

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

20-P-1139

COMMONWEALTH

vs.

WILLIAM ROCHA.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

After a jury trial, the defendant was convicted of operating a motor vehicle while under the influence of intoxicating liquor (OUI).¹ On appeal, he claims that there was insufficient evidence to support his conviction. We affirm.

"When analyzing whether the record evidence is sufficient to support a conviction, an appellate court is not required to 'ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt.' . . . Rather, the relevant 'question 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.'" Commonwealth v. Rocheteau, 74 Mass. App.

¹ The defendant was also found responsible for speeding.

Ct. 17, 19 (2009), quoting Commonwealth v. Latimore, 378 Mass. 671, 677 (1979).

Sufficiency of the evidence must be reviewed "with specific reference to the substantive elements of the offense."

Commonwealth v. Gallagher, 91 Mass. App. Ct. 385, 392 (2017).

See Latimore, supra at 677-678; Jackson v. Virginia, 443 U.S.

307, 324 n.16 (1979). In this case, "[t]o establish the defendant's guilt of OUI in violation of G. L. c. 90, § 24 (1)

(a) (1), the Commonwealth was required to prove that the defendant (1) operated a motor vehicle, (2) on a public way, (3) while under the influence of alcohol." Gallagher, supra. The defendant challenges only the sufficiency of the evidence supporting the third element.

In the light most favorable to the Commonwealth, there was ample evidence from which the jury could have concluded that the defendant was impaired due to his consumption of alcohol. "A defendant may be found guilty of driving while under the influence of intoxicating liquor if the defendant's ability to operate a vehicle safely is diminished, and alcohol is one contributing cause of the diminished ability." Commonwealth v. Stathopoulos, 401 Mass. 453, 457 (1988).

At the scene of the stop, the defendant exhibited several signs of intoxication, including having a strong odor of an alcoholic beverage emanating from the car when the window was

opened,² his speech was "labored and slurred," and his eyes were "extremely red, bloodshot and glassy." See Commonwealth v. Jewett, 471 Mass. 624, 636 (2015). The defendant produced a passport instead of a license, claiming that he had lost his license or his wallet. The defendant also admitted to having one drink at a bar in Boston.

The defendant's impairment was further evidenced by his driving in an unsafe manner. The defendant was speeding and when he neared the marked police cruiser, he slowed down so as to not pass the cruiser. In turn, the State Trooper had to reduce his speed to thirty miles per hour, a dangerous rate of speed for an interstate highway, to enable him to get behind the defendant's car and activate his overhead lights. When the cruiser's lights were activated, the defendant abruptly exited the highway. Cf. Commonwealth v. Johnson, 59 Mass. App. Ct. 164, 172 (2003) (defendant's erratic behavior and appearance, among other evidence, permitted inference that defendant's capacity to operate motor vehicle was impaired by narcotics).

Finally, the defendant's performance on the field sobriety tests provided further evidence that he was under the influence of alcohol. During the nine-step walk test, the defendant failed to follow instructions and twice began the test after

² Additionally, when the defendant was later performing field sobriety tests, the trooper could smell an order of alcohol coming from the defendant.

being told to wait. When asked to begin the test, he took more than nine steps in each direction, he twice stepped off the line, and he made an improper turn. Similarly, the defendant did not follow the instructions for the one-leg stand test as he did not keep his foot parallel to the ground and raised his arm to keep his balance. He also failed to hold his foot up for the required thirty seconds after three attempts. See Commonwealth v. Shabo, 47 Mass. App. Ct. 923, 924 (1999).

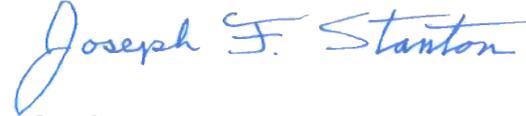
When the above evidence is viewed in the light most favorable to the Commonwealth,³ the jury were properly entitled to find that the defendant had operated the vehicle while under the influence of alcohol. See Gallagher, 91 Mass. App. Ct. at

³ The defendant claims that his driving did not indicate impairment, that he passed the one-leg stand test, and that there could be alternative explanations for his slurred speech and glassy and bloodshot eyes. However, to indulge these claims, "we would have to view the evidence in the light least favorable to the Commonwealth, which, of course, we cannot do." Gallagher, 91 Mass. App. Ct. at 393, quoting Commonwealth v. Arias, 78 Mass. App. Ct. 429, 435 (2010). See Gallagher, supra, quoting Palmariello v. Superintendent of Mass. Correctional Inst. Norfolk, 873 F.2d 491, 493 (1st Cir.), cert. denied, 493 U.S. 865 (1989) ("appellate court not obligated to 'reread the record from a [defendant's] perspective'").

392. The defendant's motion for a required finding of not guilty was properly denied.

Judgment affirmed.

By the Court (Meade,
Englander & Grant, JJ.⁴),



Clerk

Entered: June 10, 2021.

⁴ The panelists are listed in order of seniority.