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**IN THE
COURT OF APPEALS OF INDIANA**

JESSICA STAMPS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A05-0604-CR-222

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Barbara A. Collins, Judge
Cause No. 49F08-0602-CM-30889

January 18, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Jessica Stamps appeals her conviction for operating a vehicle while intoxicated, a Class A misdemeanor. We affirm in part and vacate in part.

Issue

The sole issue Stamps raises is whether there was sufficient evidence to support her conviction.

Facts

On February 19, 2006, Indiana State Police Officer Justin Hobbs arrived on the scene of an automobile accident in Indianapolis. The vehicle involved in the accident, which was registered in Stamps's name, was lying on its side at the bottom of a shallow embankment. With the exception of the emergency personnel, Stamps was the only other person present at the scene of the accident.

Upon speaking with Stamps, Officer Hobbs noticed that she appeared to be intoxicated because she slurred her speech, smelled like alcohol, and exhibited poor manual dexterity. Stamps also had scratches on her face. Officer Hobbs then requested that Stamps perform several field sobriety tests, which she failed, and he arrested her. That same day, the State charged Stamps with operating a vehicle while intoxicated, a Class A misdemeanor, and public intoxication, a Class B misdemeanor.

The trial court tried and found Stamps guilty of both charges on March 27, 2006. Stamps's conviction for public intoxication merged with her operating while intoxicated conviction, and she received a suspended sentence of 365 days and a \$75.00 fine. Stamps appeals her conviction for operating while intoxicated.

Analysis

When presented with a challenge to the sufficiency of the evidence supporting a conviction, we will affirm unless, “considering only the evidence and reasonable inferences favorable to the judgment and neither reweighing the evidence nor judging the credibility of the witnesses, we conclude that no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.” Cooper v. State, 831 N.E.2d 1247, 1251 (Ind. Ct. App. 2005) trans. denied.

Indiana Code Section 9-30-5-2(b) prohibits operating a vehicle while intoxicated in a manner that endangers a person.¹ We conclude that the evidence is sufficient to prove that Stamps both was intoxicated and operated her vehicle in that condition.

“Intoxication may . . . be established through evidence of consumption of significant amounts of alcohol, impaired attention and reflexes, watery or bloodshot eyes, an odor of alcohol on the breath, unsteady balance, failed field sobriety tests and slurred speech.” Dunkley v. State, 787 N.E.2d 962, 965 (Ind. Ct. App. 2003). Officer Hobbs testified that he observed a strong odor of alcohol coming from Stamps and that her eyes were red, glassy, and bloodshot. He further testified that Stamps’s speech was slurred and that her balance and manual dexterity were poor. Stamps also failed the three field sobriety tests Officer Hobbs administered. The State’s evidence in this case was sufficient to prove that Stamps was intoxicated.

¹ Stamps does not argue that the State failed to sufficiently prove that she operated her vehicle in a manner that endangered another person.

Based on the circumstances surrounding the accident, it was reasonable for the trial court to infer that Stamps was the operator of the vehicle. “Circumstantial evidence alone may sustain a verdict if the circumstantial evidence supports a reasonable inference of guilt.” Loyd v. State, 787 N.E.2d 953, 959 (Ind. Ct. App. 2003). Here, Stamps was the only civilian at the scene of the accident, and she was the person to whom the vehicle was registered. Further, Stamps had sustained minor injuries, and it is reasonable to infer they were a result of being involved in the accident. This evidence is sufficient to prove that Stamps operated the vehicle

Finally, we note that the trial court merged Stamps’s convictions for public intoxication and operating while intoxicated, and we conclude that this attempt at merger is inadequate to cure the double jeopardy problem. “When two or more of the charges constitute the same offense for double jeopardy purposes, for example, the defendant may not be punished on all the charges.” Carter v. State, 750 N.E.2d 778, 780 (Ind. 2001). Our review of the trial court’s order of judgment of conviction reveals that the court entered convictions on both charges but only imposed a sentence on the operating while intoxicated conviction. We regard a judgment of conviction as punishment even where no sentence is imposed. See id. Stamps’s conviction for public intoxication must be, and is hereby vacated.

Conclusion

The State’s evidence is sufficient to support Stamps’s conviction for operating a vehicle while intoxicated. We vacate the public intoxication conviction on double jeopardy grounds. The double jeopardy problem created by Stamps’s conviction for

public intoxication was not cured by merger. We vacate the public intoxication conviction.

Affirmed in part, and vacated in part.

SULLIVAN, J., and ROBB, J., concur.