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**IN THE
COURT OF APPEALS OF INDIANA**

WILLIAM P. GIBSON,
Appellant- Defendant,

vs.

STATE OF INDIANA,
Appellee- Plaintiff,

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No. 87A05-0905-CR-262

APPEAL FROM THE WARRICK SUPERIOR COURT
The Honorable Robert R. Aylsworth, Judge
Cause No. 87D02-0808-CM-266

December 7, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

William Gibson appeals his convictions, following a bench trial, of operating a vehicle while intoxicated, a Class A misdemeanor, and possessing an open container of alcohol while operating a vehicle, a Class C infraction. For our review, Gibson raises a single issue, which we restate as whether the trial court erred when it denied Gibson's motion for a directed verdict. Concluding the trial court did not err, we affirm.

Facts and Procedural History

On July 27, 2008, Trooper John Alexander of the Indiana State Police followed Gibson as he drove on the entrance ramp to northbound state road 57 in Warrick County. Trooper Alexander observed as Gibson drove onto the shoulder of the entrance ramp. While traveling on state road 57, Trooper Alexander further observed as Gibson's vehicle repeatedly went left of the solid yellow center line, back across the road, and over the solid white fog line. Trooper Alexander then initiated a traffic stop.

When Trooper Alexander spoke with Gibson to request his driver's license and registration, he noticed the odor of alcohol emanating from the vehicle and saw two open containers of beer inside the vehicle. Gibson slurred his speech while speaking to Trooper Alexander and could not locate his driver's license, initially handing Trooper Alexander a credit or debit card instead. Trooper Alexander asked Gibson to step out of his vehicle and conducted three field sobriety tests: a horizontal gaze nystagmus test; a walk and turn test; and a one-legged stand test. Gibson failed all three tests. In addition, while talking to Trooper Alexander, Gibson had to lean against his vehicle for balance.

Trooper Alexander read Gibson the implied consent law and Gibson consented to take a breath test.

Trooper Alexander then took Gibson into custody and drove him to the Warrick County Jail to administer the breath test. Gibson either refused or was unable to blow air into the machine with enough force to conduct a test. Therefore, Trooper Alexander placed Gibson under arrest. On August 7, 2008, the State charged Gibson with four counts: 1) operating a vehicle while intoxicated in a manner endangering a person, a Class A misdemeanor; 2) operating a vehicle while intoxicated, a Class C misdemeanor; 3) possessing an open container in a vehicle, a Class C infraction; and 4) driving left of center in violation of Indiana Code section 9-21-8-4. The trial court held a bench trial on March 12, 2009, after which it found Gibson guilty of counts one and three. The trial court dismissed count two as a lesser included offense of count one and found Gibson not guilty of count four. Gibson now appeals.

Discussion and Decision

I. Standard of Review

In order for a trial court to appropriately grant a motion for a directed verdict, there must be a total lack of evidence regarding an essential element of the crime, or the evidence must be without conflict and susceptible only to an inference in favor of the innocence of the defendant. If the evidence is sufficient to sustain a conviction upon appeal, then a motion for a directed verdict is properly denied; thus, our standard of review is essentially the same as that upon a challenge to the sufficiency of the evidence. We neither reweigh evidence nor judge witness credibility, but consider only the evidence that supports the conviction and the reasonable inferences to be drawn therefrom in order to determine whether there is substantial evidence of probative value from which a reasonable trier of fact could have drawn the conclusion that the defendant was guilty of the crime charged beyond a reasonable doubt.

Edwards v. State, 862 N.E.2d 1254, 1262 (Ind. Ct. App. 2007), trans. denied.

II. Sufficiency of Evidence

A. Propriety of the Traffic Stop

Gibson argues correctly the State mistakenly charged him with violating Indiana Code section 9-21-8-4, which requires a driver to yield one-half of the road to an oncoming motorist. Although Gibson crossed the center line of the road, there was no evidence he did so into the path of an oncoming vehicle. Because of this, the trial court found Gibson not guilty of count four. However, Gibson goes on to argue the evidence of his intoxication and the open containers should not have been admitted because they resulted from an improper traffic stop.

At trial, Trooper Alexander testified he stopped Gibson to cite him for driving left of center, which he believed was a violation of Indiana Code section 9-21-8-4. However, Trooper Alexander also testified that was not the sole basis for the stop, and he had observed numerous violations. In addition, Trooper Alexander testified he had been trained to look for indicators of drunk driving, including “weaving, left of center, improper turns, failure to signal – things like that.” Transcript at 3.

State Police officers have the authority “without writ or warrant, to make an arrest for violation of the laws of the state for the regulation and use of vehicles when the violation is committed in their presence.” Ind. Code § 10-11-2-21(a)(3). Trooper Alexander observed Gibson cross the center line of the highway in violation of Indiana Code section 9-21-8-2 (a vehicle shall be driven upon the right half of the roadway). Trooper Alexander also observed driving behavior indicative of driving while intoxicated

in violation of Indiana Code section 9-30-5-2. As a result, Trooper Alexander had the authority to stop Gibson. Osborne v. State, 805 N.E.2d 435, 439 (Ind. Ct. App. 2004) (“the decision to stop a vehicle is reasonable where the police have probable cause to believe that a traffic violation has occurred”), trans. denied. Therefore, the evidence of Gibson’s intoxication and the open containers was admissible despite Trooper Alexander’s mistake regarding the applicable statute.

B. Driving While Intoxicated

Alexander testified Gibson smelled of alcohol, slurred his speech, had difficulty retrieving his driver’s license, had to lean against his vehicle for balance, and failed three field sobriety tests. Evidence of intoxication can be established by impaired attention and reflexes, the odor of alcohol on the breath, unsteady balance, failure of field sobriety tests, and slurred speech. Stayley v. State, 895 N.E.2d 1245, 1251 (Ind. Ct. App. 2008), trans. denied. In addition, Trooper Alexander testified he saw Gibson’s vehicle weaving back and forth across the road, crossing the center line, and crossing the fog line. Such unsafe driving practices are sufficient to prove the endangerment element of the charge. See id. (“the endangerment clause does not require that the State prove a person other tha[n] the defendant was actually in the path of the defendant’s vehicle or in the same area ... it is sufficient that the defendant’s condition renders driving unsafe.”) Therefore, the probative evidence is sufficient to support Gibson’s conviction for driving while intoxicated in a manner endangering a person.

B. Open Container Violation

Indiana Code section 9-30-15-3 prohibits a person from possessing an opened alcoholic beverage container in a vehicle while the vehicle is in operation. Trooper Alexander testified he observed two open cans of beer in Gibson's vehicle. This is sufficient probative evidence to support Gibson's conviction for possession of an open container.

Conclusion

The evidence of Gibson's intoxication and the open containers in the vehicle was sufficient to support his convictions for driving while intoxicated, a Class A misdemeanor, and possessing an open container, a Class C infraction. As a result, the trial court properly denied Gibson's motions for a directed verdict. Gibson's convictions are affirmed.

Affirmed.

DARDEN, J., and MATHIAS, J., concur.