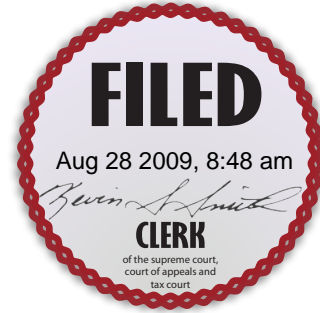


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

THOMAS DOSE,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 36A01-0811-CR-542

APPEAL FROM THE JACKSON CIRCUIT COURT
The Honorable Bruce E. Markel, Judge
Cause No. 36D01-0706-CM-758

August 28, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Thomas Dose appeals his conviction following a bench trial for operating a motor vehicle while intoxicated, a class A misdemeanor.¹

We affirm.

ISSUE

Whether there is sufficient evidence to support Dose's conviction for operating a motor vehicle while intoxicated.

FACTS

On June 10, 2007, at approximately 9:54 p.m., Officer Foster of the Seymour Police Department received information from police dispatch that a possibly intoxicated driver was traveling northbound on U.S. 31 in a white Cadillac with a paper license plate. Proceeding to the junction of U.S. 31 and Tipton Street, Officer Foster spotted a white Cadillac with a paper license. The officer followed the white Cadillac for approximately a quarter of a mile and witnessed the car crossing over the center line of the street. He then activated his emergency lights, and the Cadillac stopped in response.

Officer Foster approached the white Cadillac, and after asking the driver for his license and vehicle registration, was able to identify him as Thomas Dose. During Officer Foster's initial conversation with Dose, Officer Foster noticed that Dose leaned away from him, and he suspected that Dose was trying to hide the odor of alcohol emanating from his person.

¹ Ind. Code § 9-30-5-2(b).

Officer Foster asked Dose to exit the vehicle so that he could administer field sobriety tests. Dose was unsteady on his feet upon exiting the vehicle. Officer Foster noticed that Dose smelled of alcohol and continually leaned against the vehicle for balance and support as Officer Foster spoke to him.

The first test Officer Foster administered was the Horizontal Gaze Nystagmus (HGN) test, which uses six distinct clues regarding eye behavior to determine whether an individual is intoxicated. Dose failed the test by exhibiting all six clues of intoxication.

Next, Officer Foster asked Dose to complete a walk-and-turn test, which requires that the driver: (1) stand heel-to-toe; (2) not begin walking until the instructions are completely read; (3) walk, turn and return to the starting position without raising his arms more than six inches from his sides; and (4) maintain balance. Dose informed Officer Foster that he had chronic hip pain that may make the tasks difficult for him. Although Officer Foster asked Dose to stand heel-to-toe on the designated line, Dose was unable to do so and instead leaned against the vehicle while listening to the officer's instructions. Dose also began walking before the instructions were fully read.

The last field test Officer Foster administered was the one-leg stand, during which the driver must stand on one leg without putting the raised foot down or raising his arms more than six inches from his sides. Again, Dose was unable to perform the required task; Dose lowered his foot and raised his arms more than six inches. Following his failure of all three field tests, Officer Foster asked Dose to provide a breath sample, via a

portable breath test instrument, but Dose refused. Officer Foster then arrested Dose and transported him to the Jackson County Jail.

On June 12, 2007, the State charged Dose with operating a motor vehicle while intoxicated, a class A misdemeanor. On October 27, 2008, the trial court found Dose guilty as charged. The trial court subsequently sentenced Dose to ninety days in the Jackson County Jail.

DECISION

Dose contends that the State failed to provide sufficient evidence that he operated a motor vehicle while intoxicated. We disagree.

When reviewing the sufficiency of evidence to support a conviction, we neither reweigh evidence nor assess witness credibility. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). Instead, we consider the evidence most favorable to the verdict and draw all reasonable inferences that support the ruling below. *Id.* We will defer to the trial court's findings of fact, and we will affirm unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Id.* "It is therefore not necessary that the evidence 'overcome every reasonable hypothesis of innocence.'" *Id.* at 147 (quoting *Moore v. State*, 652 N.E.2d 53, 55 (Ind. 1995)).

To support a conviction for class A misdemeanor operating a motor vehicle while intoxicated, the State must establish beyond a reasonable doubt that Dose, (1) operated a vehicle; (2) while intoxicated; (3) in a manner that endangered a person. Ind. Code § 9-

30-5-2(b). On appeal, Dose challenges only the State's evidence that he was intoxicated while he operated his vehicle.

Indiana Code section 9-13-2-86 defines "intoxicated" as "under the influence of alcohol; ... so that there is an impaired condition of thought and action and the loss of normal control of a person's faculties." Proof of intoxication need not include a measure of one's blood alcohol content (BAC); evidence of impairment is sufficient. *Jellison v. State*, 656 N.E.2d 532, 535 (Ind. Ct. App. 1995). This court has previously specified evidence that may establish impairment, including the consumption of significant amounts of alcohol; impaired attention and reflexes; watery or bloodshot eyes; the odor of alcohol on the breath; unsteady balance; failure or difficulty in performing field sobriety tests; and slurred speech. *Fields*, 888 N.E.2d at 307.

Here, the State presented Officer Foster's testimony to establish that Dose was intoxicated. The officer testified that Dose smelled of alcohol, was unsteady on his feet, and had to lean on his vehicle for balance and support while standing. His testimony also included the detailed facts regarding Dose's failure of all three field sobriety tests.

In his brief, Dose lists some hypothetical reasons a person may fail field sobriety tests, including medical conditions or medication side effects. Dose also claims to have had only one beer prior to driving, and contends that his "consumption of an acceptable amount of alcohol and [his] chronic hip problem" would explain the officer's observations regarding his impairment. Dose's Br. at 12. However, as our Supreme Court stated in *Drane*, the State need not "overcome every reasonable hypothesis of

innocence” to provide sufficient evidence establishing guilt beyond a reasonable doubt. *Drane*, 867 N.E.2d at 147 (quoting *Moore v. State*, 652 N.E.2d 53, 55 (Ind. 1995)). By advancing the same alternate version of facts that failed at the trial court, Dose invites us to go beyond our standard of review, reweigh the evidence and reassess witness credibility, which we will not do. The State has provided sufficient evidence to establish Dose’s level of impairment, and a fact-finder drawing reasonable inferences from this evidence could have concluded beyond a reasonable doubt, that Dose was intoxicated while operating his vehicle.

Affirmed.

ROBB, J., and MATHIAS, J., concur.