MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

Nicholas Skidmore,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

March 5, 2024

Court of Appeals Case No.
23A-CR-2300

Appeal from the Marion Superior Court

The Honorable Clark H. Rogers, Judge

Trial Court Cause No.
49D25-2206-F6-14729

Memorandum Decision by Judge Bailey
Judges Crone and Pyle concur.

Bailey, Judge.

Case Summary

[1] Nicholas Skidmore appeals his conviction for Operating a Vehicle While Intoxicated, as a Level 6 felony.[1] He presents the issue of whether his conviction is supported by sufficient evidence. We affirm.

Facts and Procedural History

[2] At approximately 7:45 a.m. on June 1, 2022, Indianapolis Metropolitan Police Department Officer John Guilfoy was dispatched to a liquor store to conduct a welfare check on a man – later identified as Skidmore – whom patrons had observed slumped over inside his vehicle with the engine running. When he arrived, Officer Guilfoy observed Skidmore's truck parked perpendicular to some designated parking spots and blocking four or five other parking spots. The truck was in the north section of the lot, close to an entrance from State Road 135, and parallel to Morris Street.

[3] Officer Guilfoy approached Skidmore's truck and loudly stated: "It's the police," receiving no response. (Tr. Vol. II, pg. 50.) Officer Guilfoy announced himself four or five more times before Skidmore barely responded. Skidmore did not appear to be "very aware of his surroundings," and Officer Guilfoy,

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[1] Ind. Code § 9-30-5-2(a)-(b); I.C. § 9-30-5-3(a)(1).

suspecting that Sidmore was impaired by narcotics, called for a medic unit. (*Id.*) Emergency medical technicians arrived, examined Skidmore, and advised Officer Guilfoy that Skidmore need not be hospitalized.

[4] After the medical clearance, Officer Guilfoy requested that Skidmore exit his vehicle. Skidmore complied with the command but was "verbally uncooperative." (*Id.* at 54.) Detecting some signs of intoxication, Officer Guilfoy called for a "DWI unit." (*Id.* at 52.) Officer Craig Wildauer responded to the call and administered field sobriety tests to Skidmore. Skidmore failed each test. The officers then transported Skidmore to Eskenazi Hospital for a blood draw. Upon arrival at the hospital, Skidmore informed Officer Wildauer that he had snorted Xanax and was taking medications including Abilify and Trazadone. The results of a chemical blood analysis were positive for methamphetamine, amphetamine, and aminoclonazepam (a metabolite of Xanax). Skidmore had a blood alcohol content of .056.

[5] On June 2, the State charged Skidmore with Operating a Vehicle While Intoxicated, as a Class A misdemeanor; Operating a Vehicle While Intoxicated as a Class C misdemeanor; Possession of Paraphernalia as a Class C misdemeanor;[2] and Operating a Vehicle with an Open Alcoholic Beverage Container, a Class C infraction.[3] The State also alleged that Skidmore had prior

[2] I.C. § 35-48-4-8.3.

[3] I.C. § 9-30-15-3.

offenses to support elevation of the Operating While Intoxicated charges. On February 9, the State charged Skidmore with Operating a Vehicle with a Schedule I or II Controlled Substance or its metabolite in his blood, a Class C misdemeanor.[4]

[6] On July 20, 2023, Skidmore was tried in a bench trial. He was acquitted of the possession and open container charges. The trial court found that the State had proved Skidmore's commission of the remaining offenses and Skidmore stipulated to having a prior offense of Operating While Intoxicated. However, due to double jeopardy concerns, the trial court vacated the convictions other than one count of Driving While Intoxicated, as a Level 6 felony. On August 31, Skidmore was sentenced to 365 days incarceration, with 356 days suspended to probation. He now appeals.

Discussion and Decision

[7] To convict Skidmore of Operating a Vehicle While Intoxicated, as charged, the State was required to prove beyond a reasonable doubt that Skidmore, while intoxicated, operated a vehicle, endangering a person. I.C. § 9-30-5-2(a)-(b). The offense is elevated to a Level 6 felony if the accused has a prior conviction, within seven years, for Operating a Vehicle While Intoxicated. I.C. § 9-30-5-3(a)(1). Skidmore concedes that he was intoxicated on June 1, 2022, and had a

[4] I.C. § 9-30-5-1(c).

prior conviction to support enhancement. He argues only that the State failed to prove that he "operated" his vehicle while he was intoxicated.

[8] The standard by which we review a claim of insufficient evidence to support a conviction is well-settled:

> When reviewing a challenge to the sufficiency of the evidence underlying a criminal conviction, we neither reweigh the evidence nor assess the credibility of witnesses. *Wright v. State*, 828 N.E.2d 904, 905-06 (Ind. 2005). The evidence—even if conflicting—and all reasonable inferences drawn from it are viewed in a light most favorable to the conviction. *Rohr v. State*, 866 N.E.2d 242, 248 (Ind. 2007). "[W]e 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." *Davis v. State*, 813 N.E.2d 1176, 1178 (Ind. 2004).

Bailey v. State, 979 N.E.2d 133, 135 (Ind. 2012).

[9] The word "operate" means to "navigate or otherwise be in actual physical control of a vehicle, motorboat, off-road vehicle, or snowmobile." I.C. § 9-13-2-117.5(a). When an accused has been found sleeping in a motionless vehicle with the engine running, there must be direct or circumstantial evidence to show that the defendant operated the vehicle. *Custer v. State*, 637 N.E.2d 187, 188 (Ind. Ct. App. 1994). Whether a person sitting in the driver's seat "operated" the vehicle is a question of fact to be determined by examining the surrounding circumstances. *Mordacq v. State*, 585 N.E.2d 22, 24 (Ind. Ct. App. 1992).

[10] We have considered the following factors that could be used to determine whether a person "operated" a vehicle: "(1) the location of the vehicle when it is discovered; (2) whether the car was moving when discovered; (3) any additional evidence indicating that the defendant was observed operating the vehicle before he or she was discovered; and (4) the position of the automatic transmission." *Crawley v. State*, 920 N.E.2d 808, 812 (Ind. Ct. App. 2010), *trans. denied*. This is not an exclusive list, and "[a]ny evidence that leads to a reasonable inference should be considered." *Id*.

[11] Skidmore contends that, because his truck was entirely within the parking lot, the evidence suggests only that he "got into a vehicle and started the engine" as opposed to driving the vehicle or being "in actual physical control of it on a highway." Appellant's Brief at 10. Skidmore directs our attention to two cases in which panels of this Court have found that the State failed to prove the "operation" of a vehicle: *Hiegel v. State*, 538 N.E.2d 265 (Ind. Ct. App. 1989), *trans. denied,* and *Clark v. State*, 611 N.E.2d 181 (Ind. Ct. App. 1993), *trans. denied*.

[12] In *Hiegel*,

> [o]n April 1, 1988 at approximately 10:10 P.M., a police officer found Hiegel in his car which was parked in the parking lot of a tavern. The lights of the vehicle were on and the engine was running as was the vehicle's heater. The vehicle was in "park" and although Hiegel was found on the driver's side of the vehicle, he was asleep with the seat reclined to an almost supine position. Additionally, the defendant's trousers were down around his knees and the driver's door was open.

538 N.E.2d at 266. A subsequent "breathalizer test result was .14%." *Id*.

[13] Concluding that the evidence was insufficient to prove that Hiegel operated the vehicle, the court stated:

> [s]howing that 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. There is no inference present in this case that Hiegel operated his vehicle while intoxicated.

Id. at 268.

[14] In *Clark*, a law enforcement official discovered the defendant sleeping in a car at an apartment complex. *Id*. at 181. Clark was sitting in the driver's seat, the engine was running, the car lights were on, and the transmission was in park. The car was sitting in a parking spot with the front end sticking into the roadway going through the apartment complex. *Id*. This Court found the fact that Clark's vehicle "was parked in a parking space, however inartfully," was not evidence to support a conclusion that he had been operating the car. *Id*. at 182.

[15] In sum, there were circumstances to suggest that the defendants in those cases could have parked while sober, become intoxicated nearby, returned to their vehicles, and fallen asleep instead of driving away. But unlike in *Hiegel* and *Clark*, here there is circumstantial evidence which tends to show that Skidmore arrived at the vehicle's location while he was intoxicated. Skidmore's vehicle

was not parked in a parking space at all; rather, it was perpendicular to some spaces and blocking others. It was on the parking lot but "toward the roadway" and in a "lane of travel" that patrons would use to enter and leave the liquor store lot. (Tr. Vol. II, pg. 56.) This raises an inference that Skidmore drove to the parking lot in an impaired state such that he did not properly park and, indeed, impeded traffic flow. Also, Skidmore was found with his seatbelt secured on his person. There is sufficient circumstantial evidence from which the trier of fact could conclude beyond a reasonable doubt that Skidmore operated the motor vehicle.

Conclusion

[16] Sufficient evidence supports Skidmore's conviction.

[17] Affirmed.

Crone, J., and Pyle, J., concur.

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