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IN THE
COURT OF APPEALS OF INDIANA

ROBERT BROWNING,	)	
	)	
Appellant- Defendant,	)	
	)	
vs.	)	No. 82A05-1002-CR-122
	)	
STATE OF INDIANA,	)	
	)	
Appellee- Plaintiff,	)	

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Richard G. D'Amour, Magistrate
Cause No. 82D05-0907-CM-4764

September 1, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Robert Browning appeals his conviction for operating a vehicle while intoxicated, a Class C misdemeanor, following a bench trial. On appeal, Browning argues the evidence is insufficient to sustain his conviction. Concluding that the evidence is sufficient, we affirm.

Facts and Procedural History[1]

On July 15, 2009, Browning was driving a truck with one passenger when Evansville police officers Mark Saltzman and Raymond Holden pulled Browning over for erratic driving. Specifically, Officer Saltzman observed a "very sharp sudden lane change . . . to go around [another] vehicle without signaling," drifting over two lanes for "almost a full city block," and "two more very sharp sudden lane changes in traffic without signaling." Transcript at 7.

Browning pulled over in compliance with the officers' signal, and the officers approached Browning's vehicle. Officer Saltzman smelled alcohol on Browning's breath, told him so, and asked Browning to exit the vehicle. Browning responded that he had drunk four beers.

Officer Saltzman conducted field sobriety tests on Browning. Browning had his right leg in a cast and was therefore unable to take the one-legged stand and walk-and-turn sobriety tests, but did take the horizontal gaze nystagmus sobriety test ("HGN test"), which he failed. Browning consented to be transported to the county jail for a breathalyzer test, which showed his blood alcohol concentration as .05 percent.

[1] The Table of Contents of Browning's Appendix was inaccurate. Although this created minimal confusion in this case because the appendix was short, this type of error could hamper our review in other circumstances. Therefore, counsel should be more careful in the future.

Browning's speech was "real slow and kind of slurred," and his eyes were "bloodshot and glassy." Id. at 9.

Browning was charged with operating a vehicle while intoxicated and, after a bench trial, was found guilty. Browning now appeals.

Discussion and Decision

I. Standard of Review

When reviewing the sufficiency of the evidence to support a criminal conviction, we consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). We neither reweigh the evidence nor judge witnesses' credibility. Wright v. State, 828 N.E.2d 904, 906 (Ind. 2005). Therefore, we will affirm the conviction if the probative evidence and reasonable inferences drawn therefrom could have allowed a reasonable trier of fact to find all elements of the crime proven beyond a reasonable doubt. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005).

II. Proof of Operating a Vehicle While Intoxicated

To convict Browning of operating a vehicle while intoxicated as a Class C misdemeanor, the State must prove beyond a reasonable doubt Browning operated a vehicle while "intoxicated." Ind. Code § 9-30-5-2(a). "'Intoxicated' means under the influence of . . . alcohol [or other substances] 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. "Intoxication" does not require a specific level of blood alcohol concentration, and neither does the offense of operating a vehicle while intoxicated.

Pickens v. State, 751 N.E.2d 331, 335 (Ind. Ct. App. 2001). "Evidence of the following can establish impairment: (1) the consumption of significant amounts 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." Ballinger v. State, 717 N.E.2d 939, 943 (Ind. Ct. App. 1999).

Browning asserts the State failed to prove he was intoxicated. However, the evidence of Browning's impairment includes his admission to consuming four beers, the officers' observations of erratic driving around cars and in two lanes for "almost a full city block," tr. at 7, bloodshot eyes, the odor of alcohol on Browning's breath, his failure of the HGN test, and slow or slurred speech. Browning noted he had two broken jaws, which, he argues, caused his slow and slurred speech. Tr. at 22.

The only Ballinger consideration that does not weigh against Browning – unsteady balance – may properly be ignored because Browning had a cast on his right leg and his balance would have been difficult or unreasonable to evaluate. Further, we have previously held that failure of an HGN test, "when accompanied by other evidence, will be sufficient to establish probable cause to believe a person may be intoxicated." Cooper v. State, 761 N.E.2d 900, 903 (Ind. Ct. App. 2002).

Browning's claim that this evidence is insufficient to sustain his conviction – including his invitation to reconsider how his jaw injuries affected his speech – is an invitation to reweigh the evidence and judge the credibility of witnesses. We refuse to do so. See Wright, 828 N.E.2d at 906.

Conclusion

The evidence of Browning's impairment is sufficient for a reasonable fact-finder to conclude he was guilty beyond a reasonable doubt. We therefore affirm the conviction.

Affirmed.

MAY, J., and VAIDIK, J., concur.