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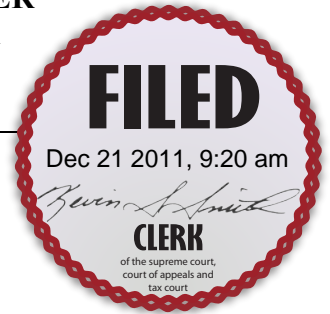
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**IN THE
COURT OF APPEALS OF INDIANA**



HANS MALDONADO,)
)
Appellant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee.)

No. 29A05-1104-CR-231

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable Gail Z. Bardach, Judge
Cause No. 29D06-1009-CM-4452

December 21, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Hans Maldonado (“Maldonado”) was convicted in Hamilton Superior Court of Class C misdemeanor operating a vehicle while intoxicated (“OWI”). Maldonado appeals and argues that the State presented insufficient evidence to support his conviction. We affirm.

Facts and Procedural History

On August 28, 2010, Officer Mike Janes (“Officer Janes”) of the Fishers Police Department was conducting patrol duties as part of Operation Pull Over, a grant-funded, law enforcement program geared toward apprehending individuals driving under the influence of alcohol. Shortly after midnight, Officer Janes observed a vehicle traveling fifty-seven miles per hour in an area with a posted speed limit of forty miles per hour. Officer Janes then initiated a traffic stop and made contact with the driver, who he identified as Maldonado. While speaking to Maldonado, Officer Janes detected the odor of an alcoholic beverage on Maldonado’s breath and noticed that Maldonado had “red, watery eyes.” Tr. p. 12. Officer Janes also noticed an unsealed bottle of wine on the vehicle’s passenger seat. When Officer Janes asked Maldonado if he had been drinking, Maldonado admitted to consuming a glass of wine prior to driving.

Officer Janes then administered five field sobriety tests. Maldonado passed the first two field sobriety tests, but failed the remaining three. Officer Janes then read the implied consent law to Maldonado twice, but Maldonado refused to submit to a chemical breath test.¹ Maldonado was subsequently transported to the Hamilton County Jail.

¹ Officer Janes then applied for and obtained a search warrant to take a sample of Maldonado’s blood. Maldonado was then transported to the Fishers Police Department, where Officer Janes, who is also a certified paramedic,

Thereafter, an inventory search of Maldonado's vehicle revealed a bottle of wine that had been uncorked, along with a glass of wine that had been spilled on the vehicle's floorboard.

As a result of these events, the State charged Maldonado with Class C misdemeanor OWI. A bench trial was held on March 11, 2011, and Maldonado was found guilty as charged. Maldonado now appeals.

Discussion and Decision

Maldonado argues that the State presented insufficient evidence to support his Class C misdemeanor OWI conviction. In reviewing a challenge to the sufficiency of the evidence, we neither reweigh the evidence nor judge the credibility of witnesses. Atteberry v. State, 911 N.E.2d 601, 609 (Ind. Ct. App. 2009). Instead, we consider only the evidence supporting the conviction and the reasonable inferences to be drawn therefrom. Id. If there is substantial evidence of probative value from which a reasonable trier of fact could have drawn the conclusion that the defendant was guilty of the crime charged beyond a reasonable doubt, then the judgment will not be disturbed. Baumgartner v. State, 891 N.E.2d 1131, 1137 (Ind. Ct. App. 2008).

To establish that Maldonado committed Class C misdemeanor OWI, the State was required to prove that Maldonado "operate[d] a vehicle while intoxicated." Ind. Code §

conducted the blood draw. However, it is unclear whether the blood sample was ever analyzed, and no evidence concerning the results of any such analysis was offered into evidence at trial.

9-30-5-2 (2004). On appeal, Maldonado asserts that the State presented insufficient evidence to establish that he was intoxicated at the time of the traffic stop. We disagree.

“Intoxicated” has been defined by statute as being under the influence of alcohol “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 (2004). However, the State need not present separate proof of impairment of action, impairment of thought, and loss of control of faculties to establish an individual’s intoxication. Curtis v. State, 937 N.E.2d 868, 873 (Ind. Ct. App. 2010). Rather, “a person’s unfitness to operate a vehicle, i.e., his impairment, is to be determined by considering his capability as a whole, not component by component, such that impairment of any of the three abilities necessary for the safe operation of a vehicle equals impairment within the meaning of I.C. § 9-30-5-2.” Id. Moreover, proof of blood alcohol content is not required to establish intoxication; it is sufficient to show that the defendant was impaired. Gatewood v. State, 921 N.E.2d 45, 48 (Ind. Ct. App. 2010), trans. denied. Impairment may be established by evidence of: “(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. (quoting Ballinger v. State, 717 N.E.2d 939, 943 (Ind. Ct. App. 1999)) (alteration in original).

We conclude that the State presented sufficient evidence to establish Maldonado’s intoxication. Specifically, the State established that Maldonado was driving fifty-seven miles per hour in an area with a posted speed limit of forty miles per hour. When Officer

Janes conducted the traffic stop, he detected the odor of an alcoholic beverage on Maldonado's breath and observed that Maldonado had "red, watery eyes." Tr. p. 12. When Officer Janes asked Maldonado if he had been drinking, he admitted to consuming a glass of wine prior to driving. Officer Janes then administered five field sobriety tests, three of which Maldonado failed. A subsequent inventory search of Maldonado's vehicle revealed a bottle of wine that had been uncorked, along with a glass of wine that had been spilled on the vehicle's floorboard. This evidence was sufficient to establish that Maldonado was intoxicated, and Maldonado's arguments to the contrary are merely requests to reweigh the evidence and judge the credibility of witnesses, which we will not do on appeal.

Affirmed.

BAILEY, J., and CRONE, J., concur.