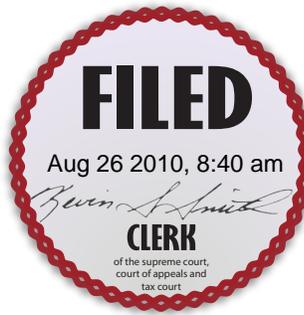


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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JEREMY JAMES BARDEN,  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 57A03-1002-CR-64

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APPEAL FROM THE NOBLE SUPERIOR COURT  
The Honorable Michael J. Kramer, Judge  
Cause No. 57D02-0906-CM-602

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**August 26, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

## Case Summary

Jeremy James Barden appeals his conviction and sentence for class C misdemeanor leaving the scene of an accident. We affirm his conviction, but remand for correction of his sentence.

## Issues

We address the following issues raised in the parties' briefs:

- I. Was there sufficient evidence to establish beyond a reasonable doubt that Barden drove the vehicle involved in the accident?
- II. Did the trial court abuse its discretion by sentencing Barden to a suspended jail term of sixty days and one year of probation given that Indiana Code Section 35-50-3-1 prohibits a combined sentence of more than 365 days?

## Facts and Procedural History

The facts most favorable to the trial court's judgment indicate that on February 19, 2009, Susan Stevens was approaching a stop sign in Albion when an "older red blazer" that was driven by Barden turned the corner and slid on the snow-covered ground into the front of her van. Tr. at 15. When both drivers exited their respective vehicles, Stevens spoke with Barden and said that she was going to call the police to get a statement for insurance, and she suggested that Barden move his vehicle so that they would not block traffic. Barden then stated that he did not think there was any damage to Stevens's van, and "he got mad and hit the top of [the] hood" of her van. *Id.* at 36-37. Barden then got back in his car and "backed very quickly all the way around the corner and took off." *Id.* at 37. Stevens waited to see if Barden would return, but he did not. Albion Police Officer Trince Hursey investigated the

accident and found that the marks at the scene were consistent with Stevens's statement and that red paint from the other vehicle had transferred to her van during the collision. The accident was witnessed by a neighbor, Tammy Bremer, from her kitchen window.

In June 2009, Stevens called the police department to report that she had seen the red vehicle involved in the collision, and she provided that license plate number and location of the vehicle. On June 2, 2009, Officer Hursey went to the location and spoke with Barden, who initially stated that he was not sure if he had possession of the vehicle at the time of the accident and that the vehicle was not operable at the time of the accident. However, when asked why he had left the scene, Barden told Officer Hursey that he did not know why he did. Also, when asked again whether he was driving the vehicle that left the accident scene, Barden stated that "he would have to say that he did." *Id.* at 23. Officer Hursey asked Barden if he had left the scene of the accident because he was scared, and Barden said yes.<sup>1</sup>

Officer Hursey asked Barden if he would be willing to write a statement, to which Barden responded yes. Barden directed his girlfriend to prepare a written statement that he signed, which read, "My vehicle was involved in an accident. The vehicle was seen left [sic] the scene of the accident. I am willing to pay all damages that occurred to [sic] other vehicle if you say it was mine." State's Ex. 7. Officer Hursey took some pictures of Barden's vehicle as part of the investigation and observed that the vehicle matched the description given by Stevens on the day of the accident, that the bumper of Barden's vehicle was

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<sup>1</sup> The record indicates that Barden did not have insurance or a driver's license at the time of the accident. Tr. at 52, 65-66.

damaged and appeared to have been recently spray-painted black, and that the bumper appeared to have been painted over after the damage occurred.

On June 11, 2009, the State charged Barden with class C misdemeanor leaving the scene of an accident pursuant to Indiana Code Section 9-26-1-9. On January 4, 2010, the trial court found Barden guilty as charged. The trial court sentenced Barden to sixty days of imprisonment, all suspended, and one year of probation. The trial court also suspended Barden's license for sixty days, ordered him to perform 150 hours of community service, and ordered him to pay full restitution. Additional facts will be included as necessary.

## **Discussion and Decision**

### ***I. Sufficiency of Evidence***

When reviewing a claim of insufficient evidence, we will neither reweigh the evidence nor judge the credibility of the witnesses. *Simpson v. State*, 915 N.E.2d 511, 514 (Ind. Ct. App. 2009), *trans. denied* (2010). We will examine the evidence most favorable to the judgment and all reasonable inferences drawn therefrom. *Alvies v. State*, 905 N.E.2d 57, 61 (Ind. Ct. App. 2009). If there is sufficient evidence of probative value to support the judgment, then we will uphold a defendant's conviction. *Simpson*, 915 N.E.2d at 514-15.

Barden argues that the State failed to present sufficient evidence that he was the person driving the red vehicle that collided with Stevens's van. Barden contends that Stevens's identification of him is suspect because it was based on "her questionable identification of [his] car four months after the collision ... [and] after he was charged and took a seat at the defendant's table many months after the offense." Appellant's Br. at 7-8.

In addition, Barden claims that Officer Hursey's testimony is inconsistent with Barden's written statement and is questionable regarding the paint on Barden's vehicle bumper and the alleged matching paint on Stevens's vehicle.

We disagree. Stevens, who spoke with Barden after the accident occurred, identified Barden as the driver of the red vehicle involved in the accident. Tr. at 37-38. In addition, Tammy Bremer, who witnessed the accident from her kitchen window, identified Barden as the person who exited the red vehicle and described him as a young man, slender in build, with darker hair. *Id.* at 31-32. Also, Bremer stated that a vehicle that matched Barden's vehicle drove by her home later the same day as the accident. Furthermore, Officer Hursey spoke with Barden on June 2, 2009, and Barden acknowledged that he was the one driving the red vehicle during the accident. Also, Barden provided Officer Hursey with a written statement in which he agreed that his vehicle was involved in an accident and that he would pay damages. Additionally, Officer Hursey observed that the damage on Barden's vehicle matched the description of the accident and that the bumper on Barden's vehicle appeared to have been recently spray-painted black. In sum, we find that the State presented sufficient evidence to establish that Barden was the driver who left the scene of the accident.

## ***II. Sentence***

We review sentencing decisions only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. We will find an abuse of discretion occurred if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be

drawn therefrom. *Id.*

Barden argues, and the State concedes, that the trial court abused its discretion in sentencing him to a suspended jail term of sixty days and 365 days of probation. Pursuant to Indiana Code Section 35-50-3-1(b), “the combined term of imprisonment and probation for a misdemeanor may not exceed one (1) year.” Therefore, the trial court imposed a sentence which exceeded the statutory maximum by sixty days. Accordingly, we remand with instructions to reduce Barden’s sentence to 305 days of probation plus sixty days of suspended jail time.

Affirmed and remanded.

FRIEDLANDER, J., and BARNES, J., concur.