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.

ATTORNEY FOR APPELLANT:

ROBERT W. HAMMERLE
Hammerle Law Firm
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ZACHARY J. STOCK
Deputy Attorney General
Indianapolis, Indiana

FILED
Dec 07 2010, 10:13 am
CLERK
of the supreme court, court of appeals and tax court

IN THE COURT OF APPEALS OF INDIANA

CHRISTOPHER EDWARDS,	)	
	)	
Appellant/Defendant,	)	
	)	
vs.	)	No. 27A02-1002-CR-138
	)	
STATE OF INDIANA,	)	
	)	
Appellee/Plaintiff.	)	

APPEAL FROM THE GRANT SUPERIOR COURT
The Honorable Jeffrey D. Todd, Judge
Cause No. 27D01-0802-FB-12

December 7, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Defendant Christopher Edwards appeals from his convictions of Class B felony Causing Death While Operating a Motor Vehicle with an Alcohol Concentration Equivalent Greater than 0.08[1] and Class B felony Causing Death While Operating a Motor Vehicle with Cocaine in the Blood.[2] Edwards contends that the trial court erred in admitting statements tending to incriminate him made by the victim prior to her death and that the State failed to produce sufficient evidence to sustain his convictions. We affirm.

FACTS AND PROCEDURAL HISTORY

Early in the morning of April 8, 2006, William Crawl was driving to work on Grant County Road 600E when he saw Edwards on the side of the road. Crawl followed Edwards to a vehicle in a nearby field, where Crawl saw Edna Hoskins lying face-down on the ground approximately fifteen to twenty feet from the vehicle. When Crawl said that he would call for help from a nearby house, Hoskins said, "there's not time. I need help[.]" Tr. p. 78. Crawl placed Hoskins in the reclined front seat of his car and drove her and Edwards to the Marion General Hospital emergency room.

Upon arrival at the hospital, among those who attended to Hoskins and Edwards were paramedic Adam Newman and registered nurse Doug Hangbers. When Newman asked Edwards what had happened, Edwards responded, "I swerved to miss a deer[.]" Tr. p. 113. When Newman asked Edwards if he indeed was driving and what kind of vehicle he was driving, Edwards responded, "I was driving a truck[.]" Tr. p. 113. According to Newman, Edwards was awake and alert, was able to respond appropriately

[1] Ind. Code § 9-30-5-5(a)(1) (2005).

[2] Ind. Code § 9-30-5-5(a)(2).

to all of his questions, and showed no signs of uncertainty or lack of comprehension. When Hangbers asked Edwards what had happened, Edwards told him that "he was out driving his car, he had swerved to miss the deer and ended up going of[f] the road." Tr. p. 267. According to Hangbers, Edwards was alert, was orientated, was able to answer questions[,] could give me his name[,] could tell me where he was[,] knew what happened[, and] appeared fairly coherent." Tr. p. 267. When Edwards's blood was drawn, his blood alcohol content was determined to be approximately 0.10-0.11 grams per 100 milliliters, a level at which "people would be considered to be drunk." Tr. p. 548 Moreover, testing revealed that Edwards had cocaine in his system.

Hoskins died as a result of her injuries. Hoskins had suffered multiple rib fractures and a crushed pelvis. The fractured ribs caused enough internal bleeding to collapse Hoskins's lungs, and the shattered pelvis caused a laceration of femoral blood vessels and additional internal bleeding. Essentially, Hoskins bled to death as a result of her injuries, which were consistent with her having been thrown from and subsequently struck by a motor vehicle.

Ultimately, the State charged Edwards with Class B felony causing death while operating a motor vehicle with an alcohol concentration equivalent greater than 0.08 and Class B felony causing death while operating a motor vehicle with cocaine in the blood. On March 9, 2009, Edwards filed a motion to suppress, *inter alia*, statements Hoskins made to Paramedic Student Robert Bennett before she died indicating that Edwards had been the person driving the vehicle when the accident occurred. On April 16, 2009, the trial court denied Edwards's motion to suppress in all respects. Edwards was found

guilty as charged, and the trial court sentenced him to ten years of incarceration for each count, with four years of each sentence to be suspended to probation, and both sentences to be served concurrently.

DISCUSSION AND DECISION

I. Whether the Trial Court Abused its Discretion in Declining to Admit Certain Statements Made by Hoskins Before her Death

The admissibility of evidence is within the sound discretion of the trial court. *Curley v. State*, 777 N.E.2d 58, 60 (Ind. Ct. App. 2002). We will only reverse a trial court's decision on the admissibility of evidence upon a showing of an abuse of that discretion. *Id*. An abuse of discretion may occur if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court, or if the court has misinterpreted the law. *Id*. The Court of Appeals may affirm the trial court's ruling if it is sustainable on any legal basis in the record, even though it was not the reason enunciated by the trial court. *Moore v. State*, 839 N.E.2d 178, 182 (Ind. Ct. App. 2005). We do not reweigh the evidence but consider the evidence most favorable to the trial court's ruling. *Hirsey v. State*, 852 N.E.2d 1008, 1012 (Ind. Ct. App. 2006).

Edwards contends that the admission of incriminating statements Hoskins made to Bennett runs afoul of the Indiana Rules of Evidence and the Confrontation Clause of the United States Constitution. We need not, however, address the merits of Edwards's arguments, as the admission of the evidence in question, even if erroneous, could only have been harmless. "An error will be found harmless if its probable impact on the jury, in light of all of the evidence in the case, is sufficiently minor so as not to affect the

substantial rights of a party." *Martin v. State*, 736 N.E.2d 1213, 1218 (Ind. 2000) (citing *Fleener v. State*, 656 N.E.2d 1140, 1142 (Ind. 1995)). "Erroneously admitted evidence which is cumulative of other, properly admitted evidence does not establish the prejudice required for reversal." *Davis v. State*, 520 N.E.2d 1271, 1274 (Ind. 1988) (citing *Campbell v. State*, 500 N.E.2d 174 (Ind. 1986)).

Here, the jury heard two witnesses who testified at trial that Edwards admitted to them that he had been driving the vehicle when the accident occurred. As such, testimony regarding Hoskins's statements to the same effect was merely cumulative. Moreover, we cannot say that the probable impact of Hoskins's statements was major enough to have affected Edwards's substantial rights. Edwards's statements, which he never denied making, were highly incriminating admissions–hardly the sort of self-serving statements that might be inherently suspect. Although Edwards points to evidence that he may not have known what he was saying or doing, this is contradicted by evidence that he was alert and showed no signs of confusion or disorientation. Newman and Hangbers, both medical professionals, testified that Edwards was alert, aware of his surroundings, and answered all of their questions appropriately. Any error in the admission of Hoskins's statements could only be considered harmless.

II. Whether the State Produced Sufficient Evidence to Sustain Edwards's Convictions

When reviewing the sufficiency of the evidence, we neither weigh the evidence nor resolve questions of credibility. *Jordan v. State*, 656 N.E.2d 816, 817 (Ind. 1995). We look only to the evidence of probative value and the reasonable inferences to be

drawn therefrom which support the verdict. *Id.* If from that viewpoint there is evidence of probative value from which a reasonable trier of fact could conclude that the defendant was guilty beyond a reasonable doubt, we will affirm the conviction. *Spangler v. State*, 607 N.E.2d 720, 724 (Ind. 1993).

Edwards argues only that the State failed to produce sufficient evidence to establish that his conduct was a proximate cause of the accident that led to Hoskins's death. As the Indiana Supreme Court has held in a case involving Indiana Code section 9-30-5-5, "'[i]f the driver's conduct caused the injury, he commits the crime; if someone else's conduct caused the injury, he is not guilty.'" *Abney v. State*, 766 N.E.2d 1175, 1177 (Ind. 2002) (citing *Micinski v. State*, 487 N.E.2d 150, 154 (Ind. 1986)). "This is simply a short-handed way of stating the well-settled rule that the State must prove the defendant's conduct was a proximate cause of the victim's injury or death." *Id*. at 1177-78. Edwards is correct that there is some evidence that the presence of a deer in the roadway may have played a part in causing the accident. This evidence, however, does not support the jury's verdict and, as such, we may not consider it. *See Jordan*, 656 N.E.2d at 817.

In any event, even if we assume, *arguendo*, that there *was* a deer in the road, there is still sufficient evidence from which the jury could have inferred that Edward's conduct caused the accident. First and foremost, Edward's alcohol content was a level at which "people would be considered to be drunk." Tr. p. 548. Moreover, the course of the accident itself suggests an inability to adequately control the vehicle. According to Grant County Sheriff's Sergeant Randy Albertson, Edward's vehicle first

> went off the west side of the roadway, north of those mailboxes that were struck. The vehicle had traveled past those mailboxes, southbound, came back onto the roadway, went left of center, and then made a right hand swerve, which caused the vehicle to slide off the road into the field.

Tr. p. 421. This evidence of erratic driving suggests either that Edwards was unable to adequately control the vehicle after seeing the alleged deer or that his reaction time was increased, any or all of which could have been caused by him being "drunk." The record contains sufficient evidence from which the jury was entitled to conclude that Edward's conduct caused the accident. In the end, Edwards's argument is merely an invitation to reweigh the evidence, which we will not do.

We affirm the judgment of the trial court.

DARDEN, J., and BROWN, J., concur.