**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:

**CRAIG A. DECHERT**
Howard County Deputy Public Defender
Kokomo, Indiana

ATTORNEYS FOR APPELLEE:

**GREGORY F. ZOELLER**
Attorney General of Indiana

**KATHERINE M. COOPER**
Deputy Attorney General
Indianapolis, Indiana

FILED
Jul 06 2011, 9:28 am
CLERK
of the supreme court, court of appeals and tax court

# IN THE
# COURT OF APPEALS OF INDIANA

| | | |
|---|---|---|
| AARON AARON, | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 34A02-1101-CR-187 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE HOWARD SUPERIOR COURT
The Honorable Douglas A. Tate, Judge
Cause No. 34D03-1005-CM-544

**July 6, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BRADFORD, Judge**

Appellant-Defendant Aaron Aaron appeals his conviction for Class A misdemeanor Operating a Vehicle While Intoxicated ("OWI"),[1] contending that the State failed to produce sufficient evidence to prove his guilt beyond a reasonable doubt. We affirm.

## FACTS

After a night of drinking at the Social in Howard County, at approximately 3:30 a.m. on May 2, 2010, Chris Johnson, Brittney Guy, and Kasey Smith walked to the parking lot. Johnson and Guy intended to retrieve some belongings from their car, but, when they arrived, saw that the truck Aaron was driving with a passenger was "parked on [their] hood, his tailgate was on top of [their] hood, he was on top of [their] car" with the motor still running. Tr. p. 4. When Johnson and Guy approached the truck and said, "[H]ey what are you doing[?]," Aaron responded, "[W]hat do you mean, what do you mean … and he sat there for awhile." Tr. p. 4. According to Johnson, Aaron hesitated "for a minute" before pulling his truck off of the car. Tr. p. 4. According to Guy, Aaron, when approached, "acted like he didn't do nothing" and "finally pulled off the car about five minutes later[.]" Tr. p. 9.

Kokomo Police Officer Jeff Packard, who was in front of the Social, walked around to the parking lot when alerted by the staff that there had been an accident. When Officer Packard began speaking with Aaron, he noticed that his eyes were bloodshot and watery, he had the odor of alcoholic beverage on his breath, his speech was slurred, and his balance was unsteady. Aaron told Officer Packard that he had not been involved in

[1] Ind. Code § 9-30-5-2 (2009).

any accident. At some point, Aaron placed his right hand into his pants pocket and refused to remove it when requested to by Officer Packard. Instead, Aaron shoved his right hand farther into the pocket and began "feeling around inside his pocket[.]" Tr. p. 22.

When Officer Packard took hold of Aaron's right forearm and instructed him again to remove his hand from his pocket, Aaron shoved his left hand into his other pocket, and Officer Packard took hold of his left arm as well. After a brief struggle during which Aaron still refused to comply with commands to remove his hands from his pockets, "at that point he was escorted to the ground." Tr. p. 22. Officer Packard, assisted by other officers who had arrived, finally managed to restrain Aaron and take him into custody. (Tr. 22). Officer Packard transported Aaron to a hospital, where his blood alcohol concentration was determined to be 208 mg/dL, or 0.208 g/100 mL.

On May 10, 2010, the State charged Aaron with Class A misdemeanor OWI, Class A misdemeanor operating a vehicle with a alcohol concentration equivalent of 0.15 or greater, and Class A misdemeanor resisting law enforcement. On January 13, 2011, the trial court found Aaron guilty of Class A misdemeanor OWI and Class A misdemeanor resisting law enforcement. The trial court sentenced Aaron to an aggregate sentence of one year in the Howard County Criminal Justice Center, all suspended.

## DISCUSSION AND DECISION

Aaron contends that the State failed to produce sufficient evidence to sustain his conviction for Class A misdemeanor OWI.[2] Our standard of review for challenges to the sufficiency of the evidence supporting a criminal conviction is well-settled:

> In reviewing a sufficiency of the evidence claim, the Court neither reweighs the evidence nor assesses the credibility of the witnesses. We look to the evidence most favorable to the verdict and reasonable inferences drawn therefrom. We will affirm the conviction if there is probative evidence from which a reasonable jury could have found Defendant guilty beyond a reasonable doubt.

*Vitek v. State*, 750 N.E.2d 346, 352 (Ind. 2001) (citations omitted).

In order to convict Aaron of Class A misdemeanor OWI, the State was required to establish that he operate[d] a vehicle while intoxicated … in a manner that endanger[ed] a person." Ind. Code § 9-30-5-2. While apparently conceding that he was intoxicated, Aaron contends that the State failed to produce sufficient evidence to establish that he was operating the vehicle or that he endangered a person. As for his contention that the State failed to establish that he was operating the truck, both Johnson and Guy testified that they saw him driving it, which is more than sufficient to establish operation.

As for Aaron's claim that the State failed to establish endangerment, we note that "[t]he element of endangerment is proved by evidence that the defendant's condition or manner of operating the vehicle could have endangered any person, including the public, the police, or the defendant." *Weaver v. State*, 702 N.E.2d 750, 753 (Ind. Ct. App. 1998) (citing *Blinn v. State*, 677 N.E.2d 51, 54 (Ind. Ct. App. 1997)). "Thus, 'proof that the

[2] Aaron does not challenge his resisting law enforcement conviction.

defendant's condition rendered operation of the vehicle unsafe is sufficient to establish endangerment.'" *Id*. (quoting *Kremer v. State*, 643 N.E.2d 357, 360 (Ind. Ct. App. 1994)). "[T]he endangerment clause does not require that the State prove a person other tha[n] the defendant was actually in the path of the defendant's vehicle or in the same area in order to obtain a conviction." *Staley v. State*, 895 N.E.2d 1245, 1251 (Ind. Ct. App. 2008). "An officer does not have to wait until the defendant crosses the centerline and adds another victim to the statistics of those who have died in drunk driving accidents." *Id*. "Thus, it is sufficient that the defendant's condition renders driving unsafe." *Id*.

We conclude that there is more than sufficient evidence to sustain a finding of endangerment, primarily due to evidence that Aaron's high level of intoxication rendered driving unsafe. When first encountered by Johnson and Guy, Aaron's truck had backed onto their car with the motor still running. The fact that Aaron had apparently not emerged to investigate the accident and his response to Johnson's and Guy's inquiries imply that he was not even aware that he had backed onto the car, indicating a dangerous lack of awareness of his surroundings that clearly posed a threat to himself, his passenger, and anybody else he would have encountered had he driven away. Further evidence of Aaron's impairment was testimony regarding his bloodshot and watery eyes, the odor of alcoholic beverage on his breath, his slurred speech, and his unsteady balance. Finally, Aaron's blood alcohol concentration was found to be nearly 0.21 g/100 ml, or more than two and one-half times the legal limit. The trial court was entitled to find that Aaron's condition together with his operation of his vehicle was an endangerment to himself or

others.

The judgment of the trial court is affirmed.

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