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IN THE
COURT OF APPEALS OF INDIANA

JEREMY DEWAYNE MATHENY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 87A05-1105-CR-260
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE WARRICK SUPERIOR COURT
The Honorable Keith A. Meier, Judge
Cause No. 87D01-1005-CM-113

December 22, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Jeremy Dewayne Matheny (Matheny), appeals his conviction for operating a vehicle while intoxicated, a Class C misdemeanor, Ind. Code § 9-30-5-2(a).

We affirm.

ISSUE

Matheny raises one issue on appeal, which we restate as follows: Whether the State presented sufficient evidence to prove beyond a reasonable doubt that he operated a vehicle while intoxicated.

FACTS AND PROCEDURAL HISTORY

On May 6, 2010, Warrick County Sheriff Deputy Daniel Bullock (Deputy Bullock) was on patrol northbound on State Route 261 when he encountered Matheny's vehicle. Deputy Bullock observed Matheny's vehicle cross over the fog line, come back onto the road, and travel left of the double yellow line. Then the vehicle went back to the right and off the roadway again. After making these observations, Deputy Bullock conducted a traffic stop of Matheny.

Upon exiting his vehicle, Deputy Bullock noticed the odor of alcohol coming from Matheny's vehicle. Deputy Bullock found Matheny inside along with a passenger, Marcie Wilhite (Wilhite). Deputy Bullock asked Matheny for his driver's license and registration, and Matheny handed Deputy Bullock his proof of insurance. Deputy Bullock again requested Matheny's license and registration, and Matheny produced his

license, but not his registration. He finally produced his registration upon further request. While standing next to Matheny's vehicle, Deputy Bullock smelled a strong odor of alcohol coming from Matheny. As a result, Deputy Bullock asked Matheny to step out of his car, and he noticed that Matheny staggered as he did so.

Outside of the vehicle, Matheny agreed to submit to field sobriety tests. First, Deputy Bullock administered the horizontal gaze nystagmus test to determine whether Matheny's eyes could track an object smoothly. According to Deputy Bullock, if a person has been drinking, that person's eyes will jerk to the left and right. There are six "clues" that the horizontal gaze nystagmus test identifies as indicating that a person has been drinking. (Transcript p. 25). When Deputy Bullock administered the test to Matheny, Matheny exhibited all six clues and failed the test.

Next, Deputy Bullock administered the "heel to toe, walk and turn test." (Tr. p. 26). According to Deputy Bullock, there are eight clues that officers look for in this test, including whether the person sways or loses balance from the very beginning, steps off of the line, or raises his or her arms up more than six inches, among others. A person will fail the test by exhibiting two out of the eight clues. Matheny exhibited seven out of the eight—except for raising his arms more than six inches—and therefore failed.

The final field test Deputy Bullock administered was the "one leg stand." (Tr. p. 28). During this test, Matheny was required to stand on one leg while Deputy Bullock looked for four clues, such as swaying, hopping, and putting his foot down more than three times. Matheny exhibited two of the clues, and Deputy Bullock determined that he

had failed the test. Deputy Bullock asked Matheny if he had consumed any alcoholic beverages that night, and Matheny responded that he had consumed "a couple of beers." (Tr. p. 41). After Deputy Bullock read Matheny the implied consent law, Matheny refused to take a chemical test. Subsequently, Deputy Bullock placed Matheny under arrest and took him to jail. At the jail, Matheny again refused a chemical test. However, Ray Wallace (Wallace), a sergeant at the Warrick County Sheriff's Office, smelled the odor of alcohol on Matheny when he stepped past him.

On May 6, 2010, the State filed an Information charging Matheny with Count I, operating a vehicle while intoxicated endangering a person, a Class A misdemeanor, I.C. § 9-30-5-2(b); Count II, operating a vehicle while intoxicated, a Class C misdemeanor, I.C. § 9-30-5-2(a); and Count III, driving left of center, an infraction. On April 13, 2011, a jury trial was held. The jury found Matheny guilty of operating a vehicle while intoxicated and driving left of center, and the trial court entered judgment on both Counts. On May 6, 2011, the trial court sentenced Matheny to sixty days at the Warrick County Security Center for Count II, suspended to one year of probation, and a fine of $35.00 and the costs of the action for Count III.

Matheny now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Matheny argues that the State did not provide sufficient evidence to prove beyond a reasonable doubt that he operated a vehicle while intoxicated. The standard of review for a sufficiency of the evidence claim is that a court should only reverse a conviction

when reasonable persons would not be able to form inferences as to each material element of the offense. *Perez v. State,* 872 N.E.2d 208, 212-213 (Ind. Ct. App. 2007), *trans. denied.* This court does not reweigh evidence or judge the credibility of witnesses. *Id.* at 213. In addition, this court only considers the evidence most favorable to the verdict and the reasonable inferences stemming from that evidence. *Id.*

To convict Matheny of operating a vehicle while intoxicated, the State was required to prove that he "operate[d] a vehicle while intoxicated." I.C. § 9-30-5-2(a). Indiana Code § 9-13-2-86 defines intoxicated as "under the influence of (1) alcohol; (2) a controlled substance . . . ; (3) a drug other than alcohol or a controlled substance[; or (4)] a combination of alcohol, controlled substances, or drugs; so that there is an impaired condition of thought and action and the loss of normal control of a person's faculties." 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). Instead, 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." *Id.* (quoting *Vanderlinden v. State,* 918 N.E.2d 642, 644 (Ind. Ct. App. 2009).).

Matheny makes several allegations with respect to the sufficiency of the evidence supporting his conviction: (1) that Deputy Bullock did not administer the field sobriety tests properly; (2) that Deputy Bullock never clarified where he had received training on the origin of the smell of alcohol; (3) that the odor of alcohol Deputy Bullock observed

might have come from Matheny's passenger; and (4) that Deputy Bullock did not provide testimony that Matheny's speech was impaired or that he had bloodshot eyes. With respect to Matheny's first and fourth arguments, we note that the State is not required to provide evidence fulfilling all seven of the factors indicating impairment. *See Pickens v. State*, 751 N.E.2d 331, 335 (Ind. Ct. App. 2001). Therefore, we will not address Matheny's arguments with respect to the field sobriety tests or bloodshot eyes because the State provided sufficient evidence that Matheny was impaired without producing evidence that he failed field sobriety tests or had bloodshot eyes.

Turning to the remainder of Matheny's argument, we note specifically that Deputy Bullock testified that he observed Matheny's vehicle weave in and out of its lane twice. After Deputy Bullock pulled Matheny over, he smelled an odor of alcohol coming from Matheny's car and Matheny got confused when Deputy Bullock requested that he produce his driver's license and registration. When Deputy Bullock asked Matheny to step out of the car, Matheny staggered and later admitted that he had consumed alcohol that night. When Matheny reached the jail, Wallace also smelled an odor of alcohol coming from Matheny, which is evidence that the odor of alcohol in Matheny's vehicle was not solely from his passenger.

In light of the overwhelming evidence of Matheny's intoxication, we conclude that the State did produce sufficient evidence to support Matheny's conviction for operating a vehicle while intoxicated. Matheny's implications that medication might have caused his intoxication and that the odor of alcohol might have come from his passenger are

invitations to reweigh the evidence, which we will not do on appeal. *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *modified on other grounds on reh'g,* 875 N.E.2d 218 (Ind. 2007). In addition, we do not find merit in Matheny's argument that Deputy Bullock never clarified where he was trained to recognize the odor of alcohol because Deputy Bullock testified that he has had "thousands" of opportunities to observe intoxicated people. (Tr. p. 15).

CONCLUSION

Based on the foregoing, we conclude that the State presented sufficient evidence to convict Matheny of operating a vehicle while intoxicated.

Affirmed.

FRIEDLANDER, J. and MATHIAS, J. concur