

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2204

September Term, 2014

DARYL JAMES GOODALL

v.

STATE OF MARYLAND

Woodward,
Reed,
Alpert, Paul E.
(Retired, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: October 20, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Daryl James Goodall, appellant, was convicted by a jury in the Circuit Court for Garrett County of driving under the influence of alcohol, driving without a license, possession of marijuana, and possession of paraphernalia. He was sentenced to one year of incarceration, with all but six months suspended, and 18 months of probation for driving under the influence (“DUI”). The court also imposed a concurrent sentence of 60 days of incarceration for driving without a license. The sentences for the other convictions were suspended generally. A timely appeal was filed in which Goodall asks this Court to review whether the evidence was sufficient to sustain his convictions for driving under the influence and driving without a license. Because we conclude that the evidence was sufficient, we shall affirm the judgments of the circuit court.

FACTUAL BACKGROUND

On December 28, 2013, Master Trooper Steven Lemay of the Maryland State Police was on routine patrol in Garrett County. At 6:45 a.m. he received an assignment to be on the lookout for a snow plow truck that had been stolen from the West Virginia Highway Department and was believed to be headed toward Garrett County. Trooper Lemay passed the residential property located at 6897 Garrett Highway (“subject property”) but did not notice anything in particular there. Five minutes later, he received information that the plow truck had been located at the subject property. When Trooper Lemay returned to the subject property, he saw the plow truck there, and testified that it was readily observable from Garrett Highway. Trooper Dwight Diehl of the Maryland State Police was present at the subject property.

Trooper Diehl of the Maryland State Police testified that he was also on patrol that morning, and was looking for the stolen plow truck. He passed the subject property and noticed a snow plow parked in an unusual manner – sideways in the driveway – such that it blocked the entire driveway. In the driver’s seat was a man wearing a camouflage jacket. Trooper Diehl later identified the man he saw in the driver’s seat as Goodall. A woman stood at the open door on the passenger side of the plow truck. As Trooper Diehl pulled into the driveway, Goodall exited the plow truck and went into the residence along with the woman.

There was damage to the left rear tires and wheels of the plow truck, and scrape marks and gray paint transfer on the left side of the snow plow blade, apparently from hitting another vehicle that was parked in the shared driveway. Trooper Diehl walked around the plow truck to observe the damage and verify that it was the vehicle they were looking for. There were no keys in the vehicle, and the interior smelled of alcohol.

A few minutes later, Goodall came back outside. He was no longer wearing the camouflage jacket. Both Trooper Diehl and Trooper Lemay opined that Goodall was intoxicated as evidenced by the odor of alcohol on his breath, his speech, and the difficulty he was having standing and walking. Goodall refused a standardized field sobriety test.

Goodall claimed that he had not driven the plow truck and stated that it belonged to his mother. According to Trooper Diehl, “when the conversation went into the vehicle belonging to West Virginia and how it had gotten there,” Goodall’s story changed. He then

stated that he had driven his mother's Chevy Avalanche to West Virginia, that he went to several bars and had become intoxicated. He met a man who agreed to drive him home in his mother's vehicle. According to Goodall, the Chevy Avalanche was involved in a wreck on the way home, and the man who had agreed to drive him home left the scene and came back with the plow truck. They continued to Goodall's home, and the man slept on the couch. Goodall could not provide this man's name or description, other than that he was a white male. Eventually, he gave Trooper Diehl the man's name, but changed it several times.

Trooper Lemay knocked on the door of the residence, and Goodall's mother, Florence Holmes, answered. Ms. Holmes invited them in and took them through the house. Trooper Lemay looked for the person Goodall said had driven him home but there was no one else in the residence. Located in Goodall's bedroom was a camouflage jacket and a glass smoking device. The keys to the plow truck were found inside the camouflage jacket.

Ms. Holmes testified that Goodall resided with her. She did not know who drove the plow truck to the subject property, and testified that no one else was present at the house that morning other than herself and Goodall. She said that she went outside that morning to tell her son to remove the plow truck from her yard, but he did not have the keys. She did not know to whom the camouflage jacket belonged and did not recall her son wearing it.

Goodall was placed under arrest and transported to police barracks. On the way, although he had denied taking the vehicle or causing damage, Goodall wanted to know the

victim's name so that he could contact them and pay for the damages so as to avoid being charged. He also admitted to smoking marijuana in the glass smoking device that was found in his bedroom. During processing at the barracks, Goodall was searched and another smoking device was found in his camouflage jacket. He refused an "intoximeter" test at the barracks.¹

At the conclusion of the State's case, Goodall moved for judgment of acquittal, arguing that there was no evidence tending to show that he was driving the vehicle, or that he had actual physical control of the vehicle. The circuit court denied the motion, ruling that there was sufficient circumstantial evidence that Goodall was guilty of the driving offenses.

DISCUSSION

Goodall argues that the evidence was insufficient to sustain his conviction for driving under the influence because there was no evidence that he had recently driven the plow truck, or that he had actual physical control of the truck at any point. Appellant also sets forth as an issue on appeal that the evidence was insufficient to sustain his conviction for driving without a license, but presents no argument as to why. Accordingly, our review is limited to whether the evidence was sufficient to support the conviction for driving under

¹ Trooper Diehl explained that an intoximeter test is a breath alcohol test.

the influence.² See *Klauenberg v. State*, 355 Md. 528, 552 (1999) (“[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal.”)

“The test for sufficiency of the evidence to sustain a criminal conviction on appeal is ‘whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” *Atkinson v. State*, 331 Md. 199, 205 (1993) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original)).

Goodall was convicted under Maryland Code (2012 Repl. Vol.), Transportation Article (“TR”), § 21-902(a)(1) which provides that “[a] person may not drive or attempt to drive any vehicle while under the influence of alcohol.” “Drive” is defined in TR § 11-114 as meaning “to drive, operate, move, or be in actual physical control of a vehicle, including the exercise of control over or the steering of a vehicle being towed by a motor vehicle.” “The term ‘driving’ is generally used to mean . . . steering and controlling a vehicle while in motion; the term ‘operating,’ on the other hand, is generally given a broader meaning to include starting the engine or manipulating the mechanical or electrical devices of a standing vehicle.” *Thomas v. State*, 277 Md. 314, 318 (1976) (citation and internal quotation marks omitted). A person is considered to be in “actual physical control” of a vehicle if he or she

²We note, however, that even if Goodall had argued that the evidence was insufficient to convict him of driving without a license, we would affirm the conviction on the same rationale, below, *i.e.*, that there was sufficient circumstantial evidence that he had recently driven the plow truck.

is “presently exercising or is imminently likely to exercise ‘restraining or directing influence’ over a motor vehicle[.]” *Atkinson*, 331 Md. at 215.

A conviction for driving under the influence can be based on circumstantial evidence alone. As the *Atkinson* Court observed,

[A] defendant who is not in “actual physical control” of the vehicle at the time of apprehension will not necessarily escape arrest and prosecution for a drunk driving offense. A person may also be convicted under § 21-902 if it can be determined beyond a reasonable doubt that before being apprehended he or she has actually driven, operated, or moved the vehicle while under the influence.

Id. at 218. See also *Harding v. State*, 223 Md. App. 289, 292 (2015) (holding that proof of the crime of driving under the influence “may consist not only of evidence that shows that the defendant is, when observed by the police or other witnesses, driving in the present tense but also may arise from a permitted inference that the defendant was guilty of driving under the influence in the past tense.”)

In *Harding, supra*, we held that there was sufficient evidence that the defendant had been driving while under the influence of alcohol where the police received a report of a vehicle accident and soon thereafter discovered the defendant behind the wheel of a vehicle that had jumped a curb, been driven into the bushes, and was emitting smoke and radiator fluid. *Id.* at 304. Similarly, in *Gore v. State*, 74 Md. App. 143, *cert. denied*, 312 Md. 601 (1988), we held that there was circumstantial evidence sufficient to support a finding that the defendant was driving his car while under the influence of alcohol where the defendant

was discovered asleep or passed out behind the wheel of a stopped car, the engine was warm to the touch, the windows were up and the motor off, the car key was in the ignition and in the “on” position, and the transmission was in the “drive” position. *Id.* at 149.

Goodall argues that the State failed to prove that he had recently driven the plow truck because, unlike the facts of *Gore, supra*, there was no evidence that the key to the plow truck was in the ignition, that the vehicle was in gear, or that the engine was warm. Likewise, Goodall argues that there was no evidence that the plow truck was stopped in the roadway or that its lights were on, as in the case of *Dukes v. State*, 178 Md. App. 38, *cert. denied*, 405 Md. 64 (2008), in which we affirmed a conviction for a driving offense based on circumstantial evidence.

We are satisfied, based on our review of the record in the instant case, that there was sufficient circumstantial evidence from which a rational jury could have inferred that Goodall had recently driven the vehicle. The plow truck had been reported stolen in West Virginia the same morning that it was discovered in the driveway of the home where Goodall lived. Trooper Lemay, who was on the lookout for the stolen plow truck, drove by the subject property and did not observe the vehicle. Five minutes later, Trooper Diehl reported locating the plow truck at the Goodall’s home. The plow truck was readily observable from the road, and Goodall was in the driver’s seat.³ The keys to the plow truck

³ Goodall argues that the fact that Trooper Lemay did not notice the truck when he
(continued...)

were found in the camouflage jacket Goodall was seen wearing. Goodall gave conflicting stories about the vehicle, first stating that it belonged to his mother, and then claiming that an anonymous person drove him home from West Virginia in the plow truck and slept on his couch, although no one other than Goodall's mother was located in the house. Furthermore, Goodall refused a breath alcohol test, which permitted the jury to infer that he evidenced a consciousness of guilt of driving under the influence. *See Harding, supra*, 223 Md. App. at 299. Finally, although Goodall denied driving the plow truck, he wanted to pay for the damages that resulted from the plow truck hitting a vehicle belonging to the neighbor so that he would not be charged, which permitted an inference that he had caused the damage.

Under the circumstances presented, we conclude that there was sufficient circumstantial evidence tending to prove, beyond a reasonable doubt, that Goodall had driven the plow truck to the subject property, and that he did so while in an intoxicated state. Accordingly, we need not address Goodall's argument that he was not in actual physical control of the plow truck.

**JUDGMENTS OF THE CIRCUIT COURT FOR
GARRETT COUNTY AFFIRMED. COSTS TO BE
PAID BY APPELLANT.**

³(...continued)

first passed the subject property does not prove that the truck was not parked there, but only that Trooper Lemay did not notice it. We disagree. The jury could have reasonably inferred from Trooper Lemay's testimony that the plow truck was not in the driveway of the subject property when he passed by on patrol and on the lookout for the stolen vehicle, but arrived there shortly afterward, when it was discovered by Trooper Diehl.