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STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1712

State of Minnesota,
Respondent,

vs.

Anthony Graham Clark,
Appellant.

Filed September 11, 2017
Affirmed
Kirk, Judge

Dakota County District Court
File No. 19HA-CR-15-90

Lori Swanson, Attorney General, St. Paul, Minnesota; and

James C. Backstrom, Dakota County Attorney, Ryan C. McCarthy, Dain L. Olson, Assistant County Attorneys, Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Kirk, Judge; and Florey, Judge.

U N P U B L I S H E D O P I N I O N

KIRK, Judge

Appellant challenges his conviction for first-degree test refusal following a jury trial. Because there was sufficient evidence in the record to establish that the arresting officer had

probable cause to believe that appellant was in physical control of the motor vehicle, we affirm.

FACTS

In the early morning hours of January 7, 2015, A.S. was riding northbound on Barnes Avenue with her husband, who was driving. A.S. observed a man, later identified as appellant Anthony Graham Clark, walking down the middle of the road straight at her vehicle and waving his hands in the air. They slowed down to speak with appellant, who appeared delusional, hurt, and in need of help. A.S. called 911 to report the situation. As they continued, A.S. also noticed a vehicle in the ditch about 6 feet beyond where appellant was walking and associated the vehicle with appellant. It was very cold outside and had recently snowed. A.S. did not see anyone else around. A.S. and her husband were unable to stay at the scene, but others arrived to help.

M.O. was driving to work around the same time when he saw appellant alongside the road and pulled over to see what was going on. Appellant was about 100 yards away from the vehicle in the ditch when M.O. arrived. M.O. did not see anyone else in the area. Appellant appeared to be very cold, but M.O. did not allow him to get in his vehicle because appellant seemed intoxicated. M.O. called 911.

Shortly after M.O. arrived, M.G., a county transportation worker, came upon the vehicle in the ditch and saw appellant a short distance ahead standing on the side of the road talking to M.O. through the passenger window of M.O.'s vehicle. M.G. stopped and allowed appellant to sit in his vehicle. Appellant remained in M.G.'s vehicle until police officers

arrived at the scene. M.G. did not speak to appellant, but he assumed that appellant was the driver of the vehicle in the ditch.

Officer Miguel Guadalajara and Officer Patrick Sloan arrived separately at the scene shortly after starting their early morning shifts. Officer Sloan saw the vehicle in the ditch and parked his squad car on the road north of the vehicle, where M.G.'s and M.O.'s vehicles were also stopped. Appellant was sitting in M.G.'s vehicle. Officer Sloan identified appellant and recognized him from prior contacts. He patted appellant down and found a 5-Hour Energy drink, which he left in appellant's pocket. He noticed a strong odor of an alcoholic beverage coming from appellant.

Officer Guadalajara also observed the vehicle in the ditch and did not see anyone by the vehicle. He parked his squad car on the road south of the vehicle in the ditch. As he approached the vehicles parked on the road ahead, he saw footprints around the vehicle in the ditch. He saw a set of footprints with the same tread outside the driver's side door of the vehicle in the ditch and leading from the driver's side up toward M.G.'s vehicle. Officer Guadalajara did not walk around the vehicle in the ditch to the passenger side and did not look inside of it.

Officer Guadalajara spoke with appellant at the scene. Appellant did not admit or deny driving the vehicle into the ditch, but it is undisputed that appellant's license was cancelled inimical to public safety at the time, and he had notice of the cancellation. Appellant was too cold to talk, shaking badly, and breathing hard. He had bloodshot, watery eyes and smelled of an alcoholic beverage. The officers suspected appellant had hypothermia, and Officer Guadalajara transported him to the police department for treatment. After appellant received

treatment, Officer Guadalajara advised appellant that they believed he drove the vehicle into the ditch and that he was intoxicated while driving. He gave appellant a preliminary breath test, which registered an alcohol concentration of 0.183. Appellant was placed under arrest on suspicion of driving while impaired (DWI) and read the implied-consent advisory. When asked to submit to a breath test, appellant refused. Appellant was charged with first-degree test refusal and driving after cancellation.

Officer Sloan testified at trial that while Officer Guadalajara transported appellant to the police department, he investigated the scene, took photos, and searched inside the vehicle before calling for a tow truck. Officer Sloan testified that he believed that appellant was the driver of the vehicle in the ditch. He observed footprints in the recently fallen snow around the general vicinity of the driver's side door and testified that it looked like only one person had come from the vehicle. He located the vehicle's keys inside the vehicle, but not in the ignition. He found a backpack in the backseat containing appellant's cell phone and papers and effects with appellant's name on them. He also located 5-Hour Energy drinks in the front passenger seat, the same type that he found on appellant during the pat-down. Officer Guadalajara testified that he found a 5-Hour Energy drink in the back of his squad car after appellant got out of the car at the police department.

A jury found appellant guilty of first-degree test refusal but not guilty of driving after cancellation. This appeal follows.

D E C I S I O N

On appeal, appellant argues that the state failed to prove beyond a reasonable doubt that the arresting officer had probable cause to believe that appellant was in physical control

of the motor vehicle in the ditch. This is the only element of first-degree test refusal that appellant claims was not sufficiently proved.

In considering a sufficiency-of-the-evidence challenge, this court's review is limited to a thorough analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court assumes that "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989).

The test for probable cause is whether, under the particular circumstances, the officers, guided by their professional experience and conditioned by their observations and the available information, could have believed the potential arrestee committed a crime. *State v. Olson*, 436 N.W.2d 92, 94 (Minn. 1989), *aff'd*, 495 U.S. 91, 110 S. Ct. 1684 (1990). "[W]e review de novo the legal conclusion of whether probable cause existed." *State, Lake Minnetonka Conservation Dist. v. Horner*, 617 N.W.2d 789, 795 (Minn. 2000).

Under Minn. Stat. § 169A.20, subd. 2 (2014), it is a crime for a person to refuse to submit to a chemical test when an officer has probable cause to believe that the person was driving, operating, or in physical control of a motor vehicle while impaired, and the person is placed under arrest for driving while impaired. Minn. Stat. § 169A.51, subd. 1(a), (b)(1) (2014).

Minnesota statutes do not define physical control, but Minnesota courts have held that "a person is in physical control of a vehicle if he has the means to initiate any movement of that vehicle, and he is in close proximity to the operating controls of the vehicle." *State v.*

Fleck, 777 N.W.2d 233, 236 (Minn. 2010). Temporary inoperability of the motor vehicle does not necessarily preclude physical control. *State v. Starfield*, 481 N.W.2d 834, 838 (Minn. 1992). "Mere presence in or about a vehicle is insufficient to show physical control . . . ." *Fleck*, 777 N.W.2d at 236. Rather, "it is the overall situation that is determinative." *Id.* (citing *Starfield*, 481 N.W.2d at 838). Courts consider "the person's location in proximity to the vehicle; the location of the keys; whether the person was a passenger in the vehicle; who owned the vehicle; and the vehicle's operability." *Id.* (citing *Starfield*, 481 N.W.2d at 839).

Appellant argues on appeal that the state failed to prove beyond a reasonable doubt that the arresting officer had probable cause to believe that appellant was in physical control of the vehicle in the ditch because appellant was found walking down the road; no one saw him in the vehicle or in the driver's seat; the vehicle was immobile in a snowy ditch; no one saw the vehicle go into the ditch; and the keys were found in the vehicle but not in the ignition.[1] Appellant also contends that because the jury acquitted him of driving after cancellation, the state did not prove that he had operated or driven the vehicle.[2]

In viewing the evidence here in the light most favorable to the conviction, and assuming that the jury believed the state's witnesses, there was sufficient evidence presented at trial that Officers Sloan and Guadalajara observed or had information that: (1) there was an immobile vehicle in a snowy ditch on the side of Barnes road in a rural location; (2) it was a

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[1] Appellant also argues that the vehicle did not belong to him and that his childhood friend testified that appellant was the passenger. But the arresting officer did not have this information prior to appellant's arrest, and it had no bearing on the officer's probable cause determination for the element of physical control.

[2] We have not been asked to determine on appeal whether there was sufficient evidence to prove that appellant drove or operated the vehicle.

very cold day and had recently snowed; (3) witnesses reported a man in need of help walking in the road in close proximity to the vehicle in the ditch; (4) no one saw the vehicle go into the ditch or saw anyone in the vehicle; (5) no one saw anyone other than appellant near the vehicle; (6) appellant exhibited signs of hypothermia and indicia of intoxication when the officers arrived; (7) there were footprints that looked like they came from the same person in front of the vehicle in the ditch and leading from its driver's side up to M.G.'s vehicle, where appellant was sitting when the officers arrived; (8) the keys were located inside the unlocked vehicle in the ditch but were not in the ignition; (9) a backpack in the backseat of the vehicle contained appellant's cell phone, as well as papers and effects with his name on them; and (10) 5-Hour Energy drinks were found in the front passenger seat of the vehicle, on appellant's person during a pat-down search, and in the back of Officer Guadalajara's squad car after appellant got out of it at the police department.[3]

The collective-knowledge doctrine provides that, "the *entire* knowledge of the police force is pooled and imputed to the arresting officer for the purpose of determining if sufficient probable cause exists for an arrest." *State v. Conaway*, 319 N.W.2d 35, 40 (Minn. 1982). Applying the collective-knowledge doctrine here, based on the observations, investigation, and experience of both officers, and the totality of the circumstances, the record shows that Officer Guadalajara had probable cause to believe that appellant was in physical control of the vehicle while under the influence of alcohol, sufficient to arrest appellant for DWI and to read him the implied-consent advisory.

[3] Officers also knew that appellant's driver's license was cancelled inimical to public safety, but that information did not impact their probable cause determination for physical control.

The evidence presented at trial supports the conclusion that a reasonable officer in this situation would have entertained an honest and strong suspicion that appellant had the means to initiate the vehicle's movement despite its immobility, and was in a position to exercise dominion or control over the vehicle at any time, so as to establish probable cause that appellant was in physical control. Thus, there was sufficient evidence in the record for the jury to reasonably conclude that the state proved beyond a reasonable doubt that the arresting officer had probable cause to believe that appellant was in physical control of the motor vehicle, as required to find appellant guilty of first-degree test refusal.

Affirmed.