

MEMORANDUM DECISION

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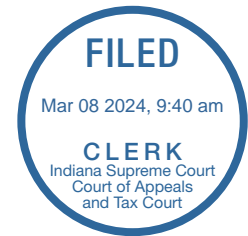


IN THE
Court of Appeals of Indiana

Frankie Dale Miller, Jr.,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



March 8, 2024

Court of Appeals Case No.
23A-CR-1391

Appeal from the Elkhart Superior Court
The Honorable Kristine A. Osterday, Judge

Trial Court Cause No.
20D01-1912-CM-2175

Memorandum Decision by Judge Pyle
Judges Tavitas and Foley concur.

Pyle, Judge.

Statement of the Case

[1] Frankie Dale Miller, Jr. (“Miller”) appeals, following a jury trial, his conviction for Class A misdemeanor operating a vehicle while intoxicated while endangering a person.¹ Miller argues that: (1) the trial court abused its discretion when it admitted expert testimony regarding Miller’s impairment; and (2) there was insufficient evidence to support his conviction. Concluding that the trial court did not abuse its discretion and that there is sufficient evidence to support Miller’s Class A misdemeanor conviction, we affirm the trial court’s judgment.

[2] We affirm and remand.

Issue

1. Whether the trial court abused its discretion when it admitted expert testimony regarding Miller’s impairment.
2. Whether there was sufficient evidence to support Miller’s conviction.

¹ IND. CODE § 9-30-5-2.

Facts

- [3] In April 2019, Miller and Maggie Dickerson (“Maggie”) had been dating for a couple of months. Miller and Maggie planned to attend a wedding together. On the day of the wedding, Miller went to Maggie’s house to pick her up around 1:00 p.m. When Maggie got into Miller’s car, she saw Miller “quickly take[]” four pills. (Tr. Vol. 2 at 146). Miller told Maggie that he was nervous about meeting her family for the first time and that the medication was for his anxiety.
- [4] At the wedding reception, Miller met Maggie’s family members, including Maggie’s older brother, Brian Dickerson (“Brian”). Miller, Maggie, and her family sat together at the reception. Miller ate some food and drank two Long Island iced teas. While at the table, Brian noticed that Miller “struggl[ed] to stay upright[.]” (Tr. Vol. 2 at 132). Maggie noticed that Miller was eating very messily, “was [not] talking much at the table[,]” and was “out of it[.]” (Tr. Vol. 2 at 152). Miller also had “[s]lurred speech” and “droopy eyes.” (Tr. Vol. 2 at 132).
- [5] Miller abruptly left the reception without telling anyone and went to his car. Maggie, who was worried about Miller, followed him to his car. Miller told Maggie that he wanted to go home, and Maggie offered to drive. Miller refused to let Maggie drive and began driving his car back to his house. Maggie left the reception with Miller in his car. Brian, who was concerned about Miller driving, looked up Miller’s address. Brian also called 911 and his friend, Elkhart Police Department Officer Dustin Young (“Officer Young”). Brian

told Officer Young that he was worried about Miller driving home and provided Officer Young with Miller's address and a description of his car. In response, Officer Young relayed Brian's concerns to the Elkhart Police Department.

[6] While driving home, Miller had difficulty driving. He drifted in and out of his lane, was drowsy, and "nodd[ed] off a little bit." (Tr. Vol. 2 at 158). In addition, Miller also had placed his arm on the console and closed his eyes while driving.

[7] Elkhart Police Department Officer Brian Davis ("Officer Davis"), who was patrolling near Miller's neighborhood, saw Miller's car drive in the center of the road instead of in the proper lane. Officer Davis initiated a traffic stop on Miller's car. When Officer Davis approached Miller's car, he saw that Miller was wearing sunglasses. Officer Davis asked Miller to remove his sunglasses. When Miller complied, Officer Davis saw that Miller had "red and watery" eyes and noticed that his "speech was slurred." (Tr. Vol. 2 at 199). Miller told Officer Davis that he had had two Long Island iced teas. Officer Davis called for backup, and Officer Michael Vanscoik ("Officer Vanscoik") arrived on the scene. The officers determined that Maggie could leave the scene.

[8] Officer Davis asked Miller to exit the car and administered multiple field sobriety tests on Miller. When Officer Davis administered the horizontal gaze nystagmus test, Miller exhibited six out of six possible clues of impairment. During the walk-and-turn test, Miller exhibited three of eight clues of

impairment, including “stepping off [the] line, [an] improper turn, and . . . [u]nsteady balance[.]” (Tr. Vol. 2 at 209). Finally, Officer Davis administered a one leg stand test on Miller. During the test, Miller exhibited two of four signs of impairment, including putting his foot down and swaying during the test.

[9] Officer Davis and Officer Vanscoik transported Miller to the Elkhart Police Department. There, Officer Vanscoik administered a drug recognition evaluation² on Miller. Officer Vanscoik administered additional tests for impairment and asked Miller about any drugs or medications that he had taken. Miller told Officer Davis and Officer Vanscoik that he had taken Adderall and Tramadol that day. Specifically, Miller told Officer Vanscoik that he had taken two Adderall and four Tramadol at 7:00 or 8:00 a.m., and then another four Tramadol around noon. Miller also consented to a blood draw.

[10] In August 2019, the State charged Miller with Class A misdemeanor operating a vehicle while intoxicated while endangering a person. In March 2021, the State amended the charging information and added a Class C misdemeanor operating a vehicle while intoxicated with a controlled substance charge.

[11] In April 2023, the trial court held a jury trial, and the jury heard the facts as set forth above. Miller’s theory of defense was that his chronic back injury and brain injury caused him to show additional signs of impairment during the field

² This evaluation is a twelve step process used to examine a driving under the influence suspect.

sobriety tests. Additionally, Maggie testified that Brian had recommended that she not leave with Miller and that she had only left with Miller because she “was concerned” about him. (Tr. Vol. 2 at 164). Maggie further testified that Miller’s swerving while driving had “freaked [her] out[.]” (Tr. Vol. 2 at 157). Maggie also testified that she had been crying and upset when the officers had initiated the traffic stop.

[12] Officer Davis testified that Miller had told him that he “had a really bad back” and that he had been “deemed 40% disabled through the VA.” (Tr. Vol. 2 at 206). During cross examination, Officer Davis testified that he had not been aware that Miller had a brain injury. Officer Davis testified that Miller had never indicated that he had been in pain or that he had wanted to stop the tests. Officer Davis also testified that, after he had finished administering the field sobriety tests, he had believed that Miller was impaired. Officer Vanscoik testified that, after he had completed his evaluation, he “had definitely s[een] the signs of impairment.” (Tr. Vol. 3 at 63).

[13] Indiana State Department of Toxicology Analytical Laboratory Supervisor Ashley White (“Supervisor White”) testified that Miller’s blood alcohol level was 0.02 grams of ethanol per 100 milliliters. Indiana State Department of Toxicology Director Christina Beymer (“Director Beymer”) testified that she has a doctorate degree in analytical chemistry and a bachelor’s degree in chemistry. Director Beymer further testified that she had previously been the assistant director, a laboratory supervisor, and a forensic scientist for the Indiana Department of Toxicology. Director Beymer testified that she is a

member of the American Academy of Forensic Scientists and the American Society of Crime Laboratory Directors. Director Beymer also testified that she had taught the breath test certification course for police officers, had been a toxicology guest lecturer at Indiana University Purdue University Indianapolis (“IUPUI”) and Purdue University, and had taught a workshop with the forensic science program at IUPUI.

[14] Director Beymer further testified that she was familiar with the effects of alcohol, Adderall, and Tramadol on the body. Director Beymer explained that a therapeutic range for a medicine “is the concentration that is expected of a drug to be in somebody’s blood” if the person is “taking the drug therapeutically or under the guidance of a prescription.” (Tr. Vol. 3 at 197). Director Beymer also testified that Miller’s blood had been outside the therapeutic range for Tramadol.

[15] The State asked Director Beymer about her opinion on whether Miller was impaired or intoxicated, and Miller objected. Specifically, Miller objected because he did not “believe that she[] [had] been qualified” as a toxicologist. (Tr. Vol. 3 at 200). The State argued that Director Beymer was qualified to opine on Miller’s intoxication or impairment because of her “extensive training and background” which included a long work history and training at the Indiana Department of Toxicology. (Tr. Vol. 3 at 200). The trial court noted that Director Beymer had a “combination of things” that qualified her, including “[t]he fact that she runs the lab, the fact that she’s part of professional associations, the fact that she . . . regularly reviews materials related to the field,

[and] the fact that she teaches.” (Tr. Vol. 3 at 201). The trial court overruled Miller’s objection. Director Beymer then opined that the signs and symptoms observed by the police officers and Miller’s “toxicology results [we]re consistent with impairment.” (Tr. Vol. 3 at 202).

[16] The jury found Miller guilty of Class A misdemeanor operating a vehicle while intoxicated while endangering a person and Class C misdemeanor operating a vehicle while intoxicated with a controlled substance. The trial court then entered a judgment of conviction on both counts. At the sentencing hearing, the trial court merged the Class C misdemeanor into the Class A misdemeanor conviction but did not vacate its previously entered judgment on the Class C misdemeanor. The trial court sentenced Miller to 360 days at the Elkhart County jail with the entire sentence suspended to probation for his Class A misdemeanor operating a vehicle while intoxicated while endangering a person conviction.

[17] Miller now appeals.

Decision

[18] Miller argues that: (1) the trial court abused its discretion when it admitted expert testimony regarding Miller’s impairment; and (2) there was insufficient evidence to support his conviction. We address each argument in turn.

1. Expert Testimony

[19] Miller first argues that the trial court abused its discretion when it admitted expert testimony from Director Beymer regarding Miller’s intoxication. Decisions regarding the admission of evidence are entrusted to the sound discretion of the trial court, and we review the court’s decision only for an abuse of that discretion. *Wells v. State*, 904 N.E.2d 265, 269 (Ind. Ct. App. 2009), *trans. denied*. The trial court’s ruling on the admission of evidence constitutes an abuse of discretion only if its decision is clearly against the logic and effect of the facts and circumstances before it, or if the court has misinterpreted the law. *Id.*

[20] The admission of the testimony of expert witnesses is governed by Indiana Evidence Rule 702, which provides in relevant part:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.

Ind. Evid. R. 702(a).

[21] “Thus, for a witness to qualify as an expert, the subject matter of the witness’[] testimony must be distinctly related to some scientific field, business, or profession beyond the knowledge of the average person, and the witness must have sufficient skill, knowledge, or experience in that area so that the opinion will aid the trier of fact.” *Aillones v. Minton*, 77 N.E.3d 196, 199 (Ind. Ct. App. 2017) (citing *Hastings v. State*, 58 N.E.3d 919, 924 (Ind. Ct. App. 2016)). “If the

witness has any peculiar knowledge or experience not common to the world that renders the witness'[] opinion founded upon that knowledge any aid to the trier of fact, the witness may testify as an expert.” *Hastings*, 58 N.E.3d at 924 (internal quotation marks omitted).

[22] Here, it is undisputed that Director Beymer has a bachelor’s degree in chemistry and a doctorate degree in analytical chemistry. Director Beymer also has years of experience and training from the Indiana Department of Toxicology, where she has previously held the positions of forensic scientist, laboratory supervisor, and assistant director. She also holds memberships in many organizations related to crime laboratories and forensic science. Director Beymer also opined about the effects of alcohol, Adderall, and Tramadol on the human body and had no trouble explaining therapeutic ranges for Miller’s medications found in his blood. Therefore, we conclude that Director Beymer had sufficient knowledge, skill, experience, training, or education to testify as an expert witness and give an opinion about Miller’s impairment.

[23] Even if the trial court had abused its discretion when it admitted Director Beymer’s expert testimony regarding Miller’s intoxication, we find any error to be harmless. “Errors in the admission or exclusion of evidence are to be disregarded as harmless error unless they affect the substantial rights of a party.” *Norris v. State*, 53 N.E.3d 512, 524 (Ind. Ct. App. 2016). “The improper admission is harmless error if the conviction is supported by substantial independent evidence of guilt satisfying the reviewing court there is no substantial likelihood the challenged evidence contributed to the conviction.”

Hoglund v. State, 962 N.E.2d 1230, 1236 (Ind. 2012), *reh'g denied*. Our review of the record reveals that there was substantial, independent evidence of Miller's intoxication or impairment. Brian, Maggie, Officer Davis, and Officer Vanscoik all testified that Miller had shown signs of intoxication or impairment. Thus, even if Director Beymer's opinion regarding Miller's intoxication had been excluded, there was still substantial, independent evidence of Miller's guilt. *See Hoglund*, 962 N.E.2d at 1236.

2. Sufficiency of the Evidence

- [24] Miller also argues that there was insufficient evidence to support his conviction. 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.* at 146-47. The evidence is sufficient if an inference may be reasonably drawn from it to support the verdict. *Id.* at 147.
- [25] INDIANA CODE § 9-30-5-2(a) provides that “a person who operates a vehicle while intoxicated commits a Class C misdemeanor.” However, the offense is “a Class A misdemeanor if the person operates a vehicle in a manner that endangers a person.” I.C. § 9-30-5-2(b).
- [26] Our review of the record reveals that Miller took two Adderall in the morning, four Tramadol in the morning, and four additional Tramadol in the early

afternoon. Later that day at the wedding, Miller drank two Long Island iced teas. While at the wedding, Brian noticed that Miller “struggl[ed] to stay upright[.]” (Tr. Vol. 2 at 132). Maggie noticed that Miller was eating very messily, “was [not] talking much at the table[,]” and was “out of it[.]” (Tr. Vol. 2 at 152). Miller also had “[s]lurred speech” and “droopy eyes.” (Tr. Vol. 2 at 132). Miller, while driving home with Maggie in his car, drifted and swerved out of his lane. Further, when Officer Davis and Officer Vanscoik initiated a traffic stop on Miller and administered field sobriety tests on him, they found his performance consistent with someone who was impaired.

[27] Miller attempts to argue that Officer Davis and Officer Vanscoik did not give “appropriate weight” to Miller’s chronic back pain and brain injury during the field sobriety tests. (Miller’s Br. 22). Ultimately, Miller’s argument amounts to a request to reweigh the evidence, which we will not do. *See Drane*, 867 N.E.2d at 146. Based on our review of the evidence presented at the jury trial, we conclude that there was sufficient evidence from which a reasonable factfinder could have found Miller guilty of Class A misdemeanor operating a motor vehicle while intoxicated while endangering a person. Accordingly, we affirm the trial court’s judgment.

[28] Lastly, we note that, at the end of the jury trial, the trial court entered a judgment of conviction on Miller’s Class A misdemeanor conviction and his Class C misdemeanor conviction. The trial court then merged Miller’s two convictions at sentencing, but it did not vacate its previously entered judgment on the Class C misdemeanor. Merger is insufficient to cure double jeopardy

concerns. *See West v. State*, 22 N.E.3d 872, 875 (Ind. Ct. App. 2014) (holding that merging two convictions did not cure double jeopardy concerns), *trans. denied*. Accordingly, we remand to the trial court with instructions to vacate the Class C misdemeanor operating a vehicle while intoxicated with a controlled substance conviction.

[29] Affirmed and remanded.³

Tavitas, J., and Foley, J., concur.

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³ Miller also challenges the sufficiency of the evidence for his Class C misdemeanor operating a vehicle while intoxicated with a controlled substance conviction. However, we have ordered the trial court to vacate this conviction and need not address this argument on appeal.