MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Daniel Ross Lytle, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 9, 2022

Court of Appeals Case No. 22A-CR-560

Appeal from the Noble Superior Court

The Honorable Steven C. Hagen, Judge

Trial Court Case No. 57D02-2007-CM-445

Shepard, Senior Judge.

[1] In appealing his conviction for Class C misdemeanor operating a vehicle while intoxicated,[1] Daniel Ross Lytle, Jr. argues that the trial court abused its discretion in the admission of evidence and by entering an inadequate sentencing statement. Finding that the evidence was properly admitted, we affirm. As to the sentencing statement, we agree Lytle is entitled to know the particulars of the costs assessed against him and remand the matter for a more detailed statement. Affirmed in part and remanded in part.

Facts and Procedural History

[2] On July 25, 2020, Kendallville Police Department Officers Ben Jones and Matthew Gillison responded to a dispatch that Lytle was "[d]oing donuts with" his "black Dodge Charger," and "tearing up the park grass" at Bixler Lake Park. Tr. Vol. II, pp. 215-16. By the time officers arrived, Lytle's Charger was parked in his driveway near a park entrance. The officers observed that the Charger's "engine was warm" and there were "tire marks in the grass," that the grass had been torn up, and there were "a lot of grass clippings underneath the wheel wells" of Lytle's Charger. *Id.* at 227, 230, 247. Officer Jones knocked on Lytle's door, but Lytle did not answer.

[3] Officer Jones was called away to respond to another dispatch, but Officer Gillison remained in his patrol car parked down the street. As he waited, he observed Lytle drive toward him in the Charger; so, he initiated a traffic stop.

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[1] Ind. Code §9-30-5-2(a) (2001).

After stopping, Lytle slowly exited and placed his hands on the roof of his car, remarking "[a]we, you got me." Tr. Vol. III, p. 2. Officer Gillison observed that Lytle's speech was slurred, and both officers (Officer Jones had since returned) noticed a "very strong heavy odor of alcohol" coming from him. *Id.* at 3; Tr. Vol. II, p. 232. When asked how much alcohol he had to drink, Lytle responded "a little bit." Tr. Vol. III, p. 54.

[4] Officer Gillison read Indiana's implied consent law to Lytle and asked him to submit to a portable breath test. During testing, which indicated the presumptive presence of alcohol, Lytle commented it would be "amazing if [he] tested .09," also commenting at another point that he was "f***ed." *Id.* at 8, 35. Next, Officer Gillison asked Lytle to submit to a blood draw to which he agreed. Officer Gillison conducted a limited pat down of Lytle prior to transporting him to the hospital. Lytle told him "that he might have a bowl in his pocket." *Id.* at 7. Gillison testified at trial that a bowl is "[a] smoking device, normally for marijuana." *Id.* After arriving at the hospital, Lytle withdrew his consent for the draw, saying "he would like to race [Gillison] when he's more sober." *Id.* at 13. Gillison transported Lytle to the Noble County Jail.

[5] The State charged Lytle with Class C misdemeanor operating a vehicle while intoxicated and a jury found him guilty as charged. The sentence was 30 days in the Noble County Jail, and the court imposed costs of $385 and a $10 fine.

Discussion and Decision

I. Admission of Evidence

[6] Lytle argued at trial that Officer Gillison's testimony that Lytle believed that he had a marijuana bowl in his pocket and testimony about the bowl's use was irrelevant to the charge. We review the court's decision as to the admissibility of evidence for an abuse of discretion, which occurs only if the decision is clearly against the logic and effect of the facts and circumstances. *Jones v. State*, 957 N.E.2d 1033, 1037 (2011). We will not reweigh evidence and will consider any conflicting evidence in favor of the court's ruling. *Id.*

[7] Lytle suggests that his relevance objection at trial is sufficient to preserve this issue for our review. *See Jones v. State*, 708 N.E.2d 37, 39 (Ind. Ct. App. 1999) ("An Evid. R. 404(b) objection is simply a specific form of a relevancy objection). However, *Jones* involved the evidence "of a defendant's prior convictions." *Id.* Here, the challenged evidence was Lytle's disclosure about the bowl and Officer Jones' testimony explaining the bowl's possible uses, not evidence of "a crime, wrong, or other act," such as a prior conviction under Indiana Evidence Rule 404(b).

[8] Nonetheless, the only element in dispute at trial was whether Lytle was intoxicated, which is statutorily defined in part to mean, under the influence of alcohol, a controlled substance, or a drug other than alcohol or a controlled substance "so that there is an impaired condition of thought and action and the loss of normal control of a person's faculties." Ind. Code §9-13-2-86 (2013).

Thus, proof of a blood alcohol content is not required to establish intoxication. *Ballinger v. State*, 717 N.E.2d 939, 943 (Ind. Ct. App. 1999).

[9] Evidence of impairment may be established by: "(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;[and] (7) slurred speech." *Id.* Both officers testified that Lytle smelled strongly of alcohol, and Lytle admitted to officers that he had consumed alcohol. Lytle's speech was slurred, and he made statements such as "[a]we, you got me," that it would be "amazing if [he] tested .09," and that he would like to race Officer Gillison sometime when he was "a little more sober," statements one likely would not make to law enforcement officers when not impaired. Tr. Vol. II, pp. 2, 8, 13-14, 54. Given this overwhelming evidence of Lytle's guilt, it is highly unlikely that the reference to the bowl had a probable impact on the jury's verdict finding Lytle guilty. *See Messel v. State*, 80 N.E.3d 230, 232 (Ind. Ct. App. 2017) (erroneous admission of evidence is harmless where "the conviction is supported by substantial independent evidence of guilt so as to satisfy the reviewing court that there is no substantial likelihood the questioned evidence contributed to the conviction."), *trans. denied.* We find no error, let alone reversible error, here.

II. Sentencing Statement

[10] Next, Lytle challenges the adequacy of the court's statement supporting the imposition of costs. The court imposed "costs of $385.50," as reflected in both

the written and oral sentencing statement without identifying the bases for the costs. Tr. Vol. III, p. 84; Appellant's App. Vol. II, p. 92. Lytle acknowledges that a portion of the fees appear to be authorized by statute ($120, with which we agree), and the State suggests statutory authority for the remainder of the challenged costs. *See* Appellant's Br. p.17; Appellee's Br. p. 16.

[11] A trial court has discretion in sentencing a defendant and its decision will be reversed only where a manifest abuse of discretion has been shown. *Banks v. State*, 847 N.E.2d 1050, 1051 (Ind. Ct. App. 2006), *trans. denied.* "If the trial court imposes fees within the statutory limits, there is no abuse of discretion." *Id.* Here, we simply cannot tell from the record if there has been an abuse of discretion as to the amount beyond the $120 criminal cost fee authorized by Indiana Code section 33-37-4-1(a) (2018). Lytle is entitled to a more particularized statement, and we remand to the trial court for more detail.

Conclusion

[12] In light of the above, we affirm the trial court's decision on the admissibility of the evidence and its imposition of $120 in costs. However, we remand for a more detailed sentencing statement supporting imposition of other costs.

[13] Affirmed in part, and remanded in part.

Vaidik, J., and Weissmann, J., concur.