

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.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

JOSEPH F. THOMS
Thoms & Thoms
Indianapolis, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

GARY DAMON SECREST
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

NANCY TIBBETS,)

Appellant-Defendant,)

vs.)

No. 49A02-0810-CR-964

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Linda E. Brown, Judge
The Honorable Louis F. Rosenberg, Magistrate
Cause No. 49F10-0807-CM-160626

May 21, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Nancy Tibbetts¹ appeals her convictions for Class A misdemeanor operating a vehicle while intoxicated (“OWI”) and Class A misdemeanor failure to stop after an accident resulting in injury. We affirm.

Issue

The sole issue is whether there is sufficient evidence to support Tibbetts’s convictions.

Facts

The evidence most favorable to the convictions is that on July 2, 2008, David Comley was driving in Indianapolis when he was rear-ended by another vehicle. Comley observed that there was only one person in the vehicle, and he later identified that person as Tibbetts. After the accident, Tibbetts sped away from the scene. Another driver, Larry Vest, witnessed the accident and also identified Tibbetts as the driver of the vehicle that struck Comley’s vehicle. Vest agreed to drive Comley in an attempt to find the vehicle that had struck him. Soon thereafter, they saw the vehicle parked in a driveway, with the front end pressing into the closed garage door.

Vest and Comley then called 911. Indianapolis Metropolitan Police Officer Maralee King responded and went to the residence where the car was located. Tibbetts’s sons answered the door. Officer King asked who had been driving the car that day, and they responded that their mother had, but that she was upstairs asleep. Tibbetts

¹ Tibbetts’s last name is alternately spelled “Tibbetts” and “Tibbets” throughout the record and briefs. We use “Tibbetts,” which appears in the transcript and the trial court’s orders and CCS.

eventually came downstairs to speak with Officer King, who observed Tibbetts stumbling over furniture and falling down twice. Tibbetts's speech was slurred and she smelled of alcohol. She told Officer King that she was the only person who had driven the car all day and that she had just returned from the store. She also became very argumentative and cursed at Officer King. Officer King did not perform any field sobriety tests because Tibbetts was unable to stand unassisted, and Tibbetts refused to submit to a chemical test.

Officer King arrested Tibbetts and the State charged her with Class A misdemeanor OWI and Class A misdemeanor failure to stop after an accident resulting in injury. After a bench trial, Tibbetts was convicted as charged. She now appeals.

Analysis

Tibbetts contends there is insufficient evidence to support her convictions. When reviewing the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). It is the fact-finder's role, not ours, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. Id. When confronted with conflicting evidence, we must consider it in a light most favorable to the conviction. Id. We will affirm the conviction unless no reasonable fact-finder could have found the elements of the crime proven beyond a reasonable doubt. Id.

Tibbetts contends in part, "there was no conclusive evidence presented that Ms. Tibbetts drove the vehicle at the time of the alleged incident." Appellant's Br. p. 6. This

is a blatantly improper request for us to reweigh evidence and judge witness credibility. Comely and Vest positively identified Tibbetts as the driver and sole occupant of the vehicle that crashed into Comley. Tibbetts told Officer King that she was the only one to have driven the car all day and that she had just returned from the store. This evidence is “conclusive,” notwithstanding Tibbetts’s claim at trial that a friend had been driving her car that day.

Tibbetts also claims there is insufficient evidence she was intoxicated. “‘Intoxicated’ means being under the influence of alcohol ‘so that there is an impaired condition of thought and action and the loss of normal control of a person’s faculties.’” Fields v. State, 888 N.E.2d 304, 307 (Ind. Ct. App. 2008) (quoting Ind. Code § 9-13-2-86). Impairment can be established by 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. (quoting Ballinger v. State, 717 N.E.2d 939, 943 (Ind. Ct. App. 1999)).

Tibbetts argues that this case is similar to Hartman v. State, 401 N.E.2d 723 (Ind. Ct. App. 1980). There, we held that evidence the defendant had bloodshot eyes and smelled of alcohol was insufficient to prove intoxication. Id. at 725. The evidence here went far beyond this; in addition to Officer King detecting the odor of alcohol on Tibbetts’s breath, Tibbetts was unable to stand on her own two feet, had slurred speech,

and was verbally abusive to Officer King. This clearly is sufficient evidence of intoxication.

Conclusion

There is sufficient evidence to support Tibbetts's convictions. We affirm.

Affirmed.

BAKER, C.J., and MAY, J., concur.