

Matthew Knight appeals from his convictions after a jury trial of class D felony Operating a Vehicle as a Habitual Traffic Violator¹ and class C infraction No License Plate Light.² Knight presents the following restated issue for our review: Did Knight present sufficient evidence of his defense of extreme emergency?

We affirm.

On August 5, 2008, Stephanie Spain went to a bar in Evansville, Indiana to meet some friends. Later that evening, Knight called Spain and asked her to pick him up and drive him to the bar so that he could sing karaoke. Spain believed that she picked Knight up at approximately midnight, while Knight believed it was closer to 10:30 or 11:00 p.m. Spain was aware that Knight did not have a valid driver's license and in fact was prohibited from driving. She was also aware that she would be driving Knight home after they left the bar.

Knight sang karaoke at the bar, but did not consume alcoholic beverages there. Spain and her friends drank beer. Knight and Spain remained at the bar for approximately two to two and one-half hours with each having a different recollection of the time they left the bar.

Spain's friends were too intoxicated to drive, and neither Spain nor Knight had cash or a credit card to pay for a taxi. Spain did not seem "to be too terribly off" and decided to drive, despite drinking the equivalent of a pitcher of beer. *Transcript* at 89. While attempting to back her car out of her parking space, she almost struck a concrete pole. Knight, who was in the car at the time, did not ask Spain to stop the vehicle, nor did he return

¹ Ind. Code Ann. § 9-30-10-16 (West, Westlaw current through 2011 1st Reg. Sess.).

² Ind. Code Ann. § 9-19-6-4 (West, Westlaw current through 2011 1st Reg. Sess.); Ind. Code Ann. § 9-21-7-1 (West, Westlaw current through 2011 1st Reg. Sess.); I.C. § 9-21-7-13 (West, Westlaw current through 2011 1st Reg. Sess.).

to the bar to ask the bartender to find a ride for them. They decided to head to Spain's home, which was approximately five or six miles away.

While on route to her home, Spain's vehicle crossed over the center line almost causing an accident. Spain then pulled her vehicle over and she and Knight sat in the vehicle for approximately forty-five minutes to an hour in order to call friends and for Spain to sober up. Although Spain and Knight testified at trial that they both made unsuccessful attempts to call friends to drive them home, telephone records showed that no phone calls were made from Spain's cell phone from 1:25 a.m. until 3:30 a.m. and that from 12:58 a.m. until 5:01 a.m. no calls were made from Knight's cell phone. Spain was still shaken by the near collision, so Knight decided to drive Spain's vehicle the rest of the way home.

During the drive home, Knight and Spain passed two fast-food establishments and two gas stations. Spain was not compelled to return home, and Spain and Knight were not returning home to prevent any emergency. Neither Knight nor Spain were injured or bleeding, and they did not stop anywhere to ask for help.

Deputy Sheriff Anthony Todisco and Reserve Deputy Sheriff Christopher Love were on patrol when they observed Knight driving eastbound on the same road without a functioning license plate light. The officers made a u-turn and initiated a traffic stop at 3:00 a.m. Knight admitted that he was a habitual traffic violator and that he did not possess a valid driver's license. Although Spain failed a portable breath test at the scene, Knight passed. Spain called her father at 3:30 a.m., approximately the same time his shift at work ended, and he came to the scene and took Spain home. Knight was immediately placed under arrest.

The State charged Knight with operating a vehicle while his license was suspended and with failing to have a license plate light. On November 30, 2010, Knight was tried by a jury and was found guilty as charged. On February 28, 2011, the trial court sentenced Knight to a term of one and one-half years to be served on work release. Knight now appeals.

Knight conceded at trial his status as a habitual traffic violator and that he had notice of his status. Knight presented the defense of extreme emergency at trial to justify his decision to drive even though he was prohibited from doing so. He claimed at trial and claims now on appeal that the extreme emergency was to prevent Spain, who was intoxicated, from driving and posing a danger to herself and others.

I.C. § 9-30-10-18 (West, Westlaw current through 2011 1st Reg. Sess.) provides that an individual whose driving privileges have been suspended has a defense “that operation of a motor vehicle was necessary to save life or limb in an extreme emergency.” Such defense must be proven by a preponderance of the evidence. *Id.* A challenge to the fact-finder’s refusal to accept that defense and acquit the defendant is essentially a challenge to the sufficiency of the evidence. *Moore v. State*, 702 N.E.2d 762 (Ind. Ct. App. 1998). Our standard of review thus requires us to consider the evidence most favorable to the verdict, along with all reasonable inferences to be drawn therefrom, in order to determine whether a reasonable trier of fact could have found the defendant guilty. *Id.* We neither reweigh the evidence nor reassess the credibility of witnesses, and will not disturb the conviction so long as there is substantial evidence of probative value supporting each element of the crime. *Id.*

The determination of whether Knight proved that operation of Spain’s vehicle was necessary was a question of fact. *See Cain v. State*, 844 N.E.2d 1063 (Ind. Ct. App.

2006)(noting that question of necessity to operate a car without a valid license is a question of fact). We conclude that there is ample evidence to support the jury's finding that Knight was not in such an extreme emergency situation such that operating a motor vehicle was necessary to save life and limb. Neither Knight nor Spain was compelled to immediately return home. In fact, according to Knight, they had previously pulled over for forty-five minutes to an hour in order for Spain to sober up and to attempt to locate friends willing to drive them home. Further, Spain and Knight had passed several local businesses at which they could have stopped to ask for help, but failed to do so. There is sufficient evidence in the record to support the jury's decision to reject Knight's extreme emergency defense and convict him as charged.

Judgment affirmed.

RILEY, J., and MATHIAS, J., concur.