerment by showing operation of a vehicle while intoxicated. One line of cases holds that the State cannot claim that evidence of intoxication proves the additional element of endangerment. See *Dorsett v. State*, 921 N.E.2d 529, 532 (Ind. Ct. App. 2010); *Vanderlinden v. State*, 918 N.E.2d 642, 645 (Ind. Ct. App. 2009), *trans. denied*; *Outlaw v. State*, 918 N.E.2d 379, 381 (Ind. Ct. App. 2009), *trans. pending.* Another line of case holds that the State need only show that proof of the defendant's intoxication without more is adequate to prove endangerment. See e.g., *Slate v. State*, 798 N.E.2d 510, 516 (Ind. Ct. App. 2003).

We do not have to enter into the fray because the State proved both that Walsh was intoxicated and that his actions endangered himself and others. The evidence shows that Walsh, while intoxicated, dangerously squealed his tires numerous time despite pleas to stop from Anthony, placing himself, Anthony, and others in imminent danger.

Moreover, when Anthony was asked at trial whether Walsh was driving "faster than the other traffic in the area," he responded, "Oh yes." (Tr. at 176). Anthony further testified that Walsh drove his vehicle "at a high rate of speed." *Id.* The evidence of speeding is sufficient to prove endangerment. See *Vanderlinden*, 918 N.E.2d at 646 (holding that evidence of a warning for speeding was sufficient to support a finding of endangerment); *Boyd v. State*, 519 N.E.2d 182, 184 (Ind. Ct. App. 1988) (holding that speeding alone demonstrated endangerment); *Hughes v. State*, 481 N.E.2d 135, 137 (Ind. Ct. App. 1985) (holding that excessive speed is sufficient).

Walsh points out that the State proved in *Vanderlinden* that the defendant was driving fifteen miles per hour over the speed limit, and he argues that in order to show endangerment in the present case the State should have shown "the posted speed limit, the speeds of the other vehicles, or the actual speed at which [Walsh] traveled." (Appellant's Brief at 9). Given Anthony's concern, his emphatic answer, and his description of the speed at which his brother was traveling, we find that the evidence was sufficient to show endangerment beyond a reasonable doubt, and we will not usurp the jury's authority as the trier of fact by reweighing the evidence.

II. JURY INSTRUCTION

Walsh contends that although he did not tender an instruction defining "endangers" or "endangerment," the trial court committed fundamental error in not providing its own instruction. Fundamental error is a substantial, blatant violation of due

process so prejudicial to the rights of the defendant that it makes a fair trial impossible. *Clay v. State*, 766 N.E.2d 33, 36 (Ind. Ct. App. 2002).

Walsh argues that the lack of an instruction defining "endangers" or "endangerment" caused such uncertainty as to leave the jury "floundering." (Appellant's Brief at 11). Walsh cites *Abercrombie v. State*, 478 N.E.2d 1236 (Ind. 1985) in support of his argument. *Abercrombie* holds that a trial court errs when it does not sua sponte give an instruction defining "words or art," which our supreme court defines as terms that have "special legal definitions." *Id*. at 1239.

"[W]here terms are in common use . . . and are such as can be understood by a person of ordinary intelligence, they need not be defined or explained in the absence in of anything in the charges to obscure their meaning." *Manley v. State*, 656 N.E.2d 277, 279 (Ind. Ct. App. 1995). The words "endanger," "endangers," or "endangerment" mean "to expose to danger, cause danger to" or "the action of putting in danger; the condition of being in danger." Oxford English Dictionary (2nd ed. 1989). They are terms of common parlance; they have no special legal definition and are not legal "words of art." Therefore, under the circumstances of this case, we see no possibility of confusion to the jury or prejudice to Walsh.

Affirmed.

DARDEN, J., and VAIDIK, J., concur.