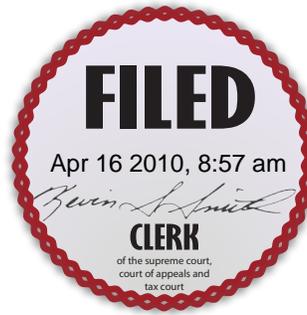


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JOSEPH B. TEMPLE,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 82A01-0912-CR-589

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Robert J. Pigman, Judge
The Honorable Richard G. D'Amour, Magistrate
Cause No. 82D05-0808-CM-5154

April 16, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Joseph B. Temple challenges the sufficiency of evidence to sustain his conviction for class A misdemeanor operating a vehicle while intoxicated (“OWI”). We affirm.

At about 6:15p.m. on August 1, 2008, Indiana State Police Trooper Laura Tomes observed a speeding vehicle heading eastbound on Interstate 64. The vehicle, a large truck, was traveling at around ninety miles per hour and was weaving in and out of traffic. Trooper Tomes positioned herself behind the vehicle and engaged both her lights and siren. She pursued the vehicle for four miles before the driver, Temple, pulled off the roadway. During the pursuit, the vehicle traveled at a speed of ninety-three miles per hour.

When she approached the vehicle and spoke with Temple, she noticed an “odor commonly associated with alcohol.” Tr. at 8. When she asked Temple if he had been drinking, he said no. For the remainder of the conversation, Temple turned his head away from her. When Temple refused to take a portable breath test, Trooper Tomes administered two standard field sobriety tests—the Gaze Test and the One-Leg Stand Test, and Temple failed them both. Trooper Tomes then read Temple the Implied Consent Warning, and Temple refused a chemical breath test. She arrested him and placed him in her vehicle, at which point she again observed the smell of alcohol. After arriving at the county jail, Temple was again read his Implied Consent Warning and again refused to take a chemical breath test.

On August 4, 2008, the State charged Temple with one count of class C misdemeanor OWI, one count of class A misdemeanor OWI in a manner endangering a person,¹ and one

¹ Ind. Code § 9-30-5-2.

count of class C infraction speeding. A bench trial ensued on June 30, 2009, and the trial court found Temple guilty as charged. The OWI counts were merged, and the trial court entered judgments on counts II and III. Temple now appeals his class A misdemeanor OWI conviction.

Temple contends that the evidence is insufficient to sustain his conviction. When reviewing sufficiency claims, we neither reweigh evidence nor judge witness credibility. *Fields v. State*, 888 N.E.2d 304, 307 (Ind. Ct. App. 2008). Rather, we consider only the evidence and reasonable inferences most favorable to the judgment. *Id.* We will affirm if there is probative evidence from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id.*

In framing his sufficiency challenge, Temple does not address the endangerment element of the crime. Instead, he challenges the evidence to support the intoxication element. A person is intoxicated if he is under the influence of alcohol to the extent “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. To establish impairment, the State can use 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.* (citation and quotation marks omitted). The list is not exhaustive, and the State need not prove every item on it; instead, it is merely a list of factors tending to establish intoxication.

Here, Trooper Tomes testified that Temple was not only speeding, but also was

driving erratically, weaving in and out of traffic. Tr. at 7, 42. Moreover, Temple's failure to pull over during Trooper Tomes's four-mile pursuit at ninety-three miles per hour, complete with lights and siren, demonstrates his impaired attention. When Temple finally *did* stop and Trooper Tomes first approached him, she noticed the smell of alcohol. Notably, she smelled alcohol again when she placed him in her vehicle. Finally, Temple failed both field sobriety tests.

To the extent Temple attempts to explain his actions and challenges Trooper Tomes's qualifications as well as the accuracy of the field sobriety tests, he merely invites us to reweigh evidence and judge witness credibility, which we may not do. Instead, we conclude that the evidence most favorable to the judgment is sufficient to support Temple's OWI conviction. Accordingly, we affirm.

Affirmed.

BAKER, C.J., and DARDEN, J., concur