

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

APR 24 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0100
)	DEPARTMENT A
Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
DONALD JOSEPH ARTEAGA,)	the Supreme Court
)	
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20103579001

Honorable Paul E. Tang, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General
By Joseph T. Maziarz and Kathryn A. Damstra

Tucson
Attorneys for Appellee

Isabel G. Garcia, Pima County Legal Defender
By Robb P. Holmes

Tucson
Attorneys for Appellant

H O W A R D, Chief Judge.

¶1 Appellant Donald Arteaga was charged with and convicted after a jury trial of aggravated driving while under the influence of an intoxicant (DUI) while a minor is present and aggravated driving or actual physical control of a vehicle with an alcohol concentration (AC) of .08 or more while a minor is present. The trial court suspended the imposition of sentence and placed Arteaga on three years' probation, ordering him to serve a ten-day jail term as a condition of probation. On appeal, Arteaga asserts the court erred in denying his motion for judgment of acquittal, claiming there was insufficient evidence to support a guilty verdict on either charge. We affirm.

¶2 We review de novo the trial court's denial of a motion for judgment of acquittal pursuant to Rule 20, Ariz. R. Crim. P., viewing the evidence in the light most favorable to sustaining the verdict. *State v. West*, 226 Ariz. 559, ¶ 15, 250 P.3d 1188, 1191 (2011). "On a Rule 20 motion for a judgment of acquittal, '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.'" *State v. Parker*, 656 Ariz. Adv. Rep. 6, ¶ 70 (March 13, 2013) (emphasis omitted), *quoting Jackson v. Virginia*, 443 U.S. 307, 319 (1979). As long as there is substantial evidence in the record establishing the elements of the offense, a Rule 20 motion must be denied. *See id.* Substantial evidence is "such proof that 'reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt.'" *West*, 226 Ariz. 559, ¶ 16, 250 P.3d at 1191, *quoting State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990).

¶3 After the state had presented all of its evidence, which was also the close of all evidence, Arteaga moved for a judgment of acquittal as to both charges, arguing, inter alia, the state had failed to present sufficient evidence on the issue of physical control. The trial court denied the motion. Arteaga contends the court erred because the evidence showed his girlfriend S.G., “the passenger in the car, had wrested control of the vehicle from Arteaga by grabbing the steering wheel.” He argues the state failed to sustain its burden of establishing he had driven or been in “actual physical control” of a motor vehicle “[w]hile under the influence of intoxicating liquor” and “impaired to the slightest degree,” or while having “an alcohol concentration of 0.08 or more within two hours of driving or being in actual physical control of the vehicle,” A.R.S. § 28-1381(A)(1), (2), because by “grabbing the wheel and steering the car erratically, [S.G.] took over physical control of” it.

¶4 Among the cases Arteaga relies on is this court’s decision in *State v. Rivera*, 207 Ariz. 69, 83 P.3d 69 (App. 2004). There, we rejected the defendant’s due-process challenge to his DUI convictions where the state had pursued alternate theories of culpability: the defendant had been driving or the defendant had been a passenger but had grabbed the steering wheel while the car was being driven by someone else. *Id.* ¶¶ 6-16. We reasoned that a person can commit DUI, both AC-related and non-AC-related offenses, by either driving the vehicle or by being in “actual physical control” of it, § 28-1381(A), and concluded, “a passenger who grabs the steering wheel of a moving car and alters the car’s movement has assumed actual physical control for purposes of the DUI statutes,” *Rivera*, 207 Ariz. 69, ¶ 16, 83 P.3d at 74. But nothing in *Rivera* or the other

authorities Arteaga relies on establishes the trial court erred here when it denied his Rule 20 motion.

¶5 That S.G. had grabbed the steering wheel from Arteaga and thereby had assumed control of the vehicle for a period of time did not exonerate Arteaga as a matter of law. Rather, assuming the jury believed this was what had occurred, the evidence might have rendered S.G. also criminally culpable under the DUI statute. *See Rivera*, 207 Ariz. 69, ¶ 16, 83 P.3d at 74. Nevertheless, there was still substantial evidence from which reasonable jurors could have found Arteaga had driven and had been in actual physical control of the vehicle at other times.

¶6 Pima County Sheriff's Deputy John Weeks testified he had noticed Arteaga's Dodge Neon the night Arteaga was arrested because the car was being driven North on the Nogales Highway in the bicycle lane. He followed the car, which returned to the roadway and accelerated away from him at a speed of in excess of eighty miles per hour in a zone for which the posted rate of speed was, initially, fifty-five miles per hour and then forty-five miles per hour.

¶7 Weeks watched as the car slowed down, jerked "from side to side," went through the bicycle lane and drove "almost off the roadway and then back into the lane and back across," which happened "several times." At that point in time, Weeks thought the driver and his female passenger were having "some kind of altercation." The car then stopped suddenly. Weeks pulled up behind it and had activated his lights. Based on this testimony, even assuming the jury had believed that S.G. had assumed control of the car for a portion of the time, there nevertheless was substantial evidence establishing Arteaga

had driven and been in control of the car. The jury reasonably could find Arteaga had accelerated the vehicle, causing it to travel at an excessive rate of speed. Weeks did not testify he observed any jerking back and forth during this period of time. The jury readily could have found that at some point Arteaga had regained control of the car, slowing down and bringing the vehicle to a stop on the side of the roadway. Based on the evidence the state had presented, the trial court did not err in denying Arteaga's motion for a judgment of acquittal. We therefore affirm his convictions and the probationary terms imposed.

/s/ *Joseph W. Howard*

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ *Michael Miller*

MICHAEL MILLER, Judge

/s/ *J. William Brammer, Jr.*

J. WILLIAM BRAMMER, JR., Judge*

*A retired judge of the Arizona Court of Appeals authorized and assigned to sit as a judge on the Court of Appeals, Division Two, pursuant to Arizona Supreme Court Order filed December 12, 2012.