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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. ANDREW TAYLOR, Appellant.	)	2 CA-CR 2012-0275 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20102914001

Honorable Howard Hantman, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General
By Joseph T. Maziarz and Diane Leigh Hunt
Tucson
Attorneys for Appellee

Isabel G. Garcia, Pima County Legal Defender
By Robb P. Holmes
Tucson
Attorneys for Appellant

E S P I N O S A, Judge.

¶1 Appellant Andrew Taylor was convicted after a jury trial of criminal damage, aggravated driving while impaired to the slightest degree, aggravated driving with a blood alcohol concentration (BAC) of .08 or greater, and aggravated driving with an illegal drug or its metabolite in his body, each driving count aggravated based on his

driver license having been suspended, revoked, or restricted at the time of the offenses. The trial court sentenced him to concurrent, mitigated, one-year prison terms, the longest of which were one year. Taylor argues on appeal that the court erred in denying his motion for acquittal made pursuant to Rule 20, Ariz. R. Crim. P. We affirm.

¶2 We view the facts in the light most favorable to upholding Taylor's convictions. *State v. Sprang*, 227 Ariz. 10, ¶ 2, 251 P.3d 389, 390 (App. 2011). In July, 2009, J.R. saw a vehicle run a stop sign, drive into a parking lot, and stop. As it entered the parking lot, the vehicle struck a fire hydrant and damaged it. J.R. retrieved his telephone from his home and called 9-1-1. As he did so, he saw a man, later identified as Taylor, get out of the driver's side of the vehicle. He could not see if anyone else was in the vehicle. After J.R. asked if he was "okay," Taylor stated he was and asked J.R. for "a ride out of here." J.R. declined and went back inside his residence. He later saw the same individual speaking with police, although he could not identify Taylor at trial.

¶3 Pima County Deputy Sheriff John Weeks arrived minutes after the car had stopped. He saw Taylor get out of the vehicle on the driver's side. Upon seeing Weeks, Taylor fled on foot, but Weeks apprehended him after giving chase in his patrol car. Taylor repeatedly told Weeks he had been driving the car and had lost control of it. Tests of samples of Taylor's blood drawn after his arrest showed the presence of a marijuana metabolite and that Taylor's BAC was .198.

¶4 A trial court may enter a judgment of acquittal under Rule 20(a) only when "there is no substantial evidence to warrant a conviction." We review de novo the denial of a Rule 20 motion. *State v. West*, 226 Ariz. 559, ¶ 15, 250 P.3d 1188, 1191 (2011). "'[T]he 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.'" *Id.* ¶ 16, *quoting State v. Mathers*, 165 Ariz. 64, 66, 796 P.2d 866, 868 (1990). "'Substantial evidence,' Rule 20's lynchpin phrase, 'is such proof 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, 796 P.2d at 869. The evidence required to sustain a conviction "may be either circumstantial or direct," and "[t]he probative value of evidence is not reduced simply because it is circumstantial." *State v. Blevins*, 128 Ariz. 64, 67, 623 P.2d 853, 856 (App. 1981).

¶5 In order to convict Taylor of the aggravated driving offenses, the state was required to prove he had been driving or in actual physical control of the vehicle. *See* A.R.S. §§ 28-1381(A), 28-1383(A). Taylor argues there was insufficient evidence he had been driving the vehicle before it stopped in the parking lot, pointing to testimony that he and another individual had left a party together and that the other individual had been driving. Thus, he reasons, because J.R. could not see who was driving the car when it stopped and could not identify him at trial, and because Weeks had arrived several minutes later, there was no evidence Taylor had been driving the car before it stopped.

¶6 The jury, however, was free to reject the testimony of those witnesses claiming another person had been driving when Taylor left the party. And, according to J.R., he saw the same man talking to police that he had seen getting out of the car from the driver's side immediately after it had stopped. Furthermore, Weeks testified Taylor repeatedly had admitted he had been driving and had lost control of the vehicle. This evidence was more than sufficient to permit the jury to conclude Taylor had been driving.

¶7 Taylor also points out that Weeks failed to record Taylor's statements, identifies some inconsistencies between Weeks's testimony and that of another deputy,

and notes no other officer heard Taylor's admissions. But it was for the jury to resolve inconsistencies in the evidence and determine what weight to give witness testimony. *See State v. Fimbres*, 222 Ariz. 293, ¶ 21, 213 P.3d 1020, 1027 (App. 2009). As we noted above, if the jury found Weeks and J.R. credible, it could readily conclude Taylor had been driving the car.

¶8 For the reasons stated, the trial court did not err in denying Taylor's Rule 20 motion.[1] His convictions and sentences therefore are affirmed.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding 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.

[1]Because there was sufficient evidence for the jury to conclude Taylor had been driving, we need not address his alternative argument there was insufficient evidence he had been in actual physical control of the vehicle after it had stopped because he did not have the vehicle's keys when arrested and the keys were never found.