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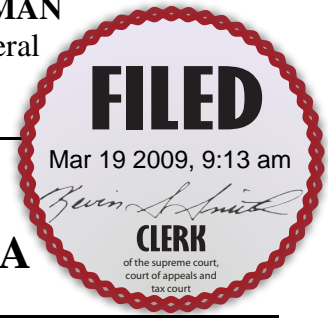
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**IN THE  
COURT OF APPEALS OF INDIANA**

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HARRY H. CAMPBELL,  
Appellant/Defendant,

vs.

STATE OF INDIANA,  
Appellee/Plaintiff.

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No. 03A01-0809-CR-417

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APPEAL FROM THE BARTHOLOMEW SUPERIOR COURT  
The Honorable Roderick D. McGillivray, Judge  
Cause No. 03D02-0607-CM-930

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**March 19, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BRADFORD, Judge**

Appellant/Defendant Harry H. Campbell appeals his conviction for Class A misdemeanor Operating a Vehicle While Intoxicated (“OWI”),<sup>1</sup> contending that the State failed to produce sufficient evidence to prove his guilt beyond a reasonable doubt. We affirm.

## FACTS

At approximately 10:30 a.m. on June 23, 2006, Kenneth Vaughn saw a person ride a black scooter “through [a] stop sign without stopping” near Vaughn’s home in Columbus. Tr. p. 34. The person then pulled over to the curb, “threw” the scooter down, and ran over to a nearby house and began “beating” on the door. Tr. p. 34. Vaughn went into his home and called the police.

Columbus Police Officer James Scott responded and noticed Campbell riding a black scooter eastbound on 8<sup>th</sup> Street near its intersection with Central Avenue. Tr. p. 41. Officer Scott caught up to Campbell just as he turned south on McClure Street. At that point, “The scooter went across the northbound lane of traffic, jumped the curb and ran through a yard ... approximately thirty yards, forty yards, something of that effect to what I found out would be [Campbell’s] residence[.]” Tr. p. 42.

When Officer Scott approached, he noticed scratches on Campbell’s left arm and the left side of the scooter. Officer Scott also detected the odor of alcoholic beverages and noticed that Campbell’s eyes were bloodshot and “glassy[.]” his balance was poor, and his speech was slurred. Tr. p. 44. Officer Scott performed the horizontal gaze nystagmus, one-leg stand, and nine-step walk-and-turn field sobriety tests (“FSTs”) on

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<sup>1</sup> Ind. Code § 9-30-5-2 (2005).

Campbell, all of which he failed. Although Campbell initially agreed to a chemical test for blood alcohol concentration, he refused the test after being taken to the Columbus Police Department.

On July 10, 2006, the State charged Campbell with Class A misdemeanor OWI. After a bench trial on June 23, 2008, the trial court found Campbell guilty as charged. On August 18, 2008, the trial court sentenced Campbell to one year of incarceration, suspended to probation.

### **DISCUSSION AND DECISION**

Campbell contends that the State failed to produce sufficient evidence to sustain his conviction for Class A misdemeanor OWI. Our standard of review for challenges to the sufficiency of the evidence supporting a criminal conviction is well-settled:

In reviewing a sufficiency of the evidence claim, the Court neither reweighs the evidence nor assesses the credibility of the witnesses. We look to the evidence most favorable to the verdict and reasonable inferences drawn therefrom. We will affirm the conviction if there is probative evidence from which a reasonable jury could have found Defendant guilty beyond a reasonable doubt.

*Vitek v. State*, 750 N.E.2d 346, 352 (Ind. 2001) (citations omitted).

In order to convict Campbell of Class A misdemeanor OWI, the State was required to establish that he operate[d] a vehicle while intoxicated ... in a manner that endanger[ed] a person.” Ind. Code § 9-30-5-2. Campbell contends that the State failed to produce sufficient evidence to establish that he was intoxicated or that he endangered a person.

“Intoxicated” means being under the influence of alcohol “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 (2005). The State is required to establish the defendant was impaired, regardless of his blood alcohol content. *Miller v. State*, 641 N.E.2d 64, 69 (Ind. Ct. App. 1994), *trans. denied*. "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; (7) slurred speech. *Ballinger v. State*, 717 N.E.2d 939, 943 (Ind. Ct. App. 1999).

Here, Campbell's eyes were glassy and bloodshot, his balance unsteady, he smelled of alcohol, he failed three FSTs, and he refused a chemical test. Based on this evidence, the trial court was entitled to conclude that Campbell was intoxicated. *See, e.g., Fields v. State*, 888 N.E.2d 304, 307-08 (Ind. Ct. App. 2008) (concluding that State produced sufficient evidence to establish intoxication where police officer testified that defendant was unsteady on his feet, he smelled of alcohol, his speech was slurred, his eyes were red and watery, he had a "dazed look[,] and he failed three FSTs). Campbell's claim that various physical ailments caused him to appear intoxicated is nothing more than an invitation to reweigh the evidence, one that we decline.

As for Campbell's claim that the State failed to establish endangerment, we note that "[t]he element of endangerment is proved by evidence that the defendant's condition or manner of operating the vehicle could have endangered any person, including the public, the police, or the defendant." *Weaver v. State*, 702 N.E.2d 750, 753 (Ind. Ct. App. 1998) (citing *Blinn v. State*, 677 N.E.2d 51, 54 (Ind. Ct. App. 1997)). "Thus, 'proof

that the defendant's condition rendered operation of the vehicle unsafe is sufficient to establish endangerment.'" *Id.* (quoting *Kremer v. State*, 643 N.E.2d 357, 360 (Ind. Ct. App. 1994)).

The trial court could have reasonably inferred that the person Vaughn saw drive a scooter through a stop sign was Campbell, given the facts that Campbell's scooter fit the description of the one Vaughn saw and Campbell was found nearby soon after Vaughn called the police. Based on the above and evidence of Campbell's intoxication, the trial court was entitled to conclude that Campbell's intoxication either caused him not to notice or to disregard the stop sign. It seems fairly clear that a person who does not heed traffic signs poses a danger to himself and others. Moreover, Officer Scott noticed scratches on Campbell's left arm and the left side of his scooter, indicating that he may have recently had an accident, further reinforcing a conclusion that he posed a danger to himself or others. Finally, Officer Scott witnessed Campbell drive the scooter across the northbound lane of traffic, jump a curb, and drive through a yard, further reinforcing the conclusion that Campbell was a danger to himself and others. We conclude that the State produced sufficient evidence to establish endangerment.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and MAY, J., concur.