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**IN THE
COURT OF APPEALS OF INDIANA**

CLIFTON E. SHARP,)
)
Appellant-Defendant,)
)
vs.) No. 49A05-0611-CR-633
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Linda Brown, Judge
Cause No. 49F10-0604-CM-72355

July 31, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Clifton E. Sharp appeals his Class A misdemeanor convictions of operating a vehicle while intoxicated¹ and operating a vehicle with a BAC above 0.15.² He claims the State presented insufficient evidence he had driven a vehicle while he was intoxicated. Because reasonable inferences from the available facts support Sharp's convictions, we affirm.³

FACTS AND PROCEDURAL HISTORY

At 3:25 a.m. on April 23, 2006, Indiana State Trooper Jason Hobbs was dispatched to Interstate 74 near Post Road because a man was in the middle of the interstate flagging down traffic. When he arrived, Trooper Hobbs saw Sharp standing next to a car parked on the side of the road. Sharp had difficulty walking because his balance was unsteady. He smelled of alcohol, had bloodshot eyes, and slurred his speech. Sharp told Trooper Hobbs he had been driving, but his car had been stopped on the side of the road for fifteen or twenty minutes because he ran out of gas. Sharp failed three field sobriety tests. At 4:29 a.m., Sharp's BAC was 0.23. The State charged Sharp with public intoxication⁴ and the two crimes at issue herein. After a bench trial, the court convicted him of all three charges.⁵

¹ Ind. Code § 9-30-5-2.

² Ind. Code § 9-30-5-1(b).

³ Both parties assert Sharp was convicted and sentenced on both charges, but the Abstract of Judgment shows a conviction entered only on the operating while intoxicated charge. Since this has no impact on our decision, we do not address it.

⁴ Ind. Code § 7.1-5-1-3.

⁵ Sharp does not challenge his conviction of public intoxication.

DISCUSSION AND DECISION

Sharp claims the State presented insufficient evidence he had driven the vehicle while intoxicated because there was no direct evidence he was intoxicated at the same time he was driving. Sharp and one of his passengers testified Sharp had not drunk any alcoholic beverages before the car ran out of gas.⁶ Sharp testified he drank nearly a fifth of 100-proof vodka during the time they had been parked on the side of the road before Trooper Hobbs arrived. However, the trial court was not required to believe Sharp's self-serving testimony. *See Fultz v. State*, 8849 N.E.2d 616, 623 (Ind. Ct. App. 2006) ("It was entirely within the jury's province to disregard Fultz's self-serving testimony"), *trans. denied*.

Our standard of review requires us to look only at the evidence most favorable to the judgment, and the reasonable inferences therefrom, and prohibits us from reweighing the evidence or reassessing the credibility of the witnesses. *Id.* at 622. Sharp told Trooper Hobbs his car had run out of gas fifteen or twenty minutes before Trooper Hobbs arrived.⁷ When Trooper Hobbs arrived, Sharp's impairment and intoxication were already apparent. Approximately one hour later, Sharp's BAC was 0.23. From this evidence, a reasonable trier of fact could infer Sharp had been drinking alcohol more than twenty minutes and, thus, was intoxicated while he was driving. *See McCray v. State*, 850 N.E.2d 998, 1001 (Ind. Ct. App. 2006) (affirming conviction because there was "a

⁶ While Sharp's passenger testified he had not seen Sharp consume alcohol prior to driving, he also testified he had not seen Sharp consume alcohol while parked on the side of the interstate.

⁷ This fact distinguishes this case from *Flanagan v. State*, 835 N.E.2d 518, 524 (Ind. Ct. App. 2005), in which we reversed a conviction for lack of evidence regarding the amount of time the car had been broken down at the side of the road.

reasonably defined time period in which the drinking, intoxication, and driving occurred”), *trans. denied* 860 N.E.2d 590 (Ind. 2006). Accordingly, we affirm.

Affirmed.

SHARPNACK, J., and BAILEY, J., concur.