

Clifford Helm appeals his conviction for Operating a Vehicle While Intoxicated Causing Death,¹ as a class B felony. He presents the following restated issue for review: Did the State present sufficient evidence that he was the driver of the vehicle?

We affirm.

The facts most favorable to the verdict follow. On December 21, 2004, Helm was at a bar and grill in Culver, Indiana. Lora Oliveris, an employee, started drinking with Helm after her shift was over. Jessica Spiewak was the bartender and after the business closed around 11:00 p.m., Helm, Oliveris, and Spiewak left in Helm's vehicle and drove to a bar in Monterey. They all took drinks with them, and Spiewak drove. After drinking at the bar in Monterey, Spiewak drove the trio to another bar in Bass Lake, where they drank until the bar closed.

When they left the last bar around 4:00 a.m., Oliveris sat in the back seat of Helm's vehicle, and Spiewak sat in the passenger seat. During the drive, Oliveris leaned forward to talk to Spiewak in the front passenger seat when she saw a curve in the road and realized the vehicle was traveling too fast. Oliveris threw herself behind the driver's seat just before the vehicle veered off the road and slammed into a cement barricade on the passenger side of the vehicle. The vehicle then flipped upside down.

When Oliveris was eventually able to exit the vehicle through a broken window, she saw Helm attempting to pull Spiewak's body from the passenger side of the vehicle. He asked Oliveris for help removing Spiewak, but all Oliveris saw was blood and she

¹ Ind. Code Ann. § 9-30-5-5(b)(1)(A) (West, PREMISE through 2007 Public Laws approved and effective through April 8, 2007).

“flipped out” when she touched the body. *Transcript* at 105. Oliveris cursed at Helm and repeatedly told him Spiewak was dead. Helm told Oliveris that she needed to calm down. He then grabbed Oliveris by the arms and repeatedly stated that Spiewak was the one driving. Oliveris responded, “[N]o, I can’t. I can’t be here.” *Id.* When Helm responded affirmatively, Oliveris left and ran to a nearby house.

Officer David Combs was dispatched to the accident scene shortly after 4:00 a.m. Upon his arrival, he observed that the vehicle was upside down and that it had heavy damage to the passenger side and front corner. Spiewak’s lifeless body was on the ground with her feet next to the passenger door. Spiewak had extensive head injuries. In fact, the top of her head – from the center of her eyes up – had been taken off during the accident. Officer Combs had to pull Helm away from Spiewak, while another officer placed him in a squad car. Helm smelled of alcohol and was combative with police and emergency medical personnel. He indicated that Spiewak was driving and did not inform anyone that Oliveris had been a passenger during the accident. Officer Combs learned of Oliveris about an hour later, when someone came to the scene to pick her up. Neither Helm nor Oliveris were significantly injured, though they were taken to the hospital for evaluation. While at the hospital, Helm’s blood was drawn at 5:25 a.m. and testing revealed his BAC was .18.²

Inspection of the inside of the vehicle revealed that the blood was concentrated on the passenger side. There was a large amount of blood on the roof of the passenger side,

² An expert further opined at trial that Helm’s BAC at the time of the accident would have been .2.

as well as blood and other body matter from Spiewak around the frame of the passenger door. Spiewak's blood and DNA was also found on the passenger airbag. Officer Earl McCullough of the Indiana State Police created a reconstruction of the accident and opined that Spiewak was in the front passenger seat at the time of the collision. Further, while Oliveris initially stated that Spiewak was the driver, she contacted the detective in charge of the case about a week after the accident and provided another statement in which she indicated that Spiewak was actually the front passenger.

On March 30, 2006, a grand jury returned an indictment charging Helms with operating a vehicle while intoxicated causing death, as a class B felony. The jury trial commenced on July 31, 2006, and Helms was found guilty as charged on August 3. Helm now appeals, arguing that the State failed to present sufficient evidence that he was the driver of the vehicle at the time of Spiewak's death.

Our standard of review for claims challenging the sufficiency of the evidence is well settled. We will not reweigh the evidence or judge witness credibility, and we will respect the fact finder's exclusive province to weigh conflicting evidence. *McHenry v. State*, 820 N.E.2d 124 (Ind. 2005). Considering only the evidence and the reasonable inferences supporting the conviction, our task is to decide whether there is substantial evidence of probative value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. *Id.*

In the instant case, the evidence favorable to the verdict and the reasonable inferences drawn therefrom establish that Helm was the driver of the vehicle at the time of the accident, Spiewak was the front seat passenger, and Oliveris was in the back seat.

While Oliveris gave conflicting statements prior to trial regarding whether Spiewak was the driver, she testified at trial that she vividly remembered leaning forward to talk with Spiewak, who was in the front passenger seat, just prior to the accident. Further, Oliveris clearly indicated that she (Oliveris) was sitting in the back seat. As there were only three individuals in Helm's vehicle, the only reasonable inference from Oliveris's testimony is that Helm was the driver. Further, DNA and other physical evidence from the scene supported Oliveris's testimony that Spiewak was the front seat passenger at the time of the collision. In fact, Officer McCullough, who was trained in accident reconstruction, testified in detail and explained his opinion that Spiewak was in the front passenger seat at the time of the accident.

We reject Helm's request for us to reweigh the evidence and judge the credibility of the witnesses. Based on the evidence, a reasonable trier of fact could find that Helm was driving his vehicle at the time of the fatal accident.

Judgment affirmed.

BAKER, C.J., and CRONE, J., concur.