

Case Summary

Appellant-Defendant Harry Paxton (“Paxton”) appeals his conviction for Operating a Vehicle While Intoxicated Endangering a Person, a Class A misdemeanor.¹ We affirm this conviction but remand with instructions to vacate the conviction upon the second OWI count.

Issue

Paxton presents a single issue for review: whether the evidence is sufficient to support his conviction.

Facts and Procedural History

On March 21, 2007, Indianapolis police officer Earl Graybeal observed a vehicle operated by Paxton make a right hand turn onto Olive Street without the use of a turn signal. Officer Graybeal activated his lights to initiate a traffic stop but Paxton continued to drive. Paxton maneuvered the vehicle as if to stop it, by pulling close to the curb, but then repeatedly pulled back away from the curb and continued to drive. When Paxton eventually stopped the vehicle, it was angled into the street rather than parked parallel to the curb.

Paxton exited his vehicle as Officer Graybeal approached but refused to get back into the vehicle at Officer Graybeal’s request. Officer Graybeal handcuffed Paxton and was able to detect a strong odor of alcohol and observe that Paxton’s eyes were red and bloodshot. After Paxton failed a series of field sobriety tests, he was given a breathalyzer test. Paxton’s blood alcohol content was 0.25%.

The State charged Paxton with two counts of OWI as Class A misdemeanors, with

¹ Ind. Code § 9-30-5-2(b).

reference to Indiana Code Sections 9-30-5-2(b) (Operating a Vehicle While Intoxicated Endangering a Person) and Indiana Code Section 9-30-5-1(b) (Operating a Vehicle While Intoxicated with 0.15 Grams of Alcohol).² On May 7, 2008, Paxton was tried in a bench trial and found guilty as charged. The trial court entered judgments of conviction and purportedly “merged” the convictions.³ (Tr. 49.) Paxton was sentenced to 273 days imprisonment and his driver’s license was suspended for two years. Paxton appeals.

Discussion and Decision

Pursuant to Indiana Code Section 9-30-5-2(b), a person commits Operating a Vehicle While Intoxicated as a Class A misdemeanor when he operates a vehicle while intoxicated “in a manner that endangers a person.” Paxton contends that the State failed to prove the element of endangerment.

When reviewing the sufficiency of the evidence to support a conviction, appellate courts consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 145 (Ind. 2007). We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. Id. at 147.

The endangerment element of OWI may be proved by evidence showing that the

² Paxton was also charged with, and convicted of, a traffic infraction. He does not challenge this conviction.

³ The trial court entered judgments of conviction for both counts and noted that it would “merge” the convictions. A trial court’s act of merging, without also vacating the conviction, is not sufficient to cure a double jeopardy violation. See Jones v. State, 807 N.E.2d 58, 67-68 (Ind. Ct. App. 2004), trans. denied. Therefore, we remand this cause to the trial court with an order to vacate the conviction for Count II.

defendant's condition or manner of operating a vehicle could have endangered any person, including the defendant himself. Staley v. State, 2008 WL 4792418, slip op. at 4 (Ind. Ct. App. 2008). Accordingly, it is sufficient that the defendant's condition renders his driving unsafe. Id. at 5.

Here, Paxton failed field sobriety tests and a breathalyzer test indicated that his blood alcohol content was 0.25%. Officer Graybeal and Officer Daniel Shragal each observed that Paxton had visible signs of intoxication. Paxton turned without using a turn signal, and then failed to promptly yield to Officer Graybeal's signal to stop. Instead, Paxton repeatedly moved his vehicle toward the curb and pulled back. When Paxton finally maneuvered his vehicle to a stop, it was not parked parallel to the curb but was parked at an angle and protruded into the driving portion of the street. This is sufficient proof to show that Paxton's condition and manner of operating his vehicle could have endangered himself or another person.

The State presented sufficient evidence to support Paxton's conviction for OWI.

Affirmed in part and remanded with instructions to vacate the conviction on Count II.

MATHIAS, J., and BARNES, J., concur.