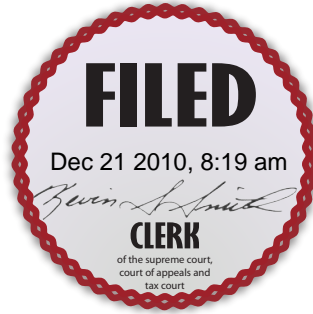


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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RODNEY ROSCOE, )  
 )  
 Appellant-Defendant, )  
 )  
 vs. )  
 )  
 STATE OF INDIANA, )  
 )  
 Appellee-Plaintiff. )

No. 49A02-1004-CR-456

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Richard E. Sallee, Judge  
Cause No. 49F10-0911-CM-092072

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**December 21, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

Rodney Roscoe (“Roscoe”) appeals his convictions for Operating a Vehicle While Intoxicated as a Class A misdemeanor<sup>1</sup> and Driving While Suspended as a Class A misdemeanor,<sup>2</sup> presenting the single issue of whether the convictions are supported by sufficient evidence. We affirm.

### **Facts and Procedural History**

On November 1, 2009, at approximately 2:00 a.m., Roscoe was driving east on Interstate 70 when he was stopped by Indiana State Police Officer Ginger Marshall (“Officer Marshall”). Officer Marshall had been driving directly behind Roscoe, and observed him twice cross over the yellow traffic line, and then return over the white line. Once stopped, Officer Marshall approached Roscoe’s vehicle, and asked to see his hands when she arrived at the passenger side. Officer Marshall detected the odor of alcoholic beverages and noticed that Roscoe’s eyes were bloodshot and glossy.

Officer Marshall asked Roscoe for his license and registration; he instead handed her his identification card, and told Officer Marshall that his license had been suspended. She informed him that she had probable cause to believe that he had operated a vehicle while intoxicated, and to stay seated with his hands visible while she walked to the driver’s side. Roscoe did not comply and was fidgety; consequently, Officer Marshall ordered him out of the vehicle and placed him in handcuffs. Roscoe also admitted to drinking an alcoholic

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<sup>1</sup> Ind. Code § 9-30-5-2.

<sup>2</sup> Ind. Code § 9-24-19-2.

beverage at a friend's house prior to driving.

After Roscoe exited, Officer Marshall moved him to the front of his vehicle, with his back facing his car, so that her lights were not in his eyes. She then administered the Horizontal Gaze Nystagmus test, which has six clues as to the subject's intoxication, three for each eye. Four registered clues is a failing score and Roscoe registered all six.

Officer Marshall then read the Indiana Implied Consent Law to Roscoe, and he agreed to take a chemical test. She administered a portable breath test, Roscoe registered a 0.09, and she placed Roscoe in her car and drove him to a police station. At the police station, Indiana State Police Officer David Salley ("Officer Salley") administered a certified chemical breath test at 2:38 a.m., relying on Officer Marshall's count as to the required twenty minutes of observation. Roscoe registered a 0.08. Officer Marshall then placed Roscoe under arrest for Operating a Vehicle While Intoxicated. He was also charged with Operating a Vehicle with a Blood Alcohol Concentration Between 0.08 and 0.15,<sup>3</sup> Driving While Suspended, Public Intoxication,<sup>4</sup> and Failure to Safely Turn, Slow, Stop, or Change Lanes, an infraction.<sup>5</sup>

On April 5, 2010 a bench trial was held, and the trial court found Roscoe guilty of Operating a Vehicle While Intoxicated as a Class A misdemeanor and Driving While Suspended as a Class A misdemeanor. He was sentenced to one year of imprisonment on each, sentences to run concurrently, with three hundred sixty-one days suspended, and three hundred sixty-one days probation. This appeal followed.

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<sup>3</sup> Ind. Code § 9-30-5-1(a).

<sup>4</sup> Ind. Code § 7.1-5-1-3.

<sup>5</sup> Ind. Code § 9-21-8-24.

## **Discussion and Decision**

### Standard of Review

When reviewing the sufficiency of the evidence, we will affirm “if there is substantial evidence of probative value supporting each element of the crime from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt.” Wright v. State, 828 N.E.2d 904, 906 (Ind. 2005) (quoting Davis v. State, 813 N.E.2d 1176, 1178 (Ind. 2004)). We do not reweigh the evidence or assess the credibility of the witnesses. Id. It is the job of the trial court to determine whether the evidence sufficiently proves each element of an offense, and we consider conflicting evidence most favorably to the trial court’s ruling. Id.

### Operating a Vehicle While Intoxicated

Roscoe challenges his conviction of Operating a Vehicle While Intoxicated by arguing that there was insufficient evidence of his intoxication to support a conviction. To convict Roscoe of Operating a Vehicle While Intoxicated as charged, the State was required to prove beyond a reasonable doubt that Roscoe (1) operated a motor vehicle, (2) in a manner that endangered a person, (3) while intoxicated. Ind. Code § 9-30-5-2. The Indiana Code also defines “intoxication” as “under the influence of: (1) alcohol . . . so that there is an impaired condition of thought and action and loss of normal control of a person’s faculties.” Ind. Code § 9-13-2-86. Evidence of the following factors can demonstrate the requisite impairment: (1) the consumption of a significant amount 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. Fought v. State, 898 N.E.2d 447, 451 (Ind. Ct. App. 2008).

Officer Marshall testified that she observed Roscoe twice crossing the yellow line while driving. While executing her traffic stop, she detected the odor of alcohol in Roscoe's car and noticed that his eyes were bloodshot and glossy. Roscoe also admitted to drinking alcohol at a friend's house. Moreover, Roscoe failed two sobriety tests on the highway—the Horizontal Gaze Nystagmus test and the field sobriety test. He also registered a 0.08 on the chemical breath test at the police station after twenty minutes, and the results of that test were admitted into evidence. Roscoe essentially invites us to reweigh the evidence of his intoxication, which we will not do. See Wright, 828 N.E.2d. at 906. Thus, there was sufficient evidence to find Roscoe guilty of Operating a Vehicle While Intoxicated.

#### Driving While Suspended

Roscoe also argues that the State failed to present sufficient evidence to convict him of Driving While Suspended. To convict Roscoe of Driving While Suspended as charged, the State was required to prove beyond a reasonable doubt that Roscoe operated a motor vehicle, when he knew that his drivers' license was suspended, and also that, within the past ten years, he had a prior unrelated judgment for Driving While Suspended. Ind. Code § 9-24-19-2. In particular, Roscoe contends that the State failed to show that he had a prior unrelated judgment by arguing that the evidence admitted at trial on this point contained internal ambiguities.

During the traffic stop, Mr. Roscoe told Officer Marshall that his license was

suspended. His certified driver's record, admitted into evidence, confirms that his license status on November 1, 2009 was "suspended-prior." Ex. 3. Moreover, the exhibit shows he had an unsatisfied judgment on March 3, 2005 and a conviction for Driving While Suspended on January 6, 2004. Finally, Officer Marshall testified that, based on her reading of the driver's record, she determined that Roscoe's license was "suspended, prior." Tr. 17. Thus, the State presented sufficient evidence such that a reasonable fact-finder could conclude beyond a reasonable doubt that the Roscoe is guilty of Driving While Suspended.

### **Conclusion**

There is sufficient evidence to support Roscoe's convictions for Operating a Vehicle While Intoxicated and Driving While Suspended.

Affirmed.

NAJAM, J., and DARDEN, J., concur.