

Jeffrey N. Miller appeals his conviction of operating a motor vehicle after forfeiture of his license, a Class C felony.¹ He asserts the trial court erred in excluding evidence and the evidence is insufficient to support his conviction. Because he has not demonstrated the evidence he offered was admissible, we cannot find the court abused its discretion when it excluded the evidence. The circumstantial evidence was sufficient to support the inference that Miller had been driving, despite testimony by both Miller and his employee, Jackie Elliott, that Elliott was driving when the accident occurred. Accordingly, we affirm.

FACTS AND PROCEDURAL HISTORY

In 2001, Miller was convicted of operating a vehicle while an habitual traffic violator and his license was suspended for life. Nevertheless, he owns a work van, which he insures through Progressive Insurance Company. Because he is an habitual traffic violator, his insurance policy covers accidents involving the van, but only if Miller is not driving.

At 8:15 a.m. on February 4, 2004, Juanita and Irvin Welch parked their car on a dead end road to attend a rummage sale. They parked one-half to one car length behind Miller's van. As they walked away from their car, Irvin saw Miller open the driver's door of his van. After they turned a corner, they heard a crash and were told their car had just been hit.

They walked back to their car to find Miller's van had "side-swiped" the driver's side of their car. (Tr. at 15.) Miller exited the driver's door of the van "[s]oon after he pulled the van up." (*Id.* at 42.) Miller approached the Welches, introduced himself,

¹ Ind. Code § 9-30-10-17.

apologized for hitting their car, and said “I guess I didn’t back up far enough. I got too close.” (*Id.* at 16.) One of Miller’s employees, Adam McPherson, stepped out of the passenger side of the van, and Miller had McPherson change the Welches’ front tire because it had been flattened in the accident.

Jeremiah Joseph was at the rummage sale and heard the crash. He looked out the window of the house to see Miller getting out of the driver’s side of the van. Irvin insisted Joseph call the police, and Miller said, “[T]here’s no need of calling the authorities. We can handle it ourselves.” (*Id.* at 18.) Miller indicated his insurance would take care of it, and he provided his insurance information to Irvin. While McPherson changed the tire, Joseph walked all around the van and did not see anyone inside. The police arrived within ten minutes of the dispatch, but Miller left before they arrived.

The State charged Miller with operating a vehicle after forfeiting his license. A jury found him guilty. The court sentenced him to serve eight years.

DISCUSSION AND DECISION

1. Admission of Evidence

Miller asserts the court erred when it denied his request to admit documentation from his insurance agency indicating it concluded Miller was not driving the van when the accident occurred. A trial court has broad discretion to determine whether to admit evidence, and we reverse only when an abuse of that discretion denies the defendant a fair trial. *See Bryant v. State*, 802 N.E.2d 486, 495 (Ind. Ct. App. 2004), *trans. denied*

822 N.E.2d 968 (Ind. 2004). “An abuse of discretion occurs when the trial court’s ruling is clearly against the logic and effect of the facts and circumstances.” *Id.*

Prior to trial the State filed a motion *in limine* to prohibit the admission of this evidence.² The court granted the State’s motion. During trial, but outside the presence of the jury, Miller presented an offer to prove in which he submitted the documents and explained:

I would offer this exhibit and describe briefly what the testimony would have been from both Beth Combs and Mike Scott. Beth is the custodian of records from Murrell and Associates which holds the policy for Progressive Growth Insurance for Mr. Miller. At the time of the accident the adjuster Mike Scott did an investigation in which he talked to both Jack Elliott a couple of times, the recording of his testimony as to the events surrounding that day and also Mr. Miller and also the agent and Beth Combs were interviewed as well. I think the testimony would be that after that investigation in talking with all those individuals that they determined that Mr. Elliott was the driver, in fact that day on February 21, 2004 and not Jeff Miller. I think we’ve already got into evidence the fact the claim was paid and the driver was excluded as a [sic] insured driver. So I think that does need to be dealt with. But that testimony was suffice to say there was an investigation and that investigation lead [sic] to Jack Elliott being the operator and for purposes of the offer of proof if [sic] now offer Defendant’s Exhibit F for that.

(Tr. at 106-7.)

The State asserts Miller waived this argument by failing to make clear to the trial court “the grounds for admission.” *See Bryant*, 802 N.E.2d at 497 (“To be sure, an offer of proof should identify not only anticipated testimony, but also the grounds on which the evidence is believed to be admissible.”). We agree. *See id.* (waiving argument because ground for admission not presented to the trial court).

² That motion did not assert why the evidence was inadmissible.

Neither has Miller argued in his appellate brief why this evidence was admissible. Rather, he tells us only what the evidence would have demonstrated. Because he has provided no ground for admission, Miller's admissibility argument fails on the merits.

As Miller's counsel noted at trial, "[W]e've already got into evidence the fact the claim was paid and the driver was excluded as a [sic] insured driver." (Tr. at 106.) Miller testified he had insurance, the insurance would not pay a claim if he was driving, and the insurance paid the Welches. (Tr. at 88-90.) Because the evidence about which Miller complains was cumulative of other evidence already admitted, Miller has not demonstrated he was prejudiced by the trial court's exclusion of this evidence.

2. Sufficiency of Evidence

Miller claims the evidence was insufficient to support the jury finding he was the driver of the van. To support his claim, Miller cites his own testimony Elliott was driving the van, Elliott's testimony he was driving the van, and the fact that all the other witnesses admitted they did not see who was driving the van.

We must affirm Miller's conviction unless no reasonable fact-finder could have found the evidence proved his guilt beyond a reasonable doubt. *See Winn v. State*, 748 N.E.2d 352, 357 (Ind. 2001). When making our determination, we must view the evidence and the inferences therefrom in the light most favorable to the verdict, and we may neither reweigh the evidence nor reassess the credibility of the witnesses. *Id.* A conviction may be supported by circumstantial evidence alone. *Jones v. State*, 780 N.E.2d 373, 376 (Ind. 2002).

The evidence most favorable to the judgment supports an inference Miller was driving the van. Miller is requesting that we reweigh the evidence and reassess the credibility of the witnesses, which our standard of review does not permit. Accordingly, we affirm his conviction.

Affirmed.

BAKER, J., concurring.

SULLIVAN, J., concurring as to Part 2; concurring in result as to Part 1.