## MEMORANDUM DECISION




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# IN THE COURT OF APPEALS OF INDIANA

Brian Keith Liggins,
*Appellant-Defendant,*

v.

State of Indiana,
*Appellee-Plaintiff*

September 29, 2021

Court of Appeals Case No. 21A-CR-626

Appeal from the Marion Superior Court

The Honorable Helen W. Marchal, Judge

Trial Court Cause No. 49D26-2001-F6-1373

**Crone, Judge.**

## Case Summary

[1] Brian Keith Liggins challenges the sufficiency of the evidence to support his conviction for level 6 felony operating while intoxicated (OWI) with endangerment. We affirm.

## Facts and Procedural History

[2] At 4:31 a.m. on January 12, 2020, Indianapolis Metropolitan Police Department Officer Jessica Russell responded to a report of a personal injury accident in an alley near Washington and Rural Streets. Two minutes later, she arrived in the alley and saw a car "wrecked into [a] piece of furniture," nearly touching a garage on one side, and facing in a direction opposite the row of residents' parking spots. Tr. Vol. 2 at 15, 49. She noticed that the vehicle's brake lights and headlights were on and the engine was running. She discovered Liggins in the driver's seat, which was in a semi-reclined position. The vehicle was in park, and Liggins was unconscious and had his foot on the brake. Officer Russell tried to awaken him for approximately "[f]orty-five seconds to a minute." *Id*. at 21. When he awoke, Liggins was unable to explain what he was doing and made nonsensical utterances. Officer Russell "could smell the alcoholic beverages coming from him" and noticed that "he was trying to fiddle for his I.D. card." *Id*. at 22. She ordered him out of his vehicle, and as he attempted to get up and walk around to the back of it, "he was continuously falling into the side, the backdoor, [and] the trunk." *Id*. at 21.

[3] Meanwhile, an ambulance arrived. Liggins was taken over to it but refused any treatment from emergency medical personnel. Officer Russell conducted a horizontal gaze nystagmus test, which Liggins failed. All the while, he was swaying, and the officer thought that he might fall on her or fall and injure himself, so she did not conduct the walk-and-turn or the one-leg-stand tests. She advised him of his *Miranda* rights and implied consent. He told her that he and his wife had argued and that he had left the house after she slapped him. He said that he then drove to his friend's apartment, in a building adjacent to the alley, where he drank and played cards. He admitted that he had consumed two iced drinks or beers and two half-pints of vodka. He agreed to a blood draw, which showed an alcohol concentration equivalent (ACE) of .216.

[4] The State charged Liggins with level 6 felony operating a vehicle while suspended as a habitual traffic violator (HTV), level 6 felony OWI with endangerment, level 6 felony OWI with an ACE of .08 or more, and an enhancement based on his status as a habitual vehicular substance offender (HVSO). During his bench trial, Liggins stipulated to the results of the blood draw and to his criminal driving history, which included his current license suspension. At the close of the State's evidence, Liggins moved for an involuntary dismissal, which the trial court took under advisement and ultimately denied. The trial court convicted Liggins as charged on the HTV and OWI counts, and Liggins pled guilty to his HVSO status based on his previous unrelated vehicular substance convictions in November 2018 and August 2016. The trial court merged the OWI with an ACE of .08 due to

double jeopardy concerns and entered judgment of conviction against Liggins for level 6 felony OWI with endangerment, level 6 felony operating as an HTV, and his HVSO enhancement.

[5] The trial court sentenced Liggins to concurrent 545-day terms for his HTV and OWI convictions, with 180 days served on home detention and the remainder suspended to probation. For the HVSO enhancement, the court extended probation by 365 days, with 180 days served on home detention and ten days served in the Marion County Jail. Liggins now appeals his conviction for OWI with endangerment. Additional facts will be provided as necessary.

## Discussion and Decision

[6] Liggins challenges the sufficiency of the evidence to support his conviction for level 6 felony OWI with endangerment. When reviewing a challenge to the sufficiency of evidence, we neither reweigh evidence nor judge witness credibility. *Gibson v. State*, 51 N.E.3d 204, 210 (Ind. 2016), *cert. denied* (2017). Rather, we consider only the evidence and reasonable inferences most favorable to the verdict and will affirm the conviction unless no reasonable factfinder could find the elements of the offense proven beyond a reasonable doubt. *Winters v. State*, 132 N.E.3d 46, 49 (Ind. Ct. App. 2019). The evidence need not "overcome every reasonable hypothesis of innocence." *Willis v. State*, 27 N.E.3d 1065, 1067 (Ind. 2015) (quoting *Meehan v. State*, 7 N.E.3d 255, 257 (Ind. 2014)). "[W]here the evidence is such that the trier of fact might reasonably draw two opposing inferences, it is not within the province of [an appellate]

court to determine which inference should control. This determination is left to the trier of fact." *Young v. State*, 257 Ind. 173, 177, 273 N.E.2d 285, 287 (1971).

[7] To convict Liggins of OWI with endangerment, the State was required to demonstrate that he (1) operated a vehicle, (2) while intoxicated, (3) in a manner that endangered a person. Ind. Code § 9-30-5-2(b). To convict him of this offense as a level 6 felony, the State also was required to establish that he had a previous OWI conviction within seven years of the date of the current offense. Ind. Code § 9-30-5-3(a). Liggins admitted to his November 2018 OWI conviction and does not challenge his state of intoxication; he stipulated to his blood test result showing an ACE of .216 and admitted to having consumed two half-pints of vodka and two frozen drinks/beers in the couple hours preceding his arrest.

[8] Liggins focuses his sufficiency challenge on the element of "operating." Indiana Code Section 9-13-2-117.5 defines "operate" in pertinent part as "to navigate or otherwise be in actual physical control of a vehicle ...." "In a case where a vehicle is discovered motionless with the engine running, whether a person sitting in the driver's seat 'operated' the vehicle is a question of fact, answered by examining the surrounding circumstances." *Mordacq v. State*, 585 N.E.2d 22, 24 (Ind. Ct. App. 1992). "[T]o show 'the defendant merely started the engine of the vehicle is not sufficient evidence to sustain a conviction for operating a vehicle while intoxicated. There must be some direct or circumstantial evidence to show that defendant operated the vehicle.'" *Id.* (quoting *Hiegel v. State*, 538 N.E.2d 265, 268 (Ind. Ct. App. 1989), *trans. denied*).

[9] Liggins maintains that before he consumed alcoholic beverages, he chose to park his vehicle crossways in the alley, up against furniture, where Officer Russell ultimately found him. He claims that after parking, he entered his friend's apartment in an adjacent building, consumed two half-pints of vodka and two frozen drinks/beers, and decided to sleep in his vehicle. He points to his partially reclined driver's seat as evidence of his intent to sleep. However, our standard of review prohibits us from reweighing evidence and drawing inferences in his favor. The evidence most favorable to the judgment shows as follows: Officer Russell received a dispatch and arrived at the alley approximately two minutes later. Tr. Vol. 2 at 15. Once there, she observed that the brake lights and headlights were on and that Liggins was unconscious in the driver's seat, with his foot on the brake. *Id*. at 20. His vehicle was parked across the parking area perpendicular to the residents' vehicles and appeared to have struck some furniture. *Id*. at 15; *see also* State's Ex. 12 (photograph depicting vehicle with its front end up against sofa or chair).

[10] Moreover, surrounding circumstances such as the 4:31 a.m. dispatch and Officer Russell's prompt arrival in the alley support a reasonable inference that someone had very recently seen or heard something that merited a call for emergency help. The orientation of Liggins's vehicle and its proximity to the furniture support a reasonable inference that Liggins did not intend to park there. Finally, the fact that he had his foot on the brake is probative of recent operation. The evidence is sufficient to establish that Liggins "operated" his vehicle while intoxicated.

[11] At the close of his brief, Liggins challenges the evidence supporting the endangerment element. The trial court made a factual determination that the position of Liggins's vehicle in the alley could have proven dangerous to himself or another vehicle passing through. "The element of endangerment can be established by evidence showing that the defendant's condition or operating manner could have endangered any person, including the public, the police, or the defendant." *Dorsett v. State*, 921 N.E.2d 529, 532 (Ind. Ct. App. 2010). "Endangerment does not require that a person other than the defendant be in the path of the defendant's vehicle or in the same area to obtain a conviction." *Id*.

[12] Liggins claims that his vehicle was not situated in a way that endangered himself or others. As support, he points to Officer Russell's testimony that "there [wa]s still enough room that cars could bypass his vehicle." Tr. Vol. 2 at 27. Citing State's Exhibits 12 and 15, he claims that "the discarded furniture was farther out into the alley than [his] vehicle." Appellant's Br. at 15. This latter claim ignores the fact that State's Exhibit 12 depicts the front of his vehicle up against the furniture, which raises an inference that he struck the furniture and affected its position. As for the former, Officer Russell was dispatched to the alley based on a call for emergency help and observed Liggins's vehicle "wrecked into the piece of furniture that was there." Tr. Vol. 2 at 15. A one-car collision is within the definition of endangerment to self, and we decline Liggins's invitation to reweigh evidence and reassess credibility. Accordingly, we affirm his conviction.

[13] Affirmed.

Bailey, J., and Pyle, J., concur.