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IN THE
COURT OF APPEALS OF INDIANA

JOHN WILSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-1006-CR-677
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robert Altice, Judge
Cause No. 49G02-0812-FC-276134

January 28, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Following a jury trial, John Wilson was convicted of three counts of Reckless Homicide[1] as class C felonies. On appeal, Wilson argues that the evidence is insufficient to sustain his convictions.

We affirm.

The facts most favorable to the convictions follow. During the evening of December 2, 2008, Wilson, then nineteen years old, and his friends Anthony Bryant, Anthony Clemons, and Lamont Porter were hanging out together. A few of the young men had smoked some marijuana early in the evening. Later, as they were driving around in Clemons's Chevy Trailblazer, they convinced someone to buy an eight-pack of beer and E&J Brandy for them. The four men stopped drinking between 10:30 and 10:45 p.m. Wilson testified that he had a couple of sips of brandy and one beer. Just after midnight, the four young men got in Clemons's car and headed for Wilson's home. After stopping at Wilson's home and leaving again, the four men stopped at a gas station on Moller Road. They then headed back to Wilson's home, with Wilson driving. Along Moller Road, Wilson lost control of the car as it spun in a blind curve, crossed the road, and crashed into a tree, killing Bryant, Clemons, and Porter. At the time, there was snow on the ground and it was cold, but the roadway was clear of ice.

An accident reconstructionist determined from the yaw marks on the pavement that the car was traveling between fifty-nine and sixty-seven miles per hour in the curve where it went off of the road. Wilson believed that he entered the curve going "a little fast" and estimated that he was traveling between forty-five to fifty miles per hour. The speed limit

[1] Ind. Code Ann. § 35-42-1-5 (West, Westlaw through 2010 2nd Regular Sess.).

along that stretch of road is thirty-five miles per hour. Wilson also testified that he tried to brake when he lost control of the vehicle. The accident reconstructionist testified that no brake marks were found at the scene.

Witnesses at the scene of the accident testified that they could smell an odor of alcoholic beverage coming from Wilson. Wilson was taken to the hospital because he was bleeding from a head injury. Toxicology tests of a plasma sample taken by the hospital at 1:34 a.m. revealed that Wilson had a BAC of between .066 and .087% and that he was declining from peak absorption at that point in time. A blood sample taken pursuant to a warrant at about 3:00 a.m. showed that Wilson had a BAC of .05% two and a half hours after the crash. Wilson also had marijuana metabolites in his system. According to a toxicologist, the alcohol in Wilson's system at the time of the crash would have "certainly" affected his ability to operate the vehicle safely. *Transcript* at 347. Further, the effect of the alcohol would have been enhanced by the presence of marijuana in Wilson's system. The toxicologist opined that the combination of alcohol and marijuana would have put Wilson at "significant risk of being impaired" when he drove the vehicle on the night of the accident. *Id*. at 405.

On December 4, 2008, the State charged Wilson with three counts of operating a vehicle while causing death as class C felonies (Counts I, III, and V) and three counts of reckless homicide as class C felonies (Counts II, IV, and VI). Prior to trial, Wilson submitted to a psychiatric examination to determine his competency to stand trial and moved to suppress the statement he made at the scene of the accident and later at the hospital. Following hearings on the matters, the trial court found Wilson competent to stand trial and

denied his motion to suppress his statements. A three-day jury trial commenced on May 10, 2010. At the conclusion of the evidence, the jury found Wilson guilty as charged. Finding that the operating-a-vehicle-while-causing-death offenses merged with the reckless homicide offenses, the trial court entered judgments of conviction only on the reckless homicide counts. On May 26, 2010, the trial court sentenced Wilson to consecutive sentences of four years each on Counts II, IV, and VI, for a total aggregate sentence of twelve years. Wilson now appeals.

Wilson argues that the evidence is insufficient to support his convictions. Specifically, Wilson maintains that the evidence does not establish that he acted recklessly, only that he acted negligently by driving too fast.

Our standard of review for challenges to the sufficiency of the evidence is well settled:

> When reviewing the sufficiency of the evidence needed to support a criminal conviction, we neither reweigh evidence nor judge witness credibility. *Henley v. State*, 881 N.E.2d 639, 652 (Ind. 2008). "We consider only the evidence supporting the judgment and any reasonable inferences that can be drawn from such evidence." *Id.* We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt. *Id.*

Bailey v. State, 907 N.E.2d 1003, 1005 (Ind. 2009).

"A person who recklessly kills another human being commits reckless homicide, a Class C felony." Ind. Code Ann. § 35-42-1-5 (West, Westlaw through 2010 2nd Regular Sess.). "A person engages in conduct 'recklessly' if he engages in the conduct in plain, conscious, and unjustifiable disregard of harm that might result and the disregard involves a substantial deviation from acceptable standards of conduct." Ind. Code Ann. § 35-41-2-2 (West, Westlaw through 2010 2nd Regular Sess.).

We herein consider several rules of law produced by case law with regard to evidence necessary to support a reckless homicide conviction arising out of a motor vehicle accident. "'Proof that an accident arose out of the inadvertence, lack of attention, forgetfulness or thoughtlessness of the driver of a vehicle, or from an error of judgment on his part, will not support a charge of reckless homicide.'" *State v. Boadi*, 905 N.E.2d 1069, 1072 (Ind. Ct. App. 2009) (quoting *Beeman v. State*, 232 Ind. 683, 115 N.E.2d 919, 922 (1953)). Evidence of driving while intoxicated is not alone sufficient to support a conviction for reckless homicide, but evidence of driving while intoxicated plus evidence of dangerous driving is sufficient. *Young v. State*, 161 Ind.App. 532, 546, 316 N.E.2d 435, 443 (1974); *Guy v. State*, 678 N.E.2d 1130 (Ind. Ct. App. 1997), *disapproved on other grounds by Abney v. State*, 821 N.E.2d 375 (Ind. 2005). Excessive speed may also be sufficient to support a conviction for reckless homicide. *Taylor v. State*, 457 N.E.2d 594 (Ind. Ct. App. 1985). The circumstances of the case dictate whether a particular speed is excessive. *Id*. This court has suggested that a speed could be deemed excessive where it is twenty or more miles per hour over the posted speed limit. *See State v. Boadi*, 905 N.E.2d 1069.

Here, Wilson's conduct was more than mere inadvertence, lack of attention, forgetfulness, or thoughtlessness. The evidence established that at 12:30 a.m., Wilson, then nineteen years old, operated a vehicle near or in excess of the legal limit for intoxication. Wilson also had marijuana metabolites in his system which would have enhanced the effects of the alcohol in his system. Wilson was driving at least twenty miles per hour in excess of the posted speed limit of thirty-five miles per hour around a blind curve when he lost control of the vehicle causing the vehicle to cross the center line and slam into a tree on the opposite

side of the roadway with tremendous force. There was no evidence that Wilson ever tried to slow the vehicle. Given these facts, it was reasonable for the jury to conclude that Wilson acted recklessly when he drove the vehicle at an excessive speed and in a dangerous manner around the curve, killing three passengers in the vehicle. We will not second-guess the jury's findings in this regard. The evidence was sufficient to support Wilson's reckless homicide convictions.

Judgment affirmed.

MAY, J., and MATHIAS, J., concur.