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IN THE
COURT OF APPEALS OF INDIANA

KARL L. BRUNK,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-1008-CR-877
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Rebecca Pierson-Treacy, Judge
The Honorable Shatrese Flowers, Master Commissioner
Cause No. 49F19-0911-CM-94937

July 26, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Karl Brunk was convicted of endangering a person by operating a vehicle while intoxicated, a Class A misdemeanor.[1] As there was sufficient evidence to support his conviction, we affirm.

FACTS AND PROCEDURAL HISTORY

At approximately 1:00 a.m. on November 14, 2009, Officer Rodney Bradburn observed Brunk's car veer left of the center line and onto a raised median on East Washington Street in Indianapolis. Both tires on the left side of Brunk's vehicle went up onto the raised median. Brunk then corrected course and continued driving for about a block and a half before turning left. Officer Bradburn pulled Brunk over for dangerous operation of a motor vehicle.

As Officer Bradburn approached, he detected an odor of alcohol from Brunk. Officer Bradburn also noticed Brunk's eyes were red and watery. He asked Brunk to exit the vehicle. Without being prompted, Brunk admitted he had been drinking alcohol. Officer Bradburn then had Brunk perform three field sobriety tests. Brunk failed the horizontal gaze nystagmus test and displayed all six of the test's "clues" indicating intoxication. (Tr. at 34). Next, Brunk failed the nine-step walk and turn test; he "missed heel to toe on eight of his first nine [steps] and then he missed all nine on his return trip." (*Id.* at 35). Brunk failed a one-leg stand test. Brunk agreed to take a breath alcohol test, which indicated his breath alcohol content was .10 %.

[1] Ind. Code § 9-30-5-2.

The State charged Brunk with endangering a person by operating a vehicle while intoxicated and operating a vehicle with a BAC between .08 and .15, a Class C misdemeanor.[2] A jury found him guilty of both. The trial court merged the Class C misdemeanor into the Class A misdemeanor, entered a conviction of the Class A misdemeanor, and sentenced Brunk to 365 days in jail, with 360 days suspended. The trial court also suspended Brunk's driver's license for 180 days.

DISCUSSION AND DECISION

Brunk contends there was insufficient evidence to support his conviction.[3] When we review sufficiency of evidence, we 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 that of appellate courts, 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 unless no reasonable fact finder could find the elements of the crime proven beyond a reasonable doubt. *Id*.

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[2] Ind. Code § 9-30-5-1(a).

[3] Brunk argues the breath test results were unreliable because Officer Bradburn did not properly observe him for twenty minutes before conducting the breath test. He asserts "the Department of Toxicology prefers twenty minutes of direct observation prior to the administration of a breath test, because among other things, a person can belch and alter the results." (Appellant Br. at 5.) We need not determine whether the results of the breath test were faulty because Brunk was not convicted of a crime that includes Blood Alcohol Content as an element. *Compare* Ind.Code § 9-30-5-2 *with* Ind. Code § 9-30-5-1. The "intoxication" necessary for the crime of which Brunk was convicted may be established by showing impairment, and does not require proof of a Blood Alcohol Content level. *Ballinger v. State*, 717 N.E.2d 939, 943 (Ind. Ct. App. 1999).

To obtain a conviction of operating a vehicle while intoxicated, the State must prove beyond a reasonable doubt that the defendant operated a vehicle while intoxicated in a manner that endangered a person. *See* Ind. Code § 9-30-5-2. "Intoxicated" is defined as being under the influence of alcohol or another substance "so 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. "Impairment can be established by evidence of: (1) the consumption of a significant amount 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." *Vaderlinden v. State*, 918 N.E.2d 642, 644 (Ind. Ct. App. 2009), *trans. denied*. Proof of a person's blood alcohol content is not required to establish intoxication. *Matlock v. State*, 944 N.E.2d 936, 941 (Ind. Ct. App. 2011).

There is sufficient evidence that Brunk endangered a person by operating a vehicle. Brunk was operating the vehicle at approximately 1:00 a.m. on November 14, 2009. Officer Bradburn testified Brunk drove onto the center median. This testimony is sufficient proof that Brunk operated his vehicle in a manner that endangered a person. *See Stately v. State*, 895 N.E.2d 1245, 1251 (Ind. Ct. App. 2008) (finding endangerment when defendant was speeding and driving without his lights), *trans. denied*; *Boyd v. State*, 519 N.E.2d 182, 184 (Ind. Ct. App. 1988) (finding endangerment when defendant was driving 24 miles-per-hour over the posted limit).

There is ample evidence Brunk was intoxicated. His driving onto the median demonstrates his driving was impaired. He smelled of alcohol, and his eyes were red and watery. He admitted drinking alcohol on the night in question, and he failed three field sobriety tests. On the horizontal gaze nystagmus test, he showed all six signs of intoxication; four are enough to infer intoxication. *Fields v. State*, 888 N.E.2d 304, 307 n.9 (Ind. Ct. App. 2008) (four signs indicate intoxication). On the nine-step walk and turn test, he "missed" on seventeen of the eighteen steps he was required to take, despite raising his arms higher than permitted. (Tr. at 35.) On the one-leg stand test, Brunk swayed while standing and had to raise his arms for balance, could keep his foot elevated for only four seconds at a time, and completely lost his balance after eight seconds. This demonstrated Brunk was intoxicated. *See Vanderlinden*, 918 N.E.2d at 644 (holding admission of consuming some alcohol, odor of alcohol, redness of eyes, and failure of one field sobriety test to be sufficient evidence of intoxication). Accordingly, we affirm Brunk's conviction of endangering a person by operating while intoxicated.

Affirmed.

BAKER, J., and BRADFORD, J., concur.