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**IN THE  
COURT OF APPEALS OF INDIANA**

GRADY T. BOBITT, JR., )

Appellant-Defendant, )

vs. )

No. 71A03-0809-CR-451

STATE OF INDIANA, )

Appellee-Plaintiff. )

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT  
The Honorable John M. Marnocha, Judge  
Cause No.71D02-0705-FD-552

**December 16, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BRADFORD, Judge**

Appellant-Defendant Grady T. Bobitt, Jr. appeals following his conviction for Class D felony Operating a Vehicle While Intoxicated With a Prior Conviction.<sup>1</sup> Bobitt contends that the evidence was insufficient to support his conviction. We affirm.

### **FACTS AND PROCEDURAL HISTORY**

At approximately 7:30 p.m. on May 19, 2007, South Bend Police Officer Neil Graber observed Bobitt's vehicle turn onto LaPorte Avenue from Colfax Avenue. Bobitt's vehicle "went almost to the curb, then all the way across the lane to the other side of the street and then back to its side." Tr. p. 100. Bobitt's vehicle then turned onto LaSalle Avenue and, after observing the vehicle's further erratic movement, Officer Graber initiated a traffic stop. Shortly after Officer Graber initiated the traffic stop, Officers Eric Schlegemilch and Joshua Morgan arrived on the scene to assist Officer Graber.

Officer Graber approached and asked Bobitt to exit the vehicle. As Bobitt complied with Officer Graber's request, Officer Graber noticed that Bobitt "appeared to have urinated on himself." Tr. p. 104. Bobitt, whose clothing was in a state of disarray, "couldn't really stand on his own, he had to lean on the car in order to keep his balance." Tr. p. 104. Bobitt's eyes were "glassed" over, he had very poor balance and slurred speech, and he smelled of alcohol. Tr. p. 104. Bobitt's balance was so poor that Officer Graber determined that it was unsafe to administer field sobriety tests. A half-full bottle containing a substance that appeared to be and smelled like whiskey was found in the passenger compartment of Bobitt's vehicle.

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<sup>1</sup> Ind. Code §§ 9-30-5-2(a) (2006); 9-30-5-3 (2006).

Officer Morgan transported Bobitt to the St. Joseph County Jail, where Officer Morgan attempted to administer a certified breath test. The results of Officer Morgan's first attempt to administer the test were incomplete because Bobitt either refused or was unable to complete the test. Bobitt refused Officer Morgan's subsequent requests to complete the test. Officer Morgan then took Bobitt to be booked into the county jail, but, due to Bobitt's level of intoxication, the county jail refused to take him until he had received medical clearance from a doctor. Officer Morgan transported Bobitt to the hospital, where he was cleared, and then back to the jail where he was eventually booked.

On May 21, 2007, the State charged Bobitt with Class C misdemeanor operating a motor vehicle while intoxicated and Class D felony operating a motor vehicle while intoxicated with a prior conviction. Following a jury trial, the trial court sentenced Bobitt to three years of incarceration.

## **DISCUSSION AND DECISION**

On appeal, Bobitt challenges the sufficiency of the evidence to support both his conviction for operating a motor vehicle while intoxicated and the operating a motor vehicle while intoxicated with a prior conviction enhancement. Specifically, Bobitt contends that the State failed to prove beyond a reasonable doubt that he was intoxicated at the time he was stopped by police and that he was the same person as named in the documents offered by the State to prove his prior conviction.

### **A. Standard of Review**

The standard of review for a challenge to the sufficiency of the evidence is well-

settled.

When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorable to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

*Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007) (citations and quotations omitted).

**B. Whether the Evidence was Sufficient to Support Bobitt's Conviction for Operating a Motor Vehicle While Intoxicated.**

In order to convict Bobitt of the underlying charge of Class C misdemeanor operating a vehicle while intoxicated, the State was required to establish that Bobitt: (1) operated a vehicle; (2) while intoxicated. Ind. Code § 9-30-5-2(a); *Jellison v. State*, 656 N.E.2d 532, 535 (Ind. Ct. App. 1995). Circumstantial evidence, including evidence of consumption of significant amounts of alcohol, impaired attention and reflexes, watery or bloodshot eyes, an odor of alcohol on the breath, unsteady balance, failed field sobriety tests, and slurred speech, is sufficient to prove that the defendant operated the vehicle while intoxicated. *Jellison*, 656 N.E.2d at 535; *Mann v. State*, 754 N.E.2d 544, 547 (Ind. Ct. App. 2001), *trans. denied*.

Here, the evidence established that Bobitt, upon being pulled over for erratic driving, appeared to have urinated on himself, his clothing was in a state of disarray, and he "couldn't really stand on his own, he had to lean on the car in order to keep his balance." Tr. p. 104.

In fact, Bobitt's balance was so poor that Officer Graber determined that it was unsafe to administer field sobriety tests. Additionally, Bobitt's eyes were "glasses" over, he exhibited slurred speech, and he smelled of alcohol. Tr. p. 104. A bottle containing a substance that appeared to be whiskey was found in the passenger compartment of Bobitt's vehicle. Furthermore, Bobitt was unable to complete a certified breath test and due to his level of intoxication, and the nurses at the jail refused to book Bobitt until he received medical clearance from a doctor. We conclude that this evidence was sufficient to support Bobitt's conviction for operating while intoxicated. Bobitt's claim that he was not intoxicated and that his erratic driving and behavior was caused by a health condition amounts to an invitation to reweigh the evidence, which we decline.

**C. Whether the Evidence was Sufficient to Support Bobitt's Operating a Motor Vehicle While Intoxicated With a Prior Conviction Enhancement.**

In order to convict Bobitt of Class D felony operating a motor vehicle while intoxicated with a prior conviction enhancement, the State was required to prove beyond a reasonable doubt that Bobitt: (1) has a previous conviction of operating while intoxicated; and (2) the previous conviction of operation while intoxicated occurred within the five (5) years immediately preceding the instant offense. Ind. Code § 9-30-5-3. "It has long been recognized that certified copies of judgments or commitments containing the same name or a name similar to a defendant's may be introduced to prove the conviction of prior offenses; however, there must be other supporting evidence to identify the defendant as being the same person named in the documents." *Sullivan v. State*, 517 N.E.2d 1251, 1254 (Ind. Ct. App.

1988), *trans. denied*; See also Ind. Code § 9-30-6-14(2006). If this evidence yields logical and reasonable inferences from which the finder of fact could determine the defendant is the same defendant disclosed in the previous conviction, a sufficient connection has been shown. *Walker v. State*, 813 N.E.2d 339, 341 (Ind. Ct. App. 2004), *trans. denied*.

Here, the State alleged that Bobitt had been convicted of operating while intoxicated in Hamilton County in 2004. In support, the State offered Bobitt's certified driving record and a certified copy of Bobitt's 2004 operating while intoxicated conviction from Hamilton County. Bobitt's certified driving record listed the following identifying information: (1) Name—Grady T. Bobitt Jr.; (2) Date of Birth—11/06/1954; (3) License Number—1350007689; and (4) Physical Description—height (5'11"), gender (male), weight (160 lbs), hair color (brown), and eye color (brown). Bobitt's certified driving record also listed a prior conviction for operating while intoxicated, Cause Number 29D05-0403-CM-1309. The certified copy of Bobitt's 2004 operating while intoxicated conviction included the following identifying information: (1) Name—Grady T. Bobitt Jr.; and (2) Cause Number—29D05-0403-CM-1309. The charging information for the instant matter listed Bobitt's name as Grady T. Bobitt Jr. and testimony at trial established that Bobitt's date of birth was 11/06/1954. Additionally, the jury was able to observe Bobitt at trial and could determine that Bobitt fit the physical description included in the certified driving record. Given the identifying documents admitted in both phases of the trial, and in light of the circumstantial evidence tending to link Bobitt to these documents, we conclude that the evidence was sufficient to allow the jury to yield logical and reasonable inferences from which it could connect Bobitt

with the 2004 operating while intoxicated conviction. *See Walker*, 813 N.E.2d at 341. Therefore, we affirm Bobitt's Class D felony operating while intoxicated with a prior conviction enhancement.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and MAY, J., concur.