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IN THE
COURT OF APPEALS OF INDIANA

DERRICK D. HAMMOND,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 59A05-0908-CR-475
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ORANGE SUPERIOR COURT
The Honorable R. Michael Cloud, Judge
Cause No. 59D01-0712-CM-1022

July 1, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Derrick D. Hammond appeals his conviction of Operating a Vehicle While Intoxicated,[1] a class A misdemeanor, and False Informing,[2] a class B misdemeanor. Hammond presents the following restated issues for review:

1. Was the evidence obtained after the traffic stop inadmissible on the basis that the officer did not have an objectively justifiable reasonable to stop Hammond?

2. Was the evidence sufficient to support Hammond's conviction for operating a vehicle while intoxicated?

3. Was the evidence sufficient to support Hammond's conviction for false informing?

We affirm.

The facts favorable to the convictions are that at approximately 1:30 a.m. on December 27, 2007, an unidentified woman entered the French Lick Police Department and informed Officer Marshall Noble that she had just observed a white Buick sedan operated by an intoxicated driver leave the parking lot. Officer Noble immediately went outside, got in his police car, and left the police station parking lot. As he did so, "right away" he saw what he believed to be the subject vehicle driving away from the vicinity at or near the intersection of Maple Street and State Road 56. *Transcript* at 212. The officer followed the vehicle traveling eastbound on SR 56 for approximately a quarter of a mile. As he did so, Officer Noble observed the subject vehicle swerving "numerous times" within its lane, "jerking or correcting a left and a right, back and forth." *Id*. at 213. Officer Noble activated his

[1] Ind. Code Ann. § 9-30-5-2(b) (West, Westlaw through 2009 1st Special Sess.).
[2] Ind. Code Ann. § 35-44-2-2(d)(1) (West, Westlaw through 2009 1st Special Sess.).

emergency lights, but the vehicle did not stop. The vehicle then came to a red light at the intersection of SR 56 and State Road 145. The driver failed to come to a complete stop and turned right onto SR 145. At that point, Officer Noble also activated his siren. A short distance later, the vehicle came to a stop.

Officer Noble approached the driver, whom he knew to be Hammond, and asked for his license and registration. Hammond fumbled with something and then stated that he did not have his driver's license with him. Officer Noble asked him his name and Hammond provided a false name and address. Officer Noble "sort of laughed" and said "Derrick, I know who you are[.]" *Id.* at 220. Hammond responded, "I'm not Derrick[.]" *Id*. Officer Noble noted a strong odor of alcohol on Hammond's person and that Hammond had red eyes, exhibited poor balance and manual dexterity, and his speech was slurred. He performed the Horizontal Gaze Nystagmus test on Hammond, and Hammond failed at least four of the six cues. On the one-leg stand test, Hammond failed at least two of the four cues. Officer Noble confirmed Hammond's identity with dispatch and later discovered Hammond's identification in his wallet, which Officer Noble had retrieved from the front seat of Hammond's vehicle at Hammond's request.

Hammond was transported to the Orange County Jail, where he refused a breath test. Officer Noble informed him of the implied consent law, and Hammond again refused the test. Hammond was placed under arrest and charged with operating a vehicle while intoxicated, endangering others, a class A misdemeanor, false informing, a class B misdemeanor, and operating a vehicle while intoxicated, a class C misdemeanor. He was convicted as set out above following a jury trial.

1.

Hammond contends the evidence obtained after the traffic stop was inadmissible because Officer Noble did not have an objectively justifiable reason to initiate the traffic stop. In support of this argument, Hammond argues, in essence, that Officer Noble lacked reasonable suspicion to initiate the stop because of what Hammond did *not* do, *viz.*: "Noble acknowledges that Hammond did not leave his lane of traffic, that Hammond did not cross the center line, cross the fog line, didn't make wide turns, did not drive too fast or too slow, did not break [sic] repeatedly, and did not leave the roadway." *Appellant's Brief* at 9 (internal citations omitted). In other words, Hammond had not committed a traffic infraction at the time Officer Noble initiated the stop. Hammond concludes that because Hammond did not commit a traffic infraction before Officer Noble initiated the stop, the stop did not comport with the Fourth Amendment. We recently rejected this argument:

> Nevertheless, Potter urges that pursuant to the reasoning of *Lewis* and the dissent in *Barrett v. State*, 837 N.E.2d 1022 (Ind. Ct. App. 2006), *trans. denied*, a traffic stop that comports with the Fourth Amendment should require that the officer "observe some traffic violation before initiating a traffic stop." Potter's Br. at 6. In *State v. Campbell*, 905 N.E.2d 51 (Ind. Ct. App. 2009), *trans. denied*, we held that "a traffic violation is not a condition precedent to a stop otherwise supported by the facts." *Id*. at 55 (citing *Bannister v. State*, 904 N.E.2d 1254 (Ind. 2009)). Specifically, "an officer may make a *Terry* stop of a vehicle to investigate an offense other than a traffic violation, as long as the officer has reasonable, articulable suspicion that a crime is being or has been committed." *Id*. The scope of a *Terry* stop includes "inquiry necessary to confirm or dispel the officer's suspicions." *Hardister v. State*, 849 N.E.2d 563, 570 (Ind. 2006).

Potter v. State, 912 N.E.2d 905, 908 (Ind. Ct. App. 2009).

According to Officer Noble's testimony, he had received extensive training at the Indiana Law Enforcement Academy and had in fact been certified as a D.U.I. Detection and

Field Sobriety Instructor for the National Highway and Safety Administration. He had made more than one hundred arrests for operating a vehicle while intoxicated. His training and experience taught him that erratic driving is a sign of impaired driving. He saw Hammond swerving within his lane (i.e., "jerking or correcting a left and a right, back and forth") "numerous times" within the span of only a quarter of a mile. *Transcript* at 213. These are articulable facts that support a reasonable suspicion that criminal activity was taking place, i.e., that Hammond was operating his vehicle while impaired from intoxication. Such circumstances warranted a brief traffic stop to "'confirm or dispel'" Officer Noble's suspicion in this regard. *Potter v. State*, 912 N.E.2d at 908 (quoting *Hardister v. State*, 849 N.E.2d at 570).

This was a proper stop traffic stop because of Officer Noble's reasonable suspicion of driver impairment. Therefore, the admission of the evidence flowing therefrom was admissible pursuant to the Fourth Amendment.

2.

Hammond contends the evidence was not sufficient to support his conviction for operating a vehicle while intoxicated, endangering others. Our standard of review for challenges to the sufficiency of evidence is well settled.

> When considering a challenge to the sufficiency of evidence to support a conviction, we respect the fact-finder's exclusive province to weigh conflicting evidence and therefore neither reweigh the evidence nor judge witness credibility. *McHenry v. State*, 820 N.E.2d 124 (Ind. 2005). We consider only the probative evidence and reasonable inferences supporting the verdict, and "must affirm 'if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.'" *Id*. at 126 (quoting *Tobar v. State*, 740 N.E.2d 109, 111-12 (Ind. 2000)).

Gleaves v. State, 859 N.E.2d 766, 769 (Ind. Ct. App. 2007).

To convict Hammond of operating a vehicle while intoxicated as a class A misdemeanor, the State was required to prove the following elements: (1) Hammond (2) operated a vehicle (3) in a manner that endangered a person (4) while intoxicated. *See* I.C. § 9-30-5-2(b). Hammond contends the State's proof was insufficient with respect to elements (3) (endangerment) and (4) (intoxication).

This court has stated, "pursuant to [I.C. §] 9-30-5-2(b), … endangerment may be demonstrated by evidence that the defendant's condition or operating manner could have endangered any person, including the public or the defendant." *Staley v. State*, 895 N.E.2d 1245, 1250 (Ind. Ct. App. 2008) (quoting *Slate v. State*, 798 N.E.2d 510, 516 (Ind. Ct. App. 2003) (internal citations omitted)), *trans. denied*. Thus, "proof that the defendant's condition rendered operation of the vehicle unsafe is sufficient to establish the endangerment element of operating a vehicle while intoxicated as a Class A misdemeanor." *Slate v. State*, 798 N.E.2d at 516.

Officer Noble testified that Hammond operated his vehicle in an erratic manner, weaving from side to side in his lane in a series of jerky corrections and failing to stop at a red light before turning right. This evidence is sufficient to establish the element of endangerment.

The second element that Hammond challenges is intoxication. Ind. Code Ann. § 9-13-2-86(1) (West, Westlaw through 2009 1st Special Sess.) defines intoxication as "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. Hammond contends the State failed to prove he was in an impaired condition on the night in question.

Officer Noble testified that when he stopped Hammond, Hammond's eyes were red, his speech was slurred, his balance and manual dexterity were poor, and he failed field sobriety tests. This was sufficient to support the finding that Hammond was impaired and thus intoxicated. *See Fields v. State*, 888 N.E.2d 304 (Ind. Ct. App. 2008).

3.

Hammond contends the evidence was not sufficient to support his conviction for false informing. This contention is based upon the claims that (1) Officer Noble did not testify as to the fictitious name and address that Hammond provided when asked to identify himself and that, in any event, (2) Officer Noble knew Hammond's true identity at the time he asked Hammond to provide it.

"The offense of false informing is established when the evidence shows that a person 'gives false information in the official investigation of the commission of a crime, knowing the report or information to be false.'" *Smith v. State*, 660 N.E.2d 357, 359 (Ind. Ct. App. 1996) (quoting I.C. § 35-44-2-2(d)(1)). When Hammond provided a false name and address, he was presumably attempting to evade the ultimate consequences of the traffic stop. This evidence is sufficient to establish that the false answers were both intentional and material. *See id*. Hammond offers no authority for the proposition that in order to obtain a conviction for false informing, the State must provide the details of the false information that was given, nor can we find any. Thus, it is of no moment that Officer Noble did not state the false name and address that Hammond gave at the time of the stop. Neither is it relevant that Officer

Noble knew Hammond's name when he asked for the information. The statute focuses on the defendant's conduct, not the officer's knowledge. Officer Noble's testimony that Hammond provided false information at the outset of the stop is sufficient because "'[t]he uncorroborated testimony of one witness is sufficient to sustain a conviction." *Id*. (quoting *Wray v. State*, 547 N.E.2d 1062, 1068 (Ind. 1989)).

Judgment affirmed.

KIRSCH, J., and ROBB, J., concur in result.