

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

TORY RICARDO PANGELINAN,
Defendant-Appellant.

Baker County Circuit Court
20CR08752; A174705

Matthew B. Shirtcliff, Judge.

Submitted May 11, 2022.

Ernest G. Lannet, Chief Defender, Criminal Appellate Section, and Bruce A. Myers, Deputy Public Defender, Office of Public Defense Services, filed the briefs for appellant.

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Robert M. Wilsey, Assistant Attorney General, filed the brief for respondent.

Before Tookey, Presiding Judge, and Egan, Judge, and Kamins, Judge.

PER CURIAM

Affirmed.

PER CURIAM

Defendant was convicted of driving under the influence of intoxicants, ORS 813.010 (2020), *amended by* Or Laws 2021, ch 253, § 6, ch 480, § 1. He received an enhanced fine for driving with a blood alcohol concentration (BAC) of 0.15 or higher, pursuant to ORS 813.010(6)(d) (2020). He appeals, assigning error to the trial court's denial of his motion for judgment of acquittal (MJOA). We affirm.

“We review the denial of an MJOA for whether a rational factfinder could find, after viewing the evidence in the light most favorable to the state and making reasonable inferences and credibility choices, that the state proved every element of the offense beyond a reasonable doubt.” *State v. Davis*, 261 Or App 38, 39, 323 P3d 276 (2014). Defendant was found off the side of a highway with his car stuck in a snowbank, perceptibly intoxicated. His BAC was 0.24 approximately three to three-and-a-half hours after he was found. Because a reasonable factfinder could believe defendant's initial statements that the accident had just happened and that he had last consumed alcohol over an hour before and disbelieve his subsequent conflicting statements and testimony that he only started drinking after the accident, the trial court did not err. *See State v. Dollman*, 303 Or App 168, 169-70, 463 P3d 607, *rev den*, 366 Or 827 (2020) (concluding that “symptoms of impairment” shortly after driving coupled with a later BAC test can “support an inference of BAC at the time of driving”).

Affirmed.