

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



ATTORNEY FOR APPELLANT

Scott H. Duerring
South Bend, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Nicole D. Wiggins
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Evelyn R. Cross-Malone,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 14, 2023

Court of Appeals Case No.
23A-CR-1112

Appeal from the St. Joseph
Superior Court

The Honorable Stephanie E.
Steele, Judge

Trial Court Cause No.
71D01-2003-F5-84

Memorandum Decision by Judge Bailey
Judges May and Felix concur.

Bailey, Judge.

Case Summary

- [1] Evelyn R. Cross-Malone appeals her conviction, following a jury trial, of causing serious bodily injury when operating a vehicle with an alcohol concentration equivalent (“ACE”) of .08 or more, as a Level 5 felony.¹ The only issue she raises is whether the State presented sufficient evidence to support the conviction. We affirm.

Facts and Procedural History

- [2] Cross-Malone and Dorian Harris were in a romantic relationship and lived together. On March 29, 2020, at around midnight, Cross-Malone called 9-1-1 through the Bluetooth connection in her vehicle and reported that Harris had struck her and taken her phone and was “walking away down the street.” Tr. v. II at 87. Officer Jacob Craft arrived minutes later and observed Cross-Malone walking down the street away from her vehicle. Cross-Malone appeared intoxicated, was staggering “a little,” and appeared to have vomited on her shirt. Tr. v. I at 90. Officer Craft made contact with Cross-Malone, and she immediately stated, “He need [sic] an ambulance. He need [sic] an ambulance.” *Id.* at 91. Cross-Malone then pointed to Harris lying on the street near a curb and stated, “I hit him with my car.” *Id.*

¹ Ind. Code § 9-30-5-4(a)(1).

- [3] Harris was unconscious and had bleeding wounds to his head, chest, and buttocks. There were fresh tire marks leading from the street to Harris's body and an obvious scrape mark on the curb. Cross-Malone's vehicle was a couple of hundred yards away from Harris's body. Cross-Malone told Officer Craft that she had drunk "seven to eight shots" of alcohol. *Id.* at 92. Officer Joseph Querciagrossa, a Drug Recognition Expert, subsequently examined and conducted sobriety tests on Cross-Malone and concluded that she was under the influence of alcohol and THC. Cross-Malone consented to a blood test that revealed that her ACE was .09% and that she had consumed THC.
- [4] Harris was transported to the hospital in serious condition and was placed on a ventilator. Harris suffered multiple life-threatening injuries including an open fibula fracture, a spinal fracture, and a punctured and bleeding lung. He underwent two surgical procedures and remained hospitalized for approximately one week.
- [5] The State charged Cross-Malone with Count I, Causing Serious Bodily Injury When Operating a Vehicle While Intoxicated, as a Level 5 Felony;² Count II, Causing Serious Bodily Injury when Operating a Vehicle with an ACE of .08 or more, a Level 5 Felony; and Count III, Causing Serious Bodily Injury When Operating a Vehicle With A Schedule I or II Substance in Blood, as a Level 5

² I.C. § 9-30-5-4(a)(3).

Felony.³ At trial, two officers trained in crash reconstruction testified that the multiple sets of tire marks at the scene demonstrated that Cross-Malone struck and knocked down Harris with her vehicle, drove over the curb, made a U-turn, drove back in the direction of Harris, and drove over Harris's body with her vehicle. Commander Tim Spencer testified that the marks on the rim of Cross-Malone's vehicle matched the scrape mark on the curb next to Harris's body and that mud and grass on Cross-Malone's tires matched the tire marks. He stated that grime wiped off of Cross-Malone's vehicle near the passenger side mirror indicated that she had struck Harris near the curb as she was traveling away from her house. The lack of damage to the passenger-side mirror, hood, bumper, grill, and windshield of Cross-Malone's vehicle indicated that she hit Harris with her vehicle a second time while he was lying on the ground. Commander Spencer concluded that Cross-Malone had driven her vehicle over the curb at least twice, the first time hitting and knocking over Harris with the car, then turning around and driving back over the curb to drive over Harris's body. Commander Spencer testified that the car broke Harris's back and leg when Cross-Malone ran over him with it.

[6] Cross-Malone claimed self-defense, asserting that Harris had attempted to enter her vehicle, and she was trying to “defend[] herself” and “escape[]” from Harris. Tr. v. II. at 134. Cross-Malone testified that she “hit the gas” to get away from Harris but claimed that she did not see where Harris was when she

³ I.C. § 9-30-5-4(a)(2).

did so. *Id.* at 90-91. In closing, the defense argued that Harris “was run over because of his own fault, stupidity, intoxication, and that’s reasonable doubt.” *Id.* at 129-30.

- [7] The jury convicted Cross-Malone of all three counts as charged. The trial court vacated two of the convictions at sentencing and entered judgement of conviction for Count II, Causing Serious Bodily Injury when Operating a Vehicle with an ACE of .08 or more, a Level 5 Felony. The court sentenced Cross-Malone to two years executed and two years suspended to probation. This appeal ensued.

Discussion and Decision

- [8] Cross-Malone contends that the evidence is insufficient to support her conviction. Our standard of review in a sufficiency of the evidence claim is clear:

[W]e examine only the probative evidence and reasonable inferences that support the verdict. We do not assess witness credibility, nor do we reweigh the evidence to determine if it was sufficient to support a conviction. Under our appellate system, those roles are reserved for the finder of fact. Instead, we consider only the evidence most favorable to the trial court ruling and affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.

Lock v. State, 971 N.E.2d 71, 74 (Ind. 2012) (citations and quotation marks omitted).

[9] To prove Cross-Malone committed the crime of Causing Serious Bodily Injury when Operating a Vehicle with an ACE of .08 or more, the State was required to prove that (1) Cross-Malone (2) caused serious bodily injury (3) to Harris (4) by operating a vehicle with an ACE of .08 or more. Ind. Code § 9-30-5-4(a)(1). The caselaw makes it clear that the State “need not establish a causal link between a driver’s intoxication and the fact that injury resulted from his driving.” *Brown v. State*, 911 N.E.2d 668, 674 (Ind. Ct. App. 2009) (citing *Micinski v. State*, 487 N.E.2d 150, 154 (Ind. 1986)), *trans. denied*.⁴ Rather, the State needed to prove only that (1) Cross-Malone operated the vehicle with an ACE of .08 or more, and (2) Cross-Malone’s conduct in operating the vehicle caused the injury to Harris. *Id.*; *see also Bunting v. State*, 731 N.E.2d 31, 34 (Ind. Ct. App. 2000) (citing *Micinski*, 487 N.E.2d at 154) (“[I]f the driver’s conduct caused the injury, she commits the crime; if someone else’s conduct caused the injury, she is not guilty.”), *trans. denied*.

[10] Here, Cross-Malone does not challenge the fact that she was operating a vehicle with an ACE of .08 or more, and the evidence establishes that fact. Moreover, Cross-Malone herself admitted to officers at the scene of the crime and again at trial that she struck Harris with her vehicle. In addition, two officers trained in crash reconstruction testified that tire marks, marks to Cross-Malone’s vehicle, and scrape marks on the curb next to Hariss’s body demonstrate that Cross-

⁴ Our Supreme Court initially granted transfer and vacated the opinion in *Brown*, 919 N.E.2d 560, but subsequently noted that transfer was “improvidently granted,” and denied transfer, 929 N.E.2d 794.

Malone struck and knocked down Harris with her vehicle, made a U-turn, drove back toward Harris, and drove over Harris's body as he was laying on the ground. And there was ample, uncontradicted evidence that Harris sustained serious bodily injuries resulting from Cross-Malone driving over his prone body with her car. That is sufficient evidence from which the jury could reasonably conclude that Cross-Malone operated her vehicle with an ACE of .08 or more and her conduct in operating the vehicle caused Harris's serious bodily injuries. In arguing that the evidence instead shows that Harris caused his own injuries, Cross-Malone cites only her own testimony that Harris tried to get in the car while she was trying to get away. However, this is merely a request that we reweigh the evidence and judge witness credibility, which we may not do. *See Lock*, 971 N.E.2d at 74.

[11] The evidence was sufficient to support the jury's verdict that Cross-Malone caused serious bodily injury to Harris by operating a vehicle with an ACE of .08 or more, as proscribed by Indiana Code Section 9-30-5-4(a)(1).

[12] Affirmed.

May, J., and Felix, J., concur.