

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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Ryann Scott Early,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

September 27, 2023

Court of Appeals Case No.  
23A-CR-470

Appeal from the Boone Superior  
Court

The Honorable Bruce E. Petit,  
Judge

Trial Court Cause No.  
06D02-2102-F4-301

**Memorandum Decision by Judge Brown**  
Judges Crone and Felix concur.

**Brown, Judge.**

[1] Ryann Scott Early appeals his conviction for causing catastrophic injury when operating a vehicle while intoxicated as a level 4 felony and claims the evidence is insufficient to sustain his conviction. We affirm.

### ***Facts and Procedural History***

[2] At approximately 7:15 a.m. on October 18, 2020, Early was driving his Toyota Tacoma westward on a two-lane road in Boone County. Sherry Schnee was driving a Honda Accord eastward. While approaching a curve in the road, exceeding the posted speed limit of forty miles per hour, and traveling in a zone marked as a no passing zone by two solid yellow lines, Early moved into the oncoming lane of traffic in order to pass a Honda Fit occupied by Eric Spidell and Jessica Costa. Early's truck struck Schnee's vehicle in a head-on collision. At the time of impact, Early was traveling approximately seventy-nine miles per hour. Costa and Spidell stopped, and Costa called 911. Spidell helped Early exit his truck. Schnee was unresponsive.

[3] Law enforcement arrived at the scene at approximately 7:20 a.m. Officer Reginald Thomas asked Early if he was involved in the collision and if he thought he was okay, and Early replied affirmatively. Officer Thomas interacted with Early for approximately fifteen to twenty seconds and, during that time, smelled an odor of alcohol on Early's person. Officer Christopher Fischer noticed Early was disoriented and seemed confused. Early walked around picking up items around his truck. Costa saw that Early was standing behind his truck at which time she did not see anything in his hands, and then she saw him walk toward a barn with a bottle in his hand, reach behind an

opening in the metal siding of the barn, place the bottle behind the siding, and sit down in front of the opening. Costa told Officer Thomas what she observed. Officers Thomas and Fischer approached Early and discovered a bottle of Fireball Whisky, which contained liquid, behind the barn's siding. Officer Thomas smelled alcohol on Early. Before medical personnel attended to Early, he vomited. Abamislomov Abdullakh, a firefighter paramedic, asked Early questions as he placed him on a gurney, and Early indicated he had not had any drugs or alcohol. As he was being transported to the hospital in an ambulance, Abdullakh again asked Early if had any drugs or alcohol, and Early "said six (6) beers last night." Transcript Volume II at 161. Early also said that he had been traveling forty-five miles per hour at the time of the crash.

[4] Officer Aaron Carlson was asked to respond to St. Vincent's Hospital in Indianapolis. The information he had was that there had been a crash which involved a serious bodily injury and one of the drivers was life-lined by helicopter to the hospital. He "retrieved [his] Indiana Implied Consent for serious bodily injury or death card from [his] vest and read it word for word to Mr. Early." *Id.* at 167. Early consented to a chemical test, and a nurse drew blood from him at approximately 8:20 a.m. Early told Officer Carlson that he observed a vehicle stopped in the roadway without flashers or a turn signal, he moved to pass the vehicle, at the time he was traveling forty to forty-five miles per hour, after he crossed the centerline he observed a vehicle coming towards him, and he swerved in an attempt to avoid the vehicle but the crash occurred. Officer Carlson asked if he had anything to drink that day, and Early said that

he had six twelve-ounce cans of beer the previous night but had nothing to drink the morning of the crash. Officer Carlson noticed that Early's speech was slurred but did not smell alcohol. A toxicology laboratory tested the blood sample and determined the blood alcohol concentration ("BAC") of Early's blood was 0.142 grams of alcohol per 100 milliliters of his blood.

[5] Schnee, who was transported to the hospital by helicopter, suffered a broken neck. As a result of the collision, she is a quadriplegic and has no feeling below her armpits.

[6] The State charged Early with: Count I, causing catastrophic injury when operating a vehicle while intoxicated as a level 4 felony; Count II, causing catastrophic injury when operating a vehicle with an ACE of 0.08 or more as a level 4 felony; Count III, operating a vehicle while intoxicated endangering a person as a class A misdemeanor; Count IV, operating a vehicle with an ACE of 0.08 or more as a class C misdemeanor; Count V, operating a vehicle while intoxicated as a class C misdemeanor; and Count VI, public intoxication as a class B misdemeanor.

[7] In November 2022, the court held a bench trial. The State presented the testimony of Schnee, Spidell, Costa, Officer Kevin Allen, Officer Thomas, Officer Fischer, Abdullakh, Officer Carlson, and Lieutenant Ben Phelps. The court admitted photographs taken at the scene and of the bottle of Fireball Whisky, the parties' stipulations regarding the time of the crash and the result

of the chemical test, and recordings taken from the body cameras of Officers Allen, Fischer, and Thomas.

[8] Lieutenant Phelps, who also worked as a crash reconstructionist, testified that he visited the scene of the crash on October 18, 2022, and that the Toyota Tacoma contained a data recorder which captured some pre-crash data including “the vehicle speed, the accelerator, percentages of accelerator input, the engine speed, yaw rate, change in velocities, [and] braking applications.” *Id.* at 184. He testified the data revealed that the Tacoma had been traveling in excess of seventy miles per hour and “as we get closer to the area of impact the accelerator position in the truck increases,” “it has data for five (5) seconds prior reported in half (1/2) second increments,” “[t]he accelerator pedal increased from approximately 40% (forty percent) to 100% (one hundred percent) within a second to a second and a half (1/2) prior to impact,” and the truck “also shows an increase in the yaw rate, which tells me that it’s making a maneuver to the right as if it was going back towards its lane of travel.” *Id.* at 185. When asked if there was an evasive maneuver, he replied: “I wouldn’t consider this one an evasive maneuver because there was nothing to support a sudden jerk . . . or a sudden rapid movement of the steering wheel to the right. This was more of a negotiating the curve and trying to get back to your lane.” *Id.* at 185-186. He testified “[t]here was no braking application in the entire five (5) seconds prior.” *Id.* at 186. He further testified “[a]t impact [the Tacoma] was traveling approximately 79 (seventy-nine) miles per hour.” *Id.* at 188. He

indicated that his conclusion was that the Tacoma driven by Early caused the crash.

[9] Early testified that there was an ongoing custody situation involving his daughter around October 2020, he had been seeing a therapist since September 2020 and had a prescription for depression and severe anxiety, and he used alcohol to self-medicate. He testified that, when he was home by himself, he would consume Fireball to help him calm down and sleep. He testified that, on the night before the crash, he was with several members of his family and consumed four to six twelve-ounce cans of Miller Lite between approximately 5:00 p.m. and 10:30 p.m. He indicated that, from about midnight until 4:45 or 5:00 a.m., he visited a woman he had been dating and did not consume alcohol while with her. He testified that, after leaving her house, he went to a credit union to withdraw cash, a gas station, and then to retrieve a deer stand which he placed in the back of his truck, and he indicated that he did not consume any alcohol during this period. He testified that he started to drive toward his house, he was struggling with his mental health, he was crying and shaking, and he felt similar to the way he had felt when he previously experienced a panic attack. He testified that he saw a vehicle in front of him which he thought was “going slow or stopped,” he was “still going through the panic attack,” he made the decision to pass the vehicle, he saw the headlights of an oncoming vehicle, and he attempted to maneuver back to the other lane. *Id.* at 233. Early stated that, after the crash, he picked up the bottle of Fireball, he thought that it would “help [him] get through that morning,” and he “took a big

drink of it.” *Id.* at 240. When asked why he had Fireball in his truck, he stated that he kept it in his truck so that his mother would not see it in the freezer or refrigerator. He indicated that at one point, Officer Thomas walked past him and he then took another drink of Fireball. He stated that he panicked and “slid [the bottle] right there on the edge of the barn.” *Id.* at 250.

[10] The court found Early guilty on all counts. The court entered an order finding that, having considered Early’s version of the crash and his speed as compared to Costa’s testimony and Lieutenant Phelps’s reconstruction and analysis of the scene, Early’s version of what occurred is not credible and is directly refuted by the other evidence presented at trial. The court stated that it had concerns regarding Early’s explanation for why he hid the whisky bottle near the barn and it found Early’s account difficult to understand or believe. The court stated Early “asks this Court to believe that [in] the chaotic accident scene of a horrendous accident, [Early] saw the bottle of Whisky that had been thrown from his truck lying on the roadway and thought it would help him through this incident by gulping whiskey straight from the bottle,” “[t]his is while law enforcement officers, fire personnel and emergency responders were all around the scene,” “[h]owever, no one, not Officer Allen, not Officer Thomas, not Officer Fischer, not Miss Costa, not Mr. [Spidell], nor any of the responders observed his open drinking of whiskey from a large 1.7 Liter bottle,” and “[t]he only witness to [Early’s] involvement with the Whisky bottle was [Costa] who testified she never saw [Early] drinking from the bottle but did see him attempt

to hide the bottle removing it from the scene of the accident.” Appellant’s Appendix Volume II at 224-225. The court stated:

[T]he Court has reviewed all body cam videos with scrutiny and believes that the State’s evaluation of the time frame in which [Early] could have consumed the alcohol was accurate. It was within a window of one minute and forty-nine seconds where [Early] had the opportunity to consume the whiskey without law enforcement around. The Court does not believe that [Early] could have or would have consumed eight to twelve ounces of whiskey in that period of time and further, could never have been able to do so without being seen. [Early’s] account goes beyond unreasonable to unbelievable. Additionally, Ms. Costa’s and Mr. [Spidell’s] account of how [Early] was driving, along with Lt. Phelps[’s] reconstruction of the accident support a finding that he was impaired before the accident occurred.

*Id.* at 225. The court entered judgment of conviction for causing catastrophic injury when operating a vehicle while intoxicated as a level 4 felony and sentenced Early to ten years with four years suspended to probation.

### ***Discussion***

[11] When reviewing the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We do not assess witness credibility or reweigh the evidence. *Id.* We consider conflicting evidence most favorably to the trial court’s ruling. *Id.* We affirm the conviction unless no reasonable factfinder could find the elements of the crime proven beyond a reasonable doubt. *Id.* It is not necessary that the evidence overcome



every reasonable hypothesis of innocence. *Id.* at 147. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. *Id.*

[12] Early argues the State did not prove that he operated his vehicle while intoxicated or while he had a certain amount of alcohol in his blood. He argues that it did not present evidence that he consumed significant amounts of alcohol, that he had impaired attention or reflexes, bloodshot or watery eyes, or an unsteady balance, or that he failed field sobriety tests. He asserts that, “[w]hile the State presented some evidence that [he] had the odor of alcohol on his breath, the timing of these purported observations demonstrates their insufficiency in establishing impairment at the time of operation.” Appellant’s Brief at 15. He also argues that, “[a]s to Counts II and IV,” the State failed to show his BAC was 0.08 or higher at the time of the crash. *Id.* at 21. He asserts that the presumption in Ind. Code 9-30-6-15(b) did not apply and that Officer Carlson “read fatal/SBI implied consent and not implied consent based on probable cause of an operating while intoxicated offense.” *Id.* at 22.

[13] The State maintains the evidence supports Early’s conviction. It argues that it presented evidence of dangerous and illegal driving behavior, the smell of alcohol on his person, confusion and disorientation, slurred speech, possession of alcohol, hiding alcohol, and a BAC of 0.142 approximately one hour after the crash occurred. It also argues all of the conditions of Ind. Code 9-30-6-15(b) were met and that, even if the presumption did not apply, there was sufficient evidence of Early’s intoxication to sustain his conviction.

[14] Ind. Code § 9-30-5-5 provides:

A person who causes the death or catastrophic injury of another person when operating a vehicle:

- (1) with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per:
    - (A) one hundred (100) milliliters of the person's blood; or
    - (B) two hundred ten (210) liters of the person's breath;
  - (2) with a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's blood; or
  - (3) while intoxicated;
- commits a Level 4 felony.

[15] “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.” Ind. Code § 9-13-2-86. Intoxication may be established through evidence of consumption of significant amounts of alcohol, impaired attention and reflexes, watery or bloodshot eyes, an odor of alcohol on the breath, unsteady balance, failed field sobriety tests and slurred speech. *Outlaw v. State*, 918 N.E.2d 379, 381 (Ind. Ct. App. 2009), *opinion adopted*, 929 N.E.2d 196 (Ind. 2010).

[16] Ind. Code § 9-30-6-15(b) provides:

If, in a prosecution for an offense under IC 9-30-5, evidence establishes that:

- (1) a chemical test was performed on a test sample taken from the person charged with the offense within the period of time allowed for testing under section 2 of this chapter; and
- (2) the person charged with the offense had an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per:
  - (A) one hundred (100) milliliters of the person's blood at the time the test sample was taken; or
  - (B) two hundred ten (210) liters of the person's breath;

the trier of fact shall presume that the person charged with the offense had an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per one hundred (100) milliliters of the person's blood or per two hundred ten (210) liters of the person's breath at the time the person operated the vehicle. However, this presumption is rebuttable.

[17] Ind. Code § 9-30-6-2(c), in turn, provides: “A test administered under this chapter must be administered within three (3) hours after the law enforcement officer had probable cause to believe the person committed an offense under IC 9-30-5 or a violation under IC 9-30-15.”<sup>1</sup>

[18] The record reveals that Early's blood draw was administered approximately one hour after the crash, which is within the three-hour period specified in Ind.

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<sup>1</sup> Ind. Code § 9-30-6-2(a) provides: “A law enforcement officer who has probable cause to believe that a person has committed an offense under this chapter, IC 9-30-5, or IC 9-30-9, or a violation under IC 9-30-15 shall offer the person the opportunity to submit to a chemical test.” Ind. Code § 9-30-7-3 provides that a law enforcement officer “shall offer a portable breath test or chemical test to any person who the officer has reason to believe operated a vehicle that was involved in a fatal accident or an accident involving serious bodily injury.”

Code § 9-30-6-2, the toxicology laboratory determined his BAC was 0.142 grams of alcohol per 100 milliliters of his blood, and he was charged with an offense under Ind. Code § 9-30-5-5. Thus, the terms of Ind. Code § 9-30-6-15(b) were satisfied. We cannot say the fact Officer Carlson read an implied consent “for serious bodily injury or death,” Transcript Volume II at 167, renders the presumption under Ind. Code § 9-30-6-15(b) inapplicable. In *Mannix v. State*, the defendant was read the implied consent law for crashes involving fatalities and was later charged with an offense under Ind. Code §§ 9-30-5. 54 N.E.3d 1002, 1005-1009 (Ind. Ct. App. 2016). We noted that some provisions in Chapters 9-30-6 and 9-30-7 should be read together, that Ind. Code § 9-30-6-15(b) allows a trier of fact to relate the driver’s blood alcohol concentration at the time of the chemical test back to the time of the accident, and that, if the State failed to prove the chemical test occurred within three hours, it was not allowed to rely on the presumption. *Id.* at 1008-1009. We held that the defendant was charged with operating while intoxicated causing death under Ind. Code chapter 9-30-5, that accordingly Ind. Code § 9-30-6-15 applied, and that, because the defendant’s blood was drawn more than three hours after the crash, the State was deprived of the rebuttable presumption. *Id.* We also noted the fact that the defendant’s blood was drawn more than three hours after the crash was relevant only to the rebuttable presumption and not to the admissibility of the chemical test. *Id.* Here, Early’s blood was not drawn more than three hours after the crash, and thus the State was not deprived of the statutory presumption. Also, Early does not argue that law enforcement did not have probable cause to believe he committed an offense under Ind. Code §§

9-30-5. We cannot say the presumption in Ind. Code § 9-30-6-15 was inapplicable.

[19] Moreover, even if the statutory presumption was not applicable, the evidence is sufficient to support the trial court's determination that Early was intoxicated at the time of the crash. The evidence most favorable to the court's ruling reveals that Early had an ACE of 0.142 grams of alcohol per 100 milliliters of his blood approximately one hour after the collision. Officer Thomas smelled alcohol on Early's person when he initially interacted with him and later when he approached him while he was sitting by the barn. Officer Fischer indicated that Early seemed disoriented and confused. Officer Carlson noticed that Early's speech was slurred. Before medical personnel attended to him, Early vomited. Costa saw Early walk toward the barn with the bottle of Fireball and hide it behind the metal siding of the barn. The recordings taken from the officers' body cameras show Early's interactions with officers and his location relative to the officers, the scene of the crash, and the barn after the officers arrived at the scene. While Early claimed that he consumed the whisky after the crash, the trial court did not find his claim credible. The court that found there was a window of one minute and forty-nine seconds during which Early had the opportunity to consume the whisky without law enforcement around, that it did not believe that he could or would have consumed eight to twelve ounces of whisky during that period and could never have been able to do so without being seen, and that Early's account went beyond unreasonable to unbelievable. It found that Costa and Spidell's account of how Early was driving, along with

Lieutenant Phelps's reconstruction of the accident, support a finding that he was impaired before the crash occurred. The court concluded that Early's version of what occurred was not credible and directly refuted by the other evidence presented at trial. We will not assess the credibility of the witnesses or reweigh the evidence. *See Drane*, 867 N.E.2d at 146.

[20] Based upon the record, we cannot say the inferences made by the trier of fact were unreasonable. We conclude that evidence of probative value exists from which the trier of fact could have found Early guilty beyond a reasonable doubt of causing catastrophic injury when operating a vehicle while intoxicated as a level 4 felony.

[21] For the foregoing reasons, we affirm Early's conviction.

[22] Affirmed.

Crone, J., and Felix, J., concur.