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IN THE
COURT OF APPEALS OF INDIANA

JEREMY R. HANEY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A05-0907-CR-384
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable John Marcocha, Judge
Cause No. 71D02-0801-FC-22

January 27, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Jeremy R. Haney appeals his convictions for operating a motor vehicle while privileges are forfeited for life, a class C felony;[1] and resisting law enforcement as a class D felony.[2]

We affirm.

ISSUE

Whether there is sufficient evidence to support the convictions.

FACTS

At approximately 4:30 p.m. on January 29, 2008, Walkerton Police Officer Shane Landrey was driving his marked police vehicle south on State Road 23 when his radar unit measured a northbound Pontiac's speed at "63 or 68 miles per hour" in an area with a posted speed limit of forty-five miles per hour. (Tr. 153). Officer Landrey observed that the Pontiac's driver was a thin white male with very short hair and wearing a dark-colored top.

Officer Landrey activated his emergency lights and made a U-turn, in order to initiate a traffic stop. Before he completed the U-turn, however, the Pontiac "veered off into a yard, in between two houses" and "through a person's yard." (Tr. 154). Officer Landrey activated his siren and radioed for assistance, dispatching a description of both the vehicle and its driver.

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[1] Ind. Code § 9-30-10-17.

[2] I.C. § 35-44-3-3.

Officer Landrey continued to follow the Pontiac; however, he briefly lost sight of it after it was driven into a field. Several seconds later, Officer Landrey came upon the Pontiac, which had been abandoned after having struck a tree. Although Officer Landrey did not see the driver flee the vehicle, another officer on the scene observed "a male white subject leave the vehicle" and "run in a southeasterly direction." (Tr. 187).

Soon thereafter, dispatch informed officers that a citizen had reported a person matching the driver's description running through a nearby yard. A firefighter, who had been monitoring radio traffic, then radioed that he saw a person matching the driver's description run into a tree line "a little further from where the first citizen had called in . . . ." (Tr. 159). The area was southeast of where the Pontiac had stopped.

Several officers responded. Officer Matthew Schalliol observed Haney going through some woods "at a jogging pace[.]" (Tr. 203). When Officer Landrey arrived at that location, he observed Haney "sitting behind a tree, kind of crouched down . . . ." (Tr. 160). "[H]e would pop his head out every once in a while, as if he w[ere] looking for" the officers. (Tr. 160). Haney was wearing a dark-blue jacket and appeared to have been "running for a bit." (Tr. 206). His clothes were in disarray, and he was perspiring.

Officers surrounded Haney and placed him under arrest. A subsequent investigation revealed that a woman with whom Haney had been stopped the prior summer was in the process of purchasing the Pontiac. Also, Haney did not live in the area where he was apprehended.

On January 30, 2008, the State charged Haney with Count I, operating a motor vehicle while privileges are forfeited for life, a class C felony; and Count II, resisting law enforcement as a class D felony. The trial court commenced a two-day jury trial on March 10, 2009, after which the jury found him guilty as charged. Following a sentencing hearing on May 13, 2009, the trial court sentenced Haney to concurrent sentences of five years on Count I and two years on Count II.

DECISION

Haney asserts that the evidence is insufficient to support his convictions. He argues that his convictions "rest only on circumstantial evidence of mere presence at the crime scene." Haney's Br. at 5.

> When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations and citations omitted).

We will sustain a judgment based on circumstantial evidence alone if the circumstantial evidence supports a reasonable inference of guilt. *Altes v. State*, 822 N.E.2d 1116, 1121 (Ind. Ct. App. 2005), *trans. denied*. A person's mere presence at the

crime scene with the opportunity to commit a crime is not a sufficient basis on which to support a conviction. *Brink v. State*, 837 N.E.2d 192, 194 (Ind. Ct. App. 2005), *trans. denied*. "However, presence at the scene in connection with other circumstances tending to show participation, such as . . . the course of conduct of the defendant before, during, and after the offense, may raise a reasonable inference of guilt." *Id.*

Indiana Code section 9-30-10-17 provides that "[a] person who operates a motor vehicle after the person's driving privileges are forfeited for life" commits a class C felony. Indiana Code section 35-44-3-3 provides that a person who uses a vehicle to "flee[] from a law enforcement officer after the officer has, by visible or audible means, including operation of the law enforcement officer's siren or emergency lights, identified himself or herself and ordered the person to stop," commits resisting law enforcement as a class D felony.

At trial, the State presented evidence that Officer Landrey observed a thin white male, wearing a dark-colored top, driving a Pontiac in excess of the speed limit. Another officer observed the Pontiac's driver who fit the description that Officer Landrey had broadcasted, exit the vehicle and flee southeast. Officers subsequently apprehended Haney southeast of the abandoned Pontiac. Haney matched the description of the Pontiac's driver; had no reason to be in the woods; and had a connection to the Pontiac in that he knew the person who was in the process of buying it.

Although officers could not identify Haney as the Pontiac's driver, the State presented circumstantial evidence that he operated a vehicle and used it to flee from

Officer Landrey. Furthermore, Haney's course of conduct, namely, running and hiding in the woods, raises a reasonable inference of guilt. His argument otherwise is an invitation to reweigh the evidence and assess the credibility of the witnesses. We decline to do so.

Affirmed.

MAY, J., and KIRSCH, J., concur.