



Dennis Sanders (“Sanders”) was convicted after a bench trial of operating a motor vehicle while an habitual traffic violator (“HTV”). Sanders appeals and argues that the State presented insufficient evidence to support his conviction. We affirm.

### **Facts and Procedural History**

In the early morning hours of March 16, 2010, Indianapolis Metropolitan Police Department Officer Nicole Hopkins (“Officer Hopkins”) observed a speeding SUV travelling westbound on Brookville Road. Officer Hopkins pursued the SUV for about one mile and, during that time, she lost sight of the SUV for approximately one minute. However, when Officer Hopkins caught up with the SUV after it came to a stop, she was certain it was the same SUV she had previously seen speeding because its back windshield was broken out and the muffler was “really loud.” Tr. p. 5. When Officer Hopkins approached the vehicle, she observed Sanders sitting in the driver’s seat with the doors closed and the SUV running and in gear.

Sanders told Officer Hopkins that he was driving home from his sister’s house, where he had gone to sleep for a short time after leaving a bar the previous evening. When Officer Hopkins asked for identification, Sanders was unable to produce a driver’s license, and instead provided his name and date of birth verbally. When Officer Hopkins ran Sanders’s identifying information, she discovered that he was an HTV and placed him under arrest.

On March 18, 2010, the State charged Sanders with Class D felony operating a motor vehicle while an HTV. At a bench trial held on June 28, 2010, the trial court

admitted by stipulation certified records of the Indiana Bureau of Motor Vehicles (“BMV”) showing that “Dennis Wayne Sanders” had been adjudicated an HTV and had been mailed notice of this adjudication. Ex. Vol. p. 8. At the conclusion of the evidence, Sanders was found guilty as charged. Sanders now appeals.

### **Discussion and Decision**

Sanders argues that the State presented insufficient evidence to support his conviction for Class D felony operating a motor vehicle while an HTV. 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 Sanders committed Class D felony operating a motor vehicle while an HTV, the State was required to prove the following three elements: (1) that Sanders operated a motor vehicle, (2) while his driving privileges were suspended as an HTV, and (3) that Sanders knew his driving privileges were suspended. See Ind. Code § 9-30-10-16 (2004). On appeal, Sanders argues that the State presented insufficient evidence on each of these three elements.

With respect to Sanders's claim that the State presented insufficient evidence to establish that he operated a motor vehicle, we initially observe that because there is no statutory definition of the verb "operate" as used in Indiana Code section 9-30-10-16, we may deduce its meaning from the definition of the word "operator." See Hampton v. State, 681 N.E.2d 250, 251 (Ind. Ct. App. 1997). Under Indiana Code section 9-13-2-118 (2004), the "operator" of a motor vehicle is a person who "drives or is in actual physical control of a motor vehicle upon a highway[.]" Thus, "to operate a vehicle is to drive it or be in actual physical control of it upon a highway." Hampton, 681 N.E.2d at 251. Whether an individual sitting in the driver's seat of a vehicle has operated that vehicle is a question of fact to be determined from the surrounding circumstances. Id.

Here, Sanders argues that the evidence was insufficient to establish that he operated the SUV because Officer Hopkins did not see the driver until the end of her pursuit, when the SUV was not moving, and because Officer Hopkins's testimony was implausible. Sanders's argument is simply an invitation to reweigh the evidence and judge the credibility of witnesses, which we will not do. Although Officer Hopkins lost sight of the SUV for approximately one minute during the pursuit, she testified that when she approached the SUV after it came to a stop, Sanders was sitting in the driver's seat with the doors closed and the engine running. Officer Hopkins testified further that the SUV was in gear and that she had to instruct Sanders to put it in park. Finally, Officer Hopkins testified that Sanders told her that he was driving the vehicle home from his

sister's house. This testimony was sufficient to support the trial court's conclusion that Sanders operated a motor vehicle.

Sanders also argues that the State presented insufficient evidence to prove that Sanders was an HTV or that he had knowledge that his driving privileges were suspended. At Sanders's bench trial, the court admitted by stipulation certified BMV records establishing that "Dennis Wayne Sanders" had been adjudicated to be an HTV and had been mailed notification of this adjudication by the BMV on November 25, 2002. Indiana Code section 9-30-10-16(b) provides:

Service by the bureau of notice of the suspension or restriction of a person's driving privileges under subsection (a)(1) or (a)(2):  
(1) in compliance with section 5 of this chapter;<sup>[1]</sup> and  
(2) by first class mail to the person at the last address shown for the person in the bureau's records;  
establishes a rebuttable presumption that the person knows that the person's driving privileges are suspended or restricted.

Sanders claims that the BMV records were insufficient to establish that he was an HTV or to trigger the statutory presumption that he had knowledge of his status as such because "the record does not reveal any stipulation by the parties that the Dennis Sanders on trial was the same Dennis Sanders identified [in the BMV records]." Appellant's Br. at 9. However, Sanders stipulated to the admission of the BMV records and made no attempt to argue that the Dennis Sanders identified in those documents was anyone other than himself. Indeed, in her closing argument, Sanders's trial counsel made the following

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<sup>1</sup> Section 5 provides that the BMV shall mail notice to the person's last known address informing the person that his or her driving privileges will be suspended in thirty days because the person is an HTV and that the he or she is entitled to appeal the BMV's HTV determination. Ind. Code § 9-30-10-5 (2004).

statement: “We don’t dispute that he is an Habitual Traffic Violator Judge. What we dispute is whether or not he was driving the car on the date in question.” Tr. p. 23.

It is well settled in Indiana that a party may not invite error and later argue that such error supports reversal. Pinkton v. State, 786 N.E.2d 796, 798 (Ind. Ct. App. 2003), trans. denied. Invited errors are not subject to appellate review. M.T. v. State, 787 N.E.2d 509, 513 (Ind. Ct. App. 2003).

Under the facts and circumstances before us, we conclude that Sanders invited the error, if any, arising from the trial court’s reliance on the BMV records to establish Sanders’s HTV status or his knowledge thereof, and he has therefore waived appellate review of these issues. Using those records, the State presented sufficient evidence to support Sanders’s conviction for Class D felony operating a motor vehicle while an HTV.

Affirmed.

FRIEDLANDER, J., and MAY, J., concur.