

NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

---

STATE OF ARIZONA, *Appellee*,

*v.*

SKYLER VAUGHN DAY, *Appellant*.

No. 1 CA-CR 16-0598  
FILED 11-28-2017

---

Appeal from the Superior Court in Maricopa County  
No. CR2015-133113-001  
The Honorable David V. Seyer, Judge *Pro Tempore*

**AFFIRMED**

---

COUNSEL

Arizona Attorney General's Office, Phoenix  
By Joseph T. Maziarz  
*Counsel for Appellee*

The Stavris Law Firm, PLLC, Scottsdale  
By Christopher Stavris  
*Counsel for Appellant*

STATE v. DAY  
Decision of the Court

---

**MEMORANDUM DECISION**

Judge Thomas C. Kleinschmidt<sup>1</sup> delivered the decision of the Court, in which Presiding Judge Kenton D. Jones and Judge Jon W. Thompson joined.

---

**KLEINSCHMIDT**, Judge:

¶1 Skyler Vaughn Day was indicted on four counts of aggravated DUI. After the State presented its evidence at trial, but before the jury rendered a verdict, Day moved for a judgment of acquittal pursuant to Arizona Rule of Criminal Procedure (“Rule”) 20. The superior court denied the motion, and the jury subsequently found Day guilty as charged. The court sentenced him to concurrent sentences of four months in the Arizona Department of Corrections for each count, followed by concurrent terms of five years’ probation.

¶2 Day’s only argument on appeal is that the evidence was not sufficient to prove that he was driving his grandmother’s truck at the time of the accident, and that the trial court therefore erred in denying his motion for a judgment of acquittal.

**FACTS AND PROCEDURAL HISTORY**

¶3 In the early hours of November 3, 2014, Esther B. heard “a lot of noise outside” her home, and thought “it sounded like vehicles hitting each other.” She went outside, “saw a truck racing down the road,” and called 9-1-1. During the phone call, the truck returned to the area, hit a tree, and flipped over. Esther observed what “looked like a male” exit the vehicle, but could not see him well enough to give an accurate physical description.

¶4 Brent B. testified that he was out walking, saw the accident happen, and arrived at the truck within 30 seconds. Although he did not observe who had been driving the truck, Day was close to the driver’s door, and there was no one else around.

---

<sup>1</sup> The Honorable Thomas C. Kleinschmidt, Retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article 6, Section 3, of the Arizona Constitution.

STATE v. DAY  
Decision of the Court

¶5 Detective Friedrich arrived at the scene within ten minutes of being dispatched. Upon arrival, he saw people tending to Day but saw no one else inside the vehicle. Friedrich approached Day and asked, “what happened?” Day replied he had been asleep in the passenger’s seat while his friend had been driving, and added he awakened during the accident. He identified the driver as James Durham, his ex-boyfriend who lived in Utah, but said he did not know where James “had gone.”

¶6 Captain Smith, a paramedic and firefighter who responded to the scene and interviewed Day, had been concerned at the time of the incident about the possibility of a “second patient” needing assistance. And because he believed Day was not being truthful during the interview regarding whether he had been the driver, Smith took a “more stern” tone, stating to Day:

[L]isten, I have three other fire trucks that are driving around Avondale, lights and sirens, looking for a second patient. If something happened to them and you - and you lied to us, that’s going to be on you.

Smith testified Day looked at him and responded, “[y]ou don’t have to look for anyone else.”

¶7 Day was ultimately taken to the hospital. There, Friedrich overheard a conversation between Day and his mother; Day’s mother asked him whether he had been driving the vehicle, to which Day replied, “mm-hmm.”

¶8 Because Day had told Friedrich that James lived in American Fork, Utah, Officer Iwen followed up with Day in March 2015. During that interaction, Day again “threw out the name of James Durham,” but said “[h]e had no way of contacting” Durham, though he “believed” Durham lived in Utah. Iwen contacted the American Fork Police Department “to see if they had had any contact with” Durham, and he was provided with the contact information of Durham’s mother. She advised Iwen that Durham had moved to California. Durham subsequently contacted Iwen, confirmed he had been living in California for six years, and said he was “surprised” by the allegations against him because “he had no way of contacting” Day. Durham testified at trial that although he believed someone named “Skylar Day” was a friend of a friend from Utah, he had never seen Day, the defendant then present in the courtroom. Durham also provided shift records that were admitted into evidence and indicated that

STATE v. DAY  
Decision of the Court

on November 2, 2014, his work shift at a California restaurant near Sacramento ended at 11:00 p.m., approximately an hour and a half before the crash, thereby making it highly unlikely, if not impossible, for Durham to have been in Arizona at the time of the accident.

¶9 Officer Najera, who inspected the vehicle, testified that both the driver and passenger air bags deployed. The State introduced into evidence two images of Day taken shortly after the accident showing red marks on the inner part of Day’s forearms. Friedrich testified that, based upon his training and experience investigating traffic accidents, he believed the injuries were consistent with a person driving a vehicle during an airbag deployment because “when people are driving motor vehicles both hands are on the steering wheel.” He further explained:

When the vehicle’s impacted[,] the air bag comes out so fast that – especially if you’re holding on tight, most people in accidents they tense up, that’s why you hear about accidents – people getting hurt or broken bones, is because they tense up, and once you tense up the air bag comes out so fast that it scrapes the insides of the arms, taking the top layer of the skin off.

Iwen, testifying at trial, also opined that the injuries likely resulted from “holding a steering wheel on a vehicle” during air-bag deployment.

¶10 At the hospital, Day consented to a blood draw. The blood sample, taken shortly after the accident, tested positive for amphetamines, methamphetamine, and Alprazolam.

**LEGAL PRINCIPLES**

¶11 Day claims the superior court erred when it denied his Rule 20 motion for judgment of acquittal. He argues “the trial court record is devoid of evidence establishing his culpability” for the offenses. We disagree.

¶12 When a defendant makes a Rule 20 motion before the jury renders a verdict, the trial court must enter a judgment of acquittal “if there is no substantial evidence to warrant a conviction.” Ariz. R. Crim. P. 20(a). This Court determines whether a trial court erred in denying a Rule 20 motion by viewing the evidence in the light most favorable to sustaining the verdict, *State v. Bible*, 175 Ariz. 549, 595 (1993), but assessing the question

STATE v. DAY  
Decision of the Court

of sufficiency of the evidence de novo, *State v. West*, 226 Ariz. 559, 562, ¶ 15 (2011).

¶13 We will affirm the court’s decision denying a Rule 20 motion if, “after viewing the evidence in the light most favorable to the prosecution,” we conclude that “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *West*, 226 Ariz. at 562, ¶ 16 (quoting *State v. Mathers*, 165 Ariz. 64, 66 (1990)). In the context of a Rule 20 motion, “substantial evidence” is evidence that “reasonable persons could accept as adequate and sufficient to support a conclusion of defendant’s guilt beyond a reasonable doubt.” *Id.* (quoting *Mathers*, 165 Ariz. at 67). We consider both direct and circumstantial evidence, mindful that a conviction does not negate the validity of the motion. *Id.* at ¶¶ 16-17.

¶14 A person is guilty of DUI when, among other things, he or she “drive[s] or [was] in actual physical control” of the vehicle at the time of the offense. Ariz. Rev. Stat. (“A.R.S.”) § 23-1381(A).<sup>2</sup> Day’s only argument on appeal is that he was not the driver of the vehicle. He correctly asserts that no witnesses saw him driving the vehicle “prior to or during the accident,” and “no physical evidence plac[ed] [him] behind the wheel.” After reviewing the direct and circumstantial evidence presented by the State, we conclude that a rational trier of fact could have found beyond a reasonable doubt that Day was the driver of the vehicle. *See West*, 226 Ariz. at 562, ¶ 16.

¶15 The evidence constituted what a reasonable person could accept as “adequate and sufficient” to conclude, beyond a reasonable doubt, that Day was the driver of the vehicle. Although Day claims the State “likely subpoenaed the wrong” James Durham, it is highly unlikely that there were two sets of James Durhams and Skyler Days who had come to know of each other while in American Fork, Utah. It is just as likely that James Durham and Skyler Day had heard of each other in the Utah community, but had never actually met, or had perhaps met only briefly. And even if we assume, for the sake of argument, that the State did indeed subpoena the wrong James Durham, the testimony of the witnesses and the red marks on Day’s forearms, without more, could have led a rational trier of fact to conclude Day was the driver of the vehicle. Therefore, because

---

<sup>2</sup> Absent material changes from the relevant date, we cite a statute’s current version.

STATE v. DAY  
Decision of the Court

there was substantial evidence to support a conviction, the court did not err when it denied Day's Rule 20 motion.

**CONCLUSION**

¶16 Based on the foregoing, we affirm the superior court's denial of Day's Rule 20 motion.