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**IN THE
COURT OF APPEALS OF INDIANA**

JASON SOWERS,)

Appellant-Defendant,)

vs.)

No. 03A04-0612-CR-734

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE BARTHOLOMEW SUPERIOR COURT
The Honorable Roderick D. McGillivray, Judge
Cause No. 03D02-0403-FD-0413

AUGUST 27, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBERTSON, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Jason Sowers is appealing his conviction after a bench trial of the Class D felony of operating a vehicle while intoxicated.

We affirm.

ISSUE

Sowers states the issue as:

“Whether the Trial Court abused its discretion and committed reversible error by finding that sufficient evidence was presented by the State to show that, as a matter of law, the Defendant Jason Sowers was guilty of operating a vehicle while intoxicated.”

FACTS

State Trooper Thalls made a nighttime stop of two vehicles for speeding on the interstate. The lead vehicle was driven by Sowers, and was going 85 miles per hour in a 65 mile per hour zone. Sowers was driving a pick-up truck that contained three passengers. Thalls noticed that Sowers’ pupils were dilated, which served to alert Thalls that Sowers might have narcotics in his system. Sowers had slow speech, and his movements as he looked for his driver’s license and vehicle registration were also slow.

When Sowers and Thalls were in the police cruiser Thalls asked Sowers why there was a conditional status on his driver’s license. Sowers said it was because of a prior marijuana possession conviction. Thalls looked at Sowers’ dilated eyes and concluded that Sowers had recently smoked marijuana. Thalls asked Sowers when he last smoked marijuana. Sowers replied that it had been earlier in the day. When Thalls tried to narrow down the time that Sowers had smoked marijuana, Sowers denied smoking marijuana.

Sowers told Thalls he did not have marijuana on him, and that Thalls could search his truck.

Prior to searching the truck Thalls again asked Sowers when he last smoked marijuana. Sowers replied that it was earlier in the day. One of the truck's passengers asked Thalls if he could put on Sowers' jacket. Thalls searched the jacket before giving it to the passenger. Inside Sowers' jacket Thalls found a bag of marijuana, a wooden box that held a smoking pipe, and a package of rolling papers. Thralls then arrested Sowers for driving under the influence of marijuana.

Additional facts will be added if needed.

DISCUSSION AND DECISION

When reviewing a claim of insufficient evidence, we will not reweigh the evidence or judge witnesses' credibility. *Ware v. State*, 859 N.E.2d 708, 724 (Ind. Ct. App. 2007). We will consider only the evidence favorable to the judgment and the reasonable inferences drawn therefrom. *Id.* We will affirm a conviction if the lower court's finding is supported by substantial evidence of probative value. *Id.* When a defendant is convicted on circumstantial evidence, we will not reverse if the trier of fact could reasonably infer from the evidence presented that the defendant is guilty beyond a reasonable doubt. *Id.* To affirm, we need not find the circumstantial evidence overcomes every reasonable hypothesis of innocence. *Id.* Instead, we must be able to say that an inference may reasonably be drawn from the circumstantial evidence to support the verdict. *Id.*

Pursuant to Ind. Code §9-30-5-2(a), the State must prove that Sowers operated a vehicle while intoxicated. Intoxication is defined at Ind. Code §9-13-2-86. It means, as applicable to this appeal, under the influence of a controlled substance so that there is an impaired condition of thought and action and the loss of normal control of a person's faculties. It is Sowers' argument that the State failed to prove he was intoxicated.

The question, however, is whether the inferences supporting the judgment are reasonable, not whether there were other 'more reasonable' inferences that could have been made. Reaching alternative inferences such as this is a function of the trier of fact, not this Court. We cannot reverse the conviction merely because this inference is a plausible one that might have been drawn from the evidence. Triers of fact determine not only the facts presented to them and their credibility, but any reasonable inferences from facts established either by direct or circumstantial evidence. It is not necessary that the court find the circumstantial evidence excludes every reasonable hypothesis of innocence. It need only demonstrate that inferences may reasonably be drawn which support the finding of guilt.

Brink v. State, 837 N.E.2d 192, 197 (Ind. Ct. App. 2005). (Citations omitted.)

Contrary to Sowers' argument relating to facts not proven, the facts remain that Sowers admitted that he had smoked marijuana that day; that his eyes were dilated; that his movements were slow; that his speech was slow; that his thinking was confused; and, that he was exceeding the speed limit by 20 miles per hour at nighttime. We find that those facts are sufficient to sustain the conviction.

CONCLUSION

The facts are sufficient to sustain the conviction. Judgment affirmed.

DARDEN, J., and ROBB, J., concur.