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ATTORNEY FOR APPELLANT:

JAMES A. SHOAF
Columbus, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

RYAN D. JOHANNINGSMEIER
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

TODD A. HARMON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 03A01-1011-CR-630
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE BARTHOLOMEW SUPERIOR COURT
The Honorable Kathleen T. Coriden, Judge
Cause No. 03D02-1001-FD-12

June 22, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Todd A. Harmon appeals his conviction for class D felony Operating a Vehicle While Intoxicated.[1] He presents as the sole issue on appeal the sufficiency of the evidence supporting his conviction.

We affirm.

The facts favorable to the conviction are that just before 2:30 a.m. on December 27, 2009, Sergeant Kris Weisner of the Bartholomew County Sheriff's Office initiated a traffic stop of Harmon for speeding. Upon approaching Harmon, who had already exited his vehicle, Sgt. Weisner observed that Harmon had unsure balance and some difficulty walking. He also noticed that Harmon's eyes were red, glassy, and dazed. Sgt. Weisner could smell alcoholic beverage on Harmon's breath. Harmon admitted that he had been drinking earlier in the evening. Sgt. Weisner proceeded to administer three field sobriety tests, and Harmon failed each test. Believing that Harmon was intoxicated, Sgt. Weisner informed Harmon of the implied consent law and offered a certified breath test. Harmon agreed and was promptly transported to the Sheriff's Office. A certified breath test taken at 3:05 a.m. revealed an alcohol concentration equivalent (ACE) of .08.

On January 5, 2010, the State charged Harmon with operating a vehicle while intoxicated (OWI) and operating a vehicle with an ACE of at least .08. The State sought elevation of both counts from class C misdemeanors to class D felonies based on a prior OWI conviction. At the conclusion of the jury trial on September 27, 2010, the jury found Harmon guilty of both class C misdemeanor counts: OWI and operating a vehicle with an ACE of at

[1] Ind. Code Ann. § 9-30-5-3(a) (West, Westlaw through 2011 Pub. Laws approved & effective through 5/10/2011).

least .08. Harmon then entered a plea of guilty to OWI as a class D felony. The trial court sentenced Harmon on this single count on October 25, 2010. Harmon now appeals, challenging the sufficiency of the evidence.

Our standard of review when considering a challenge 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).

Harmon's argument is based on the premise that he was convicted of operating a vehicle with an ACE of at least .08. The record before us, however, appears to indicate that his conviction was on the OWI charge. In any case, Harmon's OWI conviction is supported by sufficient evidence.

In addition to the BAC DataMaster chemical breath test reading of .08, the evidence indicates that Harmon failed three field sobriety tests and exhibited a number of signs of intoxication, including delayed reaction, unsteady balance, difficulty walking, and glassy, red eyes. Further, Harmon admitted at trial that he had consumed four beers on the night in question, finishing his last beer at the bar within an hour of being stopped by Sgt. Weisner.

On appeal, Harmon directs us to his own self-serving testimony that a portable breath test administered at the scene recorded a reading of .079. In light of his testimony, he claims that the evidence regarding his ACE "at best was conflicting". *Appellant's Brief* at 7. We

reject this bald invitation to reweigh the evidence.

Harmon also argues, without citing any authority, that the DataMaster results were invalid because the mouthpiece had been replaced following an initial insufficient breath sample. Specifically, he claims the mouthpiece was a foreign object, and Sgt. Weisner failed to wait twenty minutes before attempting the test again. There is simply no merit to this argument. *See State v. Lucas*, 934 N.E.2d 202, 206 (Ind. Ct. App. 2010) ("a Datamaster mouthpiece is itself not a foreign substance that will invalidate Datamaster results obtained less than twenty minutes later"), *trans. denied*.

Judgment affirmed.

BAILEY, J., and BROWN, J., concur.