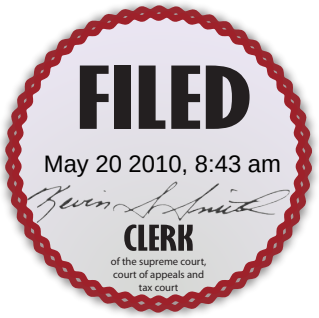

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IN THE
COURT OF APPEALS OF INDIANA

JEREMY A. BARKER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 29A02-0911-CR-1084
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable Wayne A. Sturtevant, Judge
Cause No. 29D05-0811-CM-07066

MAY 20, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

STATEMENT OF THE CASE

Appellant Jeremy A. Barker appeals his convictions for operating a vehicle while intoxicated in a manner that endangered a person, a class A misdemeanor,[1] and failure to stop after an accident resulting in damage to an unattended vehicle, a class B misdemeanor.[2] We affirm.

ISSUES

Barker raises one issue, which we restate as whether the evidence is sufficient to support the convictions.

FACTS

On the evening of May 10, 2008, Barker attended a party in Sheridan, Indiana, and became intoxicated.

At approximately 3:00 in the morning on May 11, 2008, Melissa McCoy was at work at a printing and mass mailing company in Sheridan. She had asked her supervisor, Phillip Johnson, to come over to the building where she was working because one of the printing presses was malfunctioning. Johnson had parked his car on the side of the street near the building.

McCoy went outside to smoke a cigarette. As she stood there, she saw a silver colored Isuzu sport utility vehicle ("the Isuzu") coming down the street. McCoy saw the Isuzu strike Johnson's car on its front passenger side. She was fifteen (15) feet from the collision and saw the Isuzu's driver. McCoy did not see anyone else in the Isuzu. At that

[1] Ind. Code § 9-30-5-2.
[2] Ind. Code §§ 9-26-1-3, 9-26-1-8.

point, Johnson came outside because he heard the collision and heard McCoy call to him. McCoy and Johnson saw the Isuzu back up, then move forward and strike Johnson's car again as it pushed past the car. Johnson was also fifteen (15) feet from the collision, and he saw the Isuzu's driver. He did not see anyone else in the Isuzu.

McCoy and Johnson saw the Isuzu drive a half-block further down the street and park on the side of the street. The driver of the vehicle got out of the car and went into a house. McCoy and Johnson saw the driver stagger as he walked, which caused Johnson to think that the driver was drunk. Next, they saw the driver emerge from the house, return to the Isuzu, and inspect the Isuzu with a cigarette lighter. The driver then went back into the house, and McCoy called 911.

Officer Kevin Garrison of the Sheridan Police Department was dispatched to investigate. He looked at the scene of the crash, talked with McCoy and Johnson, and walked over to the Isuzu. Officer Garrison noted that the Isuzu had sustained damage and that the damage was consistent with striking Johnson's car. Next, he walked over to the house that McCoy and Johnson had pointed out to him, knocked on the door, and asked to speak with the owner of the Isuzu. There were several people at the house, and Barker came out and identified himself as the Isuzu's owner. Officer Garrison asked Barker if he had been in an accident, and Barker responded that "he thought they had hit a parked car." Tr. p. 76. Officer Garrison noticed that Barker smelled strongly of alcohol and had watery, bloodshot eyes. In addition, Barker's speech was slurred.

Officer Garrison placed Barker in handcuffs and took him to the patrol car. At that time, McCoy and Johnson identified Barker as the person they had seen driving the Isuzu.

The State charged Barker with the offenses identified above. Barker waived his right to a trial by jury. The trial court held a bench trial and found Barker guilty as charged.

DISCUSSION AND DECISION

When reviewing a sufficiency of the evidence claim we do not reweigh the evidence or assess the credibility of witnesses. *Soward v. State*, 716 N.E.2d 423, 425 (Ind. 1999). Rather, we consider only the probative evidence and reasonable inferences supporting the judgment and determine therefrom whether a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *See White v. State*, 772 N.E.2d 408 (Ind. 2002).

In this case, Barker asserts that there is insufficient evidence to establish that he drove the Isuzu and committed the crimes for which he was convicted. We disagree. McCoy identified Barker as the Isuzu's driver after Officer Garrison brought Barker to the patrol car, and she also identified Barker as the driver at trial. In addition, when Officer Garrison brought Barker to the patrol car, Johnson was "a hundred per cent certain" that Barker was the person he had seen driving the Isuzu. Furthermore, Barker told Officer Garrison that he was the Isuzu's owner and stated that "he thought they had hit a parked car." Tr. p. 76. This evidence is sufficient to sustain the convictions. Barker identifies inconsistencies in the witnesses' testimony and cites evidence that someone

else may have driven the Isuzu, but his claim amounts to a request to reweigh the evidence, which we may not do.

Barker cites *Floyd v. State*, 399 N.E.2d 449 (Ind. Ct. App. 1980), to support his claim, but that case is distinguishable. In that case, an appellant was convicted for leaving the scene of an accident, driving while intoxicated, and driving with a suspended license, and he challenged the sufficiency of the evidence on appeal. *Id.* at 451. We noted that the appellant was found six (6) blocks from an automobile accident in an intoxicated state with blood on him, and that he acknowledged that he owned a type of car that was involved in the accident. *Id.* at 450. However, the appellant denied driving that specific car, and no one at the scene of the accident identified the appellant as the driver. *Id.* at 450, 451. Under these circumstances, we concluded that the State failed to prove that the appellant was the driver and reversed the convictions. *Id.* at 451.

By contrast, in the current case two eyewitnesses identified Barker as the driver of the Isuzu and Barker admitted his involvement to Officer Garrison. For these reasons, *Floyd* is not controlling, and Barker's claim is without merit.

CONCLUSION

For the reasons stated above, we affirm the judgment of the trial court.

Affirmed.

NAJAM, J., and CRONE, J., concur.