STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0820

State of Minnesota,
Respondent,

vs.

Jerry Dean Beckman,
Appellant.

Filed April 27, 2020
Affirmed
Ross, Judge

Otter Tail County District Court
File No. 56-CR-17-3314

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michelle M. Eldien, Otter Tail County Attorney, Benjamin G. A. Olson, Assistant County Attorney, Fergus Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, John Donovan, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Cochran, Judge; and Segal, Judge.

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

ROSS, Judge

The state charged Jerry Beckman with driving while impaired and possessing a pistol while under the influence of alcohol after a state trooper found him slumped over in

his stalled car, observed numerous signs of his intoxication, found two handguns in his possession, and administered a breath test revealing an alcohol concentration of 0.08. Beckman challenges his resulting convictions, arguing primarily that, because his car was out of gasoline, he was not in physical control of his car, and also maintaining that jurisdictional, substantive, and procedural defects require us to vacate his convictions. We affirm because being out of gas did not preclude a finding that Beckman was in physical control of his car, because the evidence was sufficient for the jury to find either that he drove or physically controlled the car while he was impaired, and because Beckman's remaining arguments are unpersuasive.

FACTS

The state charged Jerry Beckman with two counts of driving while impaired and two counts of carrying a pistol under the influence of alcohol, *see* Minn. Stat. §§ 169A.20, subd. 1(1), (5), 624.7142, subd. 1(4), (6) (2016). Beckman moved the district court to dismiss the charges, loosely challenging probable cause and raising several jurisdictional, substantive, and procedural challenges. The district court rejected Beckman's probable-cause challenge and legal arguments. The case proceeded to a jury trial, where Beckman represented himself.

Minnesota State Patrol Trooper Aaron Myren testified that he responded to a report of a stalled sport utility vehicle on the shoulder of Interstate 94 in Otter Tail County at about 8:15 on a morning in October 2017. The trooper found a Ford Explorer with its only occupant, Beckman, slumped over in the driver's seat. Trooper Myren knocked on the window. Beckman awoke, sat up, grasped the key in the ignition, turned the key to

"initiate[] the power to the first stage of the ignition," and slightly lowered his window. The trooper "was overwhelmed with a very strong odor of an alcoholic beverage." Beckman told the trooper that he had been traveling from North Dakota toward Fergus Falls but that he could not remember where he was. Trooper Myren administered field sobriety tests, during which Beckman stumbled and struggled to follow directions. The trooper told Beckman that he was under arrest, and Beckman disclosed that he had one firearm on his person and one inside the car. Trooper Myren seized a semiautomatic handgun from Beckman's jacket and another from a vest in the Explorer's second row of seats. Then he took Beckman to the jail, read him the implied-consent advisory, and at 9:35 a.m., administered a breath test that revealed Beckman's alcohol concentration of 0.08.

Beckman also testified. He told the jury that he was a musician who had performed in Fargo the night before his arrest. He admitted to drinking "one glass of beer per set" at the performance. His band finished performing at 12:30 a.m., and Beckman began driving back to his home in Fergus Falls. He said that he had been awake for 20 hours before he ran out of gas at about 2:00 a.m. He then offered a story, summarized here in his closing argument:

> I sat there for a while trying to figure out what I could do at that time of morning. I sat in my vehicle and rested for about two hours until I started shivering with no heat in the vehicle. Exhausted and disgusted, I got out and opened the back door to my vehicle, opened up my guitar case and took out two small travel size plastic bottles of Windsor Canadian Whiskey that had been in there for over a month. I locked up the vehicle and started walking. I drank the whiskey to at least warm up on the inside. After I had walked awhile, I was cold

> and too tired for that long of walk in cowboy boots with holes in the soles. I also realized that I was all dressed in black and hard for traffic to see. My only comfort was knowing that in the case of any wild animals such as coyotes out chasing deer attacking me while I was walking at that time of the morning, at least I was not totally defenseless. That was the only time a gun was out of my vehicle until the officer demanded that I step out. I turned back towards the vehicle deciding to try to flag down someone. No one stopped. I decided to rest until I . . . could call a tow truck during business hours.

The jury was unconvinced by Beckman's version of events and found him guilty of carrying a pistol with an alcohol concentration exceeding 0.04, carrying a pistol while under the influence of alcohol, and driving, operating, or being in physical control of a motor vehicle while under the influence of alcohol. It did not find him guilty of the remaining charge, driving with an alcohol concentration of 0.08 or more. The district court entered convictions for one drunk-driving offense and one pistol-possession-under-the-influence offense. It sentenced Beckman to 90 days in jail, mostly stayed on conditions of probation for two years.

Beckman appeals.

D E C I S I O N

Beckman raises a sufficiency-of-the-evidence challenge to his drunk-driving conviction. He also raises numerous arguments in a supplemental brief. None of the arguments merit reversal.

I

Beckman raises his insufficient-evidence challenge in the face of alternative prosecution theories. The prosecutor argued to the jury that Beckman was guilty because

of both his pre-gasoline-depletion activity ("He was consuming alcohol prior to driving, not while walking on a road at 8:00 in the morning on an empty stomach.") and his post-gasoline-depletion activity ("He could have easily have gotten gas and gotten back in his motor vehicle and driven back along the Interstate along with all the other motorists."). Beginning first with the latter, we reject Beckman's argument for the following reasons.

Sufficient direct evidence established Beckman's physical control.

Beckman frames his "physical-control" argument as a challenge to the sufficiency of the evidence. We review challenges to the sufficiency of the evidence by examining the record "to determine whether the evidence, when viewed in the light most favorable to the conviction," allowed the jury to find the defendant guilty beyond a reasonable doubt. *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). It is a crime for a person to exercise physical control over a motor vehicle while under the influence of alcohol. Minn. Stat. § 169A.20, subd. 1(1). To the extent Beckman maintains that one who is sitting in a car that is inoperable by virtue of its lack of gasoline cannot be in physical control of the car, his insufficient-evidence argument requires us to interpret and apply the statute, and we do so de novo. *See State v. Vasko*, 889 N.W.2d 551, 556 (Minn. 2017).

Beckman's physical-control argument is unavailing. "[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). Prohibiting intoxicated persons from exercising "physical control" of a car curbs situations where an intoxicated person might take some action to render a parked car a dangerous instrument. *State v. Starfield*, 481 N.W.2d 834, 837 (Minn. 1992).

The jury heard evidence that Beckman was seated inside his car on the highway after having driven from Fargo to where he had stopped near Fergus Falls. It also heard evidence that he sought assistance after having run out of gas both by walking to get help and by trying to flag down a passing car. Even if the jury credited his claim that he consumed whiskey while walking after the car ran out of gas (suggesting that he became intoxicated only after he was no longer actually driving), the evidence established that he was intoxicated from the time he got back into the car through the time the trooper awakened him. Given the possibility that someone might stop and help him refuel the car, he fits that category of drivers targeted by the "physical control" prohibition.

We are not persuaded otherwise by Beckman's reliance on *State v. Starfield*. In that case, a deputy found an intoxicated woman, keys in pocket, behind the steering wheel of a car "stuck in a snow-filled ditch." *Id.* at 835. A jury found her guilty of being in physical control of the vehicle while under the influence of alcohol. *Id.* at 836. The supreme court held that the district court correctly refused to instruct the jury that the state had to prove that her vehicle was operable. *Id.* at 839–40. Nor are we persuaded by Beckman's reliance on *State v. Fleck*. In *Fleck*, officers found a man intoxicated and asleep behind the wheel of his parked car with his keys readily accessible. 777 N.W.2d at 235. The supreme court concluded that these circumstances allowed the jury to reasonably find that the man "was in a position to exercise dominion or control over the vehicle and that he could, without too much difficulty, make the vehicle a source of danger." *Id.* at 237.

Those cases do not support Beckman's position.

He attempts to distinguish *Starfield* on the notion that, while Starfield's car allegedly had a tire blown out, 481 N.W.2d at 835, Beckman's car was out of gas, meaning that it was much more difficult for Beckman to remedy his car's inoperability. The reverse is more reasonable; while the *Starfield* court considered that Starfield "might have enlisted the aid of a passerby to extricate her car from the ditch," *id.* at 838, a passerby could have, with less effort than changing a flat tire and returning a car to the road, refueled Beckman's car. Beckman attempts to distinguish *Fleck* on the notion that, unlike the defendant in that case, *see* 777 N.W.2d at 235, Beckman could not have rendered his car drivable by turning a key. But *Fleck* did not rest on the car having been readily operational. The supreme court observed that, although Fleck *told* officers that his car was operable, the officers did not verify the statement and, in fact, an officer who attempted to start the car later found that it would not start. *Id.*

The evidence does not support Beckman's assertion that he could have rendered the car operable only with great difficulty. The jury knew the story and was free to infer from the evidence that the only thing standing between Beckman being slumped over drunk in his car and Beckman driving drunk down the highway was any would-be passerby's charitable assistance. The jury received sufficient direct evidence to decide whether Beckman was in physical control of his car, and the evidence supports its verdict.

Alternatively, the circumstances tending to prove that Beckman drove while under the influence preclude any rational hypothesis other than guilt.

We could also rest our decision on the state's alternative contention that the evidence permitted the jury to find that Beckman actually drove under the influence. Of

course driving a motor vehicle under the influence, like merely physically controlling it under the influence, is also illegal. Minn. Stat. § 169A.20, subd. 1(1). The state presented only circumstantial evidence that Beckman was under the influence while he was driving. When the state proves an element by circumstantial evidence, we consider the evidence more strictly, first identifying the circumstances proved by the state and then considering whether those circumstances allow for a reasonable inference other than guilt. *State v. Harris*, 895 N.W.2d 592, 598 (Minn. 2017). We have no difficulty concluding that the circumstantial evidence met the state's alternative theory.

The circumstances proved are that Beckman drank beer before leaving Fargo, drove his car from Fargo into Otter Tail County, was slumped behind the wheel intoxicated almost eight hours after he left Fargo, and did not know where he was on the route. Although Beckman attempted to persuade the jury that he merely sipped beer before driving and "drank two small bottles" of whiskey only after he ran out of gas and left the car, we consider "only those circumstances that are consistent with the verdict." *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013). Parts of Beckman's story are inconsistent with the verdict. The parts that suggest he was not really intoxicated while he drove and that he became intoxicated only after driving are both inconsistent with the verdict. Considering only the circumstances proved that are consistent with the verdict, no reasonable innocent hypothesis exists. It is true that, after finding Beckman guilty of driving, operating, or being in physical control of a motor vehicle while under the influence of alcohol, the jury did not find him guilty of driving with an alcohol concentration of 0.08 or more. But the two decisions can be reconciled on the possibility that the jury was simply

not convinced from the chemical-test evidence but was convinced by evidence of Beckman's alcohol-induced physical impairment, like, for example, passing out in a car on the shoulder of an interstate highway and sleeping it off for six hours and still being unable to successfully complete simple field sobriety tests. The circumstances proved preclude any rational hypothesis other than Beckman having driven under the influence.

II

Beckman raises numerous arguments in his supplemental brief, several which the district court already addressed and rejected in a thorough and well-reasoned memorandum. The state asks us to reject Beckman's supplemental arguments as untimely, but Beckman filed his supplemental brief within 30 days of the public defender's office's principal filing as required by Minnesota Rule of Criminal Procedure 28.02, subdivision 5(17). We address Beckman's supplemental arguments on their merits and conclude they warrant no relief.

- Beckman cites the Uniform Commercial Code for the apparent proposition that he did not consent to his own prosecution. The UCC does not govern criminal prosecutions, *see* Minn. Stat. §§ 336.1-101 to 336.10-105 (2016), and the state's charges did not arise from any contract in goods.

- Beckman argues he had the right to face his accuser but that no such person exists in a drunk-driving case. The United States and Minnesota Constitutions afford criminal defendants the right to confront the witnesses against them. U.S. Const. amend. VI; Minn. Const. art. I, § 6. Trooper Myren testified at Beckman's trial, and Beckman personally cross-examined him, asking, "Was I at any time disrespectful to you as a patrol officer?" and whether it was the trooper or Beckman who first brought up the possibility of Beckman being armed. Beckman's confrontation rights were vindicated.

- Beckman argues that his pretrial demand for a bill of particulars was ignored. Discovery is governed by Minnesota Rule of Criminal Procedure 9, and we discern no discovery violation on the record.

- Beckman argues that the district court ignored his motion to dismiss. The district court addressed Beckman's arguments in a 19-page memorandum.

- Beckman argues there were no threats, damages, or injured parties. None of Beckman's charges required proof of threats, injury, or property damage. Minn. Stat. §§ 169A.20, subd. 1(1), (5), 624.7142, subd. 1(4), (6).

Beckman asserts finally that the charging document "named a fictional person[, i.e.,] 'THE ALL CAPITAL LETTERS NAME.'" He seems to refer to a portion of his citation identifying him as "JERRY DEAN BECKMAN" rather than "Jerry Dean Beckman." He cites no authority saying that depicting a defendant's name in all capital letters identifies a fictional person and not the defendant. The letters of the English alphabet, capitalized or not, are merely "written symbol[s] or character[s] representing a speech sound." *The American Heritage Dictionary of the English Language* 1008 (5th ed. 2011). We are mindful that some have suggested that words presented in all capital letters perhaps suggest shouting or even outrage, but we are aware of no source that suggests that capitalized letters identify some other articulation than the sounds represented by their corresponding lowercase characters. We have, for example, decided all appeals since 1993, including this one, in the building inscribed, "MINNESOTA JUDICIAL CENTER," but people always find us.

Affirmed.