

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

D.R.P.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 26, 2011

Court of Appeals Cause No.
30A01-1101-CR-8

Appeal from the Hancock
Superior Court

The Honorable Dan E.
Marshall, Judge

Cause No. 30D02-0911-CM-
1689

Riley, Judge.

STATEMENT OF THE CASE

Appellant-Defendant, D.R.P., appeals his conviction for operating a vehicle while intoxicated and in a manner that endangered a person, a Class A misdemeanor, Ind. Code § 9-30-5-2.

We affirm.

ISSUE

D.R.P. raises two issues on appeal, which we consolidate and restate as the following single issue: Whether the State presented sufficient evidence to establish beyond a reasonable doubt that D.R.P. operated a vehicle while intoxicated and in a manner that endangered a person.

FACTS AND PROCEDURAL HISTORY

On November 17, 2009, D.R.P. and his cousin Brent Barnett (Brent) had worked in the morning and had lunch in Noblesville, Indiana during which D.R.P. drank three beers. After lunch, D.R.P. and Brent went to a pub in Fortville, Indiana where D.R.P. had more beers and Brent “had a beer or two.” (Transcript p. 13). Leaving the pub, D.R.P. and Brent travelled to D.R.P.’s cousin, Brian Barnett’s (Barnett), residence in Greenfield, Indiana. At Barnett’s residence, a family disturbance occurred which caused law enforcement officers to become involved.

On November 19, 2009, the State filed an Information charging D.R.P. with Count I, operating a vehicle while intoxicated and in a manner that endangered a person, a Class

A misdemeanor, I.C. § 9-30-5-2; Count II, operating a vehicle while intoxicated with a blood alcohol content of at least 0.15 or greater, a Class A misdemeanor, I.C. § 9-30-5-1; Count III, battery, a Class A misdemeanor, I.C. § 35-42-2-1; and Count IV, criminal mischief, a Class A misdemeanor, I.C. § 35-43-1-2. On November 8, 2010, D.R.P. agreed to plead guilty to Count IV, criminal mischief, in exchange for the State dismissing Count II, operating with a blood alcohol content of 0.15 or greater and Count III, battery. The trial court accepted the plea agreement and sentenced D.R.P. to one year with the entire sentence suspended to probation. On November 15, 2010, the trial court conducted a bench trial on Count I, operating a vehicle while intoxicated and in a manner that endangered a person. That same day, the trial court returned a guilty verdict. On December 9, 2010, the trial court sentenced him to a suspended sentence of one year.

D.R.P. now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

D.R.P. contends that the State failed to present sufficient evidence to establish beyond a reasonable doubt that he operated a vehicle while intoxicated. In reviewing a sufficiency of the evidence claim, this court does not reweigh the evidence or judge the credibility of the witnesses. *Perez v. State*, 872 N.E.2d 208, 212-13 (Ind. Ct. App. 2007), *trans. denied*. We will consider only the evidence most favorable to the verdict and the reasonable inferences to be drawn therefrom and will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. *Id.* at 213. Reversal is appropriate only when reasonable persons would not be able to form inferences as to each material element of the offense. *Id.*

In order to convict D.R.P. of a Class A misdemeanor, the State was required to prove beyond a reasonable doubt that D.R.P. operated a vehicle while intoxicated and in a manner that endangered a person. *See* I.C. § 9-30-5-2. Here, D.R.P. only challenges the determination that he operated a vehicle. D.R.P. claims that there are no witnesses who saw him drive the vehicle nor did he ever admit to driving the car.

We disagree. The record reflects that when the police officers arrived at the scene, D.R.P. was no longer in the car. At trial, both Officer Rod Vawter and Officer Brent Inman (Officer Inman) testified that D.R.P. admitted to them that he had driven the vehicle. The officers' testimony is corroborated by a recording at the scene of an exchange between Officer Inman and D.R.P.:

OFFICER INMAN: Is that your truck, the white one back there?

D.R.P.: Yeah.

OFFICER INMAN: Why did you park it like that?

D.R.P.: 'Cause I drove it in the alley to confront them. '

Cause my cousin . . .

OFFICER INMAN: Did you realize you hit that parked car with your trailer?

D.R.P.: No. Did I?

OFFICER INMAN: Yeah, your trailer is on top of the back of the car.

D.R.P.: Oh, shit. Really?

OFFICER INMAN: Did you drive here?

D.R.P.: No, my cousin was driving. I wasn't driving.

OFFICER INMAN: You just said that you parked it like that.

(State's Exh. 2).

However, D.R.P. adamantly testified that Brent drove the car. As such, D.R.P.'s argument now amounts to a request to reassess the credibility of witnesses. It is the function of the trier of fact to determine the weight of the evidence and the credibility of the witnesses. *Moore v. State*, 637 N.E.2d 816, 822 (Ind. Ct. App. 1994), *trans. denied*,

cert. denied 513 U.S. 1165 (1995). The trier of fact is free to believe or disbelieve witnesses, as it sees fit. *Id.*

Nevertheless, D.R.P. points to the *corpus delicti* rule which holds that a crime may not be proven based solely on a confession. *Malinski v. State*, 794 N.E.2d 1071, 1086 (Ind. 2006). The evidence need not prove that a crime was committed beyond a reasonable doubt, but merely provide an inference that a crime was committed—an inference that may be established by circumstantial evidence. *Id.* The independent evidence supporting the *corpus delicti* need not preclude any possible explanation of the circumstances. *Stevens v. State*, 691 N.E.2d 412, 424-25 (Ind. 1997), *reh'g denied*.

Here, the State presented evidence that the trailer of D.R.P.'s truck was parked on the back of another car, which supports an inference that an impaired driver operated the vehicle. Also, the State established that D.R.P. was intoxicated and was unaware that his vehicle had struck a parked car and his trailer was parked on top of another car. We conclude that these inferences taken together support the fact that D.R.P. operated his vehicle while intoxicated. Therefore, we affirm the trial court's decision.

CONCLUSION

Based on the foregoing, we conclude that the State presented sufficient evidence to establish beyond a reasonable doubt that D.R.P. operated a vehicle while intoxicated and in a manner to endanger another person.

Affirmed.

Darden, J. and Barnes, J. concur