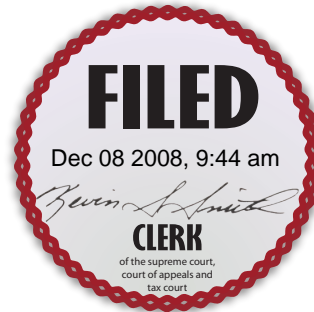


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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FRANK BURRELLO, )  
 )  
 Appellant-Defendant, )  
 )  
 vs. ) No. 49A02-0806-CR-498  
 )  
 STATE OF INDIANA, )  
 )  
 Appellee-Plaintiff. )

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable William J. Nelson, Judge  
Cause No. 49F07-0709-CM-186210

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**December 8, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**NAJAM, Judge**

## **STATEMENT OF THE CASE**

Frank Burrello appeals his conviction for Operating a Vehicle While Intoxicated, as a Class A misdemeanor, following a bench trial. He presents a single issue for our review, namely, whether the State presented sufficient evidence to support his conviction.

We affirm.

## **FACTS AND PROCEDURAL HISTORY**

On September 10, 2007, Burrello was driving eastbound on Washington Street in Indianapolis when Indianapolis Metropolitan Police Department Officer Daniel Shragal observed Burrello driving erratically. Burrello changed lanes twice before crossing the double yellow center line. Officer Shragal initiated a traffic stop and observed that Burrello smelled of alcohol and had slurred speech and watery, red eyes. Officer Shragal administered one field sobriety test,<sup>1</sup> the horizontal gaze nystagmus test, and Burrello failed that test. In addition, Burrello consented to a certified chemical test at a testing location, and that test showed a blood alcohol content of .07 grams of alcohol per 210 liters of breath.

The State charged Burrello with operating a vehicle while intoxicated, as a Class A misdemeanor. Following a bench trial, the trial court found Burrello guilty as charged and imposed a suspended one-year sentence. This appeal ensued.

## **DISCUSSION AND DECISION**

Burrello contends that the State did not present sufficient evidence to support his conviction. In particular, Burrello maintains that the evidence “does not prove beyond a

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<sup>1</sup> Burrello told Officer Shragal that he had injured his leg that day and was walking with a limp. Accordingly, Officer Shragal did not ask Burrello to perform other field sobriety tests that involve gait.

reasonable doubt that his thoughts were impaired” at the time of the alleged offense. Brief of Appellant at 5. We cannot agree.

When reviewing the claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the judgment and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

To prove operating a vehicle while intoxicated, as a Class A misdemeanor, the State was required to prove that Burrello operated a motor vehicle while intoxicated in a manner that endangered a person. Ind. Code § 9-30-5-2. On appeal, Burrello only challenges the sufficiency of the evidence regarding the intoxicated element of the offense. Specifically, Burrello maintains that there is no evidence that his “thoughts were impaired” to show intoxication. Brief of Appellant at 4.

Indiana Code Section 9-13-2-86 defines “intoxicated” as:

[U]nder the influence of:

- (1) alcohol;
- (2) a controlled substance (as defined in IC 35-48-1);
- (3) a drug other than alcohol or a controlled substance; or
- (4) a combination of alcohol, controlled substances, or drugs;

so that there is an impaired condition of thought and action and the loss of normal control of a person’s faculties.

Impairment can be established by evidence of: (1) the consumption of significant amounts of alcohol; (2) impaired attention and reflexes; (3) watery or bloodshot eyes; (4) the odor of alcohol on the breath; (5) unsteady balance; (6) failure of field sobriety tests; (7) slurred speech. Fields v. State, 888 N.E.2d 304, 307 (Ind. Ct. App. 2008).

Here, the State presented evidence that Burrello had watery and bloodshot eyes, an odor of alcohol, and slurred speech. In addition, Burrello failed a field sobriety test, and a chemical test showed a blood alcohol level of .07 grams of alcohol per 210 liters of breath. At trial, Burrello testified that he had consumed approximately thirty ounces of beer during a three or four-hour period of time prior to his arrest. Finally, the evidence showed that Burrello was driving erratically, “for a good distance,” when Officer Shragal initiated the traffic stop. Transcript at 5. Burrello’s contentions on appeal amount to a request that we reweigh the evidence, which we will not do. The evidence is sufficient to support Burrello’s conviction.

Affirmed.

BAKER, C.J., and KIRSCH, J., concur.