

Case Summary

Santiago Valdez appeals his convictions for Class D felony resisting law enforcement, Class A misdemeanor operating a vehicle while intoxicated, and Class B misdemeanor reckless driving. We affirm.

Issues

The issues before us are:

- I. whether there is sufficient evidence to rebut Valdez's defense of necessity with regard to his convictions for resisting law enforcement and reckless driving; and
- II. whether there is sufficient evidence to sustain Valdez's conviction for Class A misdemeanor operating a vehicle while intoxicated.

Facts

On December 22, 2006, Officer Justin Hobbs of the Indiana State Police was finishing a traffic stop on I-65 in Indianapolis. A vehicle driven by Santiago Valdez passed within a foot of Officer Hobbs's squad car, which was parked along the shoulder of the highway. Because Officer Hobbs did not see any vehicles along the highway that would have prevented Valdez's vehicle from yielding or changing lanes, Officer Hobbs initiated a pursuit of Valdez.

During the pursuit Officer Hobbs's radar detector indicated Valdez was traveling seventy-three miles per hour in a fifty-five mile per hour zone. Valdez later reached 120 miles per hour while weaving through traffic during the eight-mile pursuit along I-65. Eventually, Valdez aggressively exited the highway by crossing three lanes and

continued down the exit ramp at a high rate of speed. At the end of the exit ramp three other vehicles were stopped at a traffic light. Valdez passed the vehicles by driving along the shoulder of the exit and ultimately ran the traffic light by immediately turning right at the intersection.

Officer Hobbs continued the pursuit off the highway and observed Valdez run two more traffic lights and cause near accidents at each of these intersections. Officer Hobbs was about to end the pursuit when Valdez suddenly turned into an apartment complex parking lot. Valdez parked his vehicle and Officer Hobbs, along with a Greenwood police officer who joined the pursuit, parked directly next to Valdez.

Officer Hobbs drew his gun, approached Valdez's vehicle, and ordered Valdez to exit the vehicle approximately seventy times. Because Valdez did not respond or raise his hands, Officer Hobbs used his baton to break the rear driver's side window in order to unlock the driver's side door and remove Valdez. Upon removing Valdez from the vehicle and laying him on the ground Officer Hobbs noticed Valdez was wearing only a tee shirt, smelled strongly of alcohol, and had red glassy eyes. Officer Hobbs covered Valdez with a blanket while the Greenwood police officer went into Valdez's nearby apartment to get a pair of shorts.

While reading Valdez his Miranda rights, Officer Hobbs noticed Valdez had difficulty standing. Officer Hobbs asked Valdez if he had anything to drink and Valdez answered, with slurred speech, that he had consumed three beers. Valdez was then asked why he had not stopped during the pursuit and Valdez answered that someone was trying to kill him. Valdez declined Officer Hobbs's request for a field sobriety test. Officer

Hobbs then read from an implied consent card and asked if Valdez would be willing to take a chemical test. Valdez declined consent for this test as well. Valdez was placed under arrest and his vehicle was towed and inventoried. No alcohol or clothing was found in Valdez's vehicle.

The State charged Valdez with one count of Class D felony resisting law enforcement, one count of Class A misdemeanor operating a vehicle while intoxicated, one count of Class B misdemeanor reckless driving, one count of Class B misdemeanor public intoxication, and one count of Class A misdemeanor public indecency.

During trial, Valdez raised a defense of necessity and testified that he was being chased by five or six armed men who wanted to kill him after they failed to rob him. More specifically, Valdez testified that these men had demanded money from him and ordered him to take off his clothing. After Valdez complied with their demands he noticed one of the men leave to grab a shotgun. Valdez claims he immediately grabbed his clothing from one of the alleged attackers, threw his clothing in the car, obtained his keys from the pockets of his shorts, and drove away. The alleged attackers immediately pursued Valdez with three different vehicles and fired three shots at Valdez's vehicle while chasing him. Valdez testified that although the alleged attackers would stop at traffic lights, he continued to run the traffic lights in order to evade the attackers. Valdez said these men continued to follow him onto I-65.

Eventually, Valdez noticed Officer Hobbs's squad car along the shoulder of the highway and decided to drive past the squad car at a high rate of speed in order to get Officer Hobbs's attention. Valdez began flashing his headlights and waving his hands as

he sped past Officer Hobbs. Valdez believed the men were approximately 100 to 150 feet behind him at the time he passed Officer Hobbs and stated he did not want to stop near Officer Hobbs because he believed the men would have shot both of them. Valdez claims he intended to drive straight home in order to explain the situation to Officer Hobbs at that location. Furthermore, Valdez claims that even though he did not see any of the attackers follow him or Officer Hobbs off the interstate, he did see one of their vehicles follow him into the apartment complex and immediately drive away.

Valdez also testified he completed a portable breath test that was administered by the Greenwood officer, but this officer threw the testing device to the ground after the officer remarked the test failed to show anything. Furthermore, Valdez claims that Officer Hobbs failed to read Valdez his Miranda rights and never offered him either a certified breath test or any field sobriety tests.

The trial court found Valdez guilty of Class D felony resisting law enforcement, Class A misdemeanor operating while intoxicated, and Class B misdemeanor reckless driving. It found Valdez not guilty of public indecency and merged the public intoxication count into the operating while intoxicated conviction. Valdez now appeals.

Analysis

I. Necessity Defense

Valdez does not contest that he led Officer Hobbs on a high-speed chase and drove recklessly for several miles. He argues, however, that he did so out of necessity to save his life and that the State introduced insufficient evidence to prove otherwise. In order to prevail on a claim of necessity, the defendant must show: (1) the act charged as criminal

must have been done to prevent a significant evil, (2) there must have been no adequate alternative to the commission of the act, (3) the harm caused by the act must not be disproportionate to the harm avoided, (4) the accused must entertain a good faith belief that his act was necessary to prevent a greater harm, (5) such belief must be objectively reasonable under all the circumstances, and (6) the accused must not have substantially contributed to the creation of the emergency. Topps v. State, 643 N.E.2d 387, 390 (Ind Ct. App. 1994). In order to negate a claim of necessity, the State must disprove at least one element of the defense beyond a reasonable doubt. See Pointer v. State, 585 N.E.2d 33, 36 (Ind. Ct. App. 1992) (discussing State's burden in the context of an analogous self-defense claim). The State may refute a claim of the defense of necessity by direct rebuttal, or by relying upon the sufficiency of the evidence in its case-in-chief. Id.

The decision regarding whether a claim of necessity has been disproved is entrusted to the fact-finder. Id. Where a defendant is convicted despite his or her claim of necessity, this court will reverse the conviction only if no reasonable person could say that the defense was negated by the State beyond a reasonable doubt. Id. The trier of fact is free to believe or disbelieve witnesses as it sees fit. McClendon v. State, 671 N.E.2d 486, 488 (Ind. Ct. App. 1996).

In this case, the trial court was not required to believe the story that Valdez presented for his necessity defense. Therefore, a thorough analysis of the factors regarding his necessity defense is not warranted. There were many inconsistencies that allowed for the trial court not to believe the story. For example, Valdez claims he threw his clothing into the vehicle before driving away from the alleged attackers. However,

Officer Hobbs's testimony revealed that he did not recall finding any clothing or shoes in Valdez's vehicle. Furthermore, Valdez claims he had enough time not only to grab his clothing and personal effects from armed attackers, but also enter his vehicle, find his keys in the clothing, start his vehicle, and drive away. The likelihood of this portion of Valdez's story boggles the mind. The trial court relied on the evidence presented to it by the testimony and reasonably could have determined that Valdez's story was not credible.

II. Sufficiency of Evidence

Valdez also argues the State presented insufficient evidence to support his conviction for operating a vehicle while intoxicated. Our standard of review for sufficiency of the evidence claims is well settled. When reviewing the sufficiency of the evidence supporting a conviction, we will not reweigh the evidence or judge the credibility of witnesses. Staton v. State, 853 N.E.2d 470, 474 (Ind. 2006). We must look to the evidence most favorable to the conviction together with all reasonable inferences to be drawn from that evidence. Id. We will affirm a conviction if there is substantial evidence of probative value supporting each element of the crime from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. Id.

To convict Valdez, the State was required to prove that he was intoxicated while operating a vehicle. See Ind. Code § 9-30-5-2. Under Indiana Code § 9-13-2-86, "intoxicated" means under the "influence of (1) alcohol; . . . so that there is an impaired condition of thought and action and the loss of normal control of a person's faculties." Evidence of the following may establish intoxication: (1) consumption of significant

amounts of alcohol; (2) odor of alcohol; (3) impaired attention and reflexes; (4) bloodshot or watery eyes; (5) unsteady balance; (6) failure of field sobriety tests; and (7) slurred speech. Pickens v. State, 751 N.E.2d 331, 335 (Ind. Ct. App. 2001). Finally, proof of intoxication can be established by impairment, independent of tests for blood alcohol level. Stevens v. State, 701 N.E.2d 277, 280 (Ind. Ct. App. 1998).

Officer Hobbs's testimony revealed that Valdez displayed four of the foregoing elements of intoxication. After Officer Hobbs removed Valdez from the vehicle he smelled the odor of alcohol on Valdez and noticed "his eyes were red and glassy." Tr. p. 30. During a conversation with Valdez, Officer Hobbs noticed that Valdez's speech was slurred and that he had difficulty standing. Furthermore, Officer Hobbs testified that Valdez refused any sort of field sobriety tests until he had an opportunity to see a judge. Officer Hobbs's training and experience reasonably led him to believe that Valdez was intoxicated while driving erratically. This evidence supports a reasonable inference that Valdez was driving while intoxicated.

Furthermore, Valdez was properly convicted under Class A misdemeanor operating a vehicle while intoxicated because he endangered others. See I.C. § 9-30-5-2(b). Valdez contends that no danger existed because no harm resulted and that he, "was apparently capable of traveling at high speed and avoiding other vehicles and obstructions." Appellant's Br. p. 13. This argument confuses capability with luck. The danger was always present and it was only through Valdez's sheer luck that others and himself were not injured due to his erratic driving maneuvers. Valdez merely beat the odds.

Conclusion

There is sufficient evidence to support Valdez's convictions for reckless driving, resisting law enforcement, and operating a vehicle while intoxicated. We affirm.

Affirmed.

SHARNACK, J., and VAIDIK, J., concur.