IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NOS. C-200327 C-200238
Plaintiff-Appellee,	:	TRIAL NO. C-20TRC-18
vs.	:	
BRANDON PADGETT,	:	*O P I N I O N.*
Defendant-Appellant.	:	

Criminal Appeals From: Hamilton County Municipal Court

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: July 9, 2021

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Paula E. Adams*, Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Rittgers & Rittgers and *C. Stephen Kilburn*, for Defendant-Appellant.

WINKLER, Judge.

{¶1} Following a bench trial, defendant-appellant Brandon Padgett was convicted of one count of operating a vehicle without reasonable control under R.C. 4511.202 and one count of operating a vehicle under the influence of alcohol under R.C. 4511.19(A)(1)(A) ("OVI"). We find no merit in his two assignments of error, and we affirm his convictions.

{¶2} The record shows that at approximately 3:00 a.m. on December 28, 2019, Officer Nick Price of the Hamilton County Sheriff's Office was dispatched to the scene of an automobile accident in the area of 9585 Union Cemetery Road. When he arrived, police officers from the city of Loveland were already on the scene. They directed Officer Price to a car that was off the roadway.

{¶3} Officer Price walked to the side of the road and saw a navy blue Dodge Challenger or Charger overturned in a wooded area. The car had also rotated after hitting a tree so that the front of the car faced the road. The officer could see brake marks on the road indicating that the car had crossed the yellow line and went off the road, and downed trees showing the path the car took before it hit the tree.

{¶4} Officer Price then walked into the wooded area to inspect the overturned car. The driver's side airbag had deployed from the steering wheel. There was a pool of blood on the roof over the driver's seat. There was also a bloody indentation on the deployed air bag.

{¶5} Padgett was standing by a Loveland police officer's car. He was not leaning or swaying. Padgett did not respond to Officer Price's questions, and he refused to take field sobriety tests. Officer Price stated that Padgett "smelled of the odor of an alcoholic beverage. It was almost like it was coming out of his pores." Padgett's eyes were watery and bloodshot. He had what appeared to be a fresh

laceration on his face and a broken wrist. Padgett, who was the owner of the car, eventually stated that he was not the driver.

{¶6} The other officers at the scene located two other individuals who had been in the car. They had cuts on their hands that were bleeding. When they gave their statements to the police, there was blood on the paper. Nevertheless, Officer Price stated that other officers had advised him that "they didn't appear to have any type of injuries that would match to what Mr. Padgett had."

{¶7} At the time of the accident, Officer Price was a 12-year veteran. Based on his observations, his training, and his experience, he concluded that Padgett was driving the car and that he was impaired. He arrested Padgett for OVI.

{¶8} Padgett was transported to the hospital. Officer Price determined that Padgett had a class A driver's license and read to him from an administrative-license-suspension form, advising him that his license was being suspended. The officer also read him his *Miranda* rights and asked him to take a blood test, but Padgett did not say anything.

{¶9} In his first assignment of error, Padgett contends that the evidence was insufficient to support his convictions. He argues that the state failed to prove beyond a reasonable doubt that he was the driver of the vehicle or that he was impaired. This assignment of error is not well taken.

{¶10} The relevant inquiry when reviewing the sufficiency of the evidence is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the offenses proved beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus; *State v. Hackney*, 1st Dist. Hamilton No. C-

150375, 2016-Ohio-4609, ¶ 29. In deciding if the evidence was sufficient, we neither resolve evidentiary conflicts nor assess the credibility of witnesses. *State v. Cephas*, 1st Dist. Hamilton No. C-180105, 2019-Ohio-52, ¶ 37.

{¶11} Padgett was convicted of violating former R.C. 4511.19(A)(1)(a), which provides that "[n]o person shall operate any vehicle * * * within this state, if, at the time of the operation * * * [t]he person is under the influence of alcohol, a drug of abuse, or a combination of them." He was also convicted of violating R.C. 4511.202, which provides that "[n]o person shall operate a motor vehicle * * * on any street, highway, or property open to the public for vehicular traffic without being in reasonable control of the vehicle * * *."

{¶12} Padgett contends that the state failed to prove that he operated the vehicle. Former R.C. 4511.01(HHH) stated that "[o]perate" means "to cause or have caused movement of a vehicle * * *." The state can prove that the defendant operated the vehicle by circumstantial evidence. *See State v. Panzeca*, 1st Dist. Hamilton Nos. C-190474 and C-190475, 2020-Ohio-4448, ¶ 13. Circumstantial and direct evidence have the same probative value. *Jenks* at paragraph one of the syllabus; *Cephas* at ¶ 37.

{¶13} Padgett also contends that the state failed to demonstrate that he was impaired. To prove that he was under the influence of alcohol, the state was not required to prove that he had a particular level of alcohol concentration in his body. *State v. Hamilton*, 1st Dist. Hamilton No. C-200041, 2021-Ohio-1421, ¶ 30; *Panzeca* at ¶ 15. Rather, the state was required to prove that he had consumed alcohol in a quantity that had "adversely and appreciably impaired [his] actions or mental

processes and deprived [him] of that clearness of intellect and control of [him]self which he would otherwise have had." *See Hamilton* at ¶ 30; *Panzeca* at ¶ 15.

{¶14} Field sobriety tests are not required to obtain an OVI conviction. To prove impairment, the state may rely upon "physiological factors such as slurred speech, bloodshot eyes, and the odor of alcohol." *Panzeca* at ¶ 16, quoting *Cleveland v. Giering*, 2017-Ohio-8059, 98 N.E.2d 1131, ¶ 30 (8th Dist.).

{¶15} The totality of the circumstances shows that Padgett was driving the vehicle and that he was impaired. Those circumstances include: (1) the severity of the accident; (2) Padgett's injuries; (3) an odor of alcohol "coming out of his pores"; (4) watery bloodshot eyes; and (5) his refusal to take field sobriety tests or a blood test. *See Hamilton* at ¶ 31; *Panzeca*, 1st Dist. Hamilton Nos. C-190474 and C-140475, 2020-Ohio-4448, at ¶ 13-18; *State v. Carnes*, 1st Dist. Hamilton No. C-140188, 2015-Ohio-379, ¶ 11-14; *State v. Colyer*, 1st Dist. Hamilton Nos. C-120347, C-120348 and C-120349, 2013-Ohio-1316, ¶ 7-12.

{¶16} This case involved a severe accident, not a fender-bender or a car stopped by the side of the road. As the trial court stated, "You actually have a car overturned which is a significant set of circumstances, off the road, into a wooded area, having struck a tree." The circumstances support the inference that the car was going at a high rate of speed. Padgett had a facial laceration consistent with the blood in the car and the blood on the deployed air bag. He refused to say anything upon questioning by officers except that he was not driving, and he refused to take field sobriety tests or a blood test, which indicates his fear of the results and a consciousness of guilt. *See Westerville v. Cunningham*, 15 Ohio St.2d 121, 122, 239 N.E.2d 40 (1968); *Carnes* at ¶ 14.

{¶17} Padgett relies heavily on his cross-examination of Officer Price. But he takes many of the officer's statements out of context. For example, the officer acknowledged that upon arriving on the scene and seeing the overturned vehicle, he stated that he "was going to have a hard time putting him behind the wheel," and "there was not any way [he was] going to get nothing [sic] out of this," meaning he would have a difficult time proving Padgett was driving the car. The officer acknowledged that he had made those statements in response to Padgett's counsel's questions, but he qualified them with the phrase, "at that time," meaning when he had first arrived at the scene. Upon completion of his investigation after considering all the facts and circumstances, he concluded that Padgett had been driving the car.

{¶18} Padgett also argues that the other two individuals who were in the car and who had fled the scene could have been the driver. But Officer Price specifically testified that the blood stains in the car and on the air bag were consistent with Padgett's injuries, particularly the laceration on his face. They were not consistent with the injuries of the other two passengers.

{¶19} Our review of the record shows that a rational trier of fact, after viewing the evidence in a light most favorable to the prosecution, could have found that the state proved all of the elements of operating a vehicle while under the influence of alcohol and operating a vehicle without reasonable control beyond a reasonable doubt. Therefore, the evidence was sufficient to support Padgett's convictions, and we overrule his first assignment of error.

{¶20} In his second assignment of error, Padgett contends that his convictions were against the manifest weight of the evidence. After reviewing the record, we cannot say that the trier of fact lost its way and created such a manifest

miscarriage of justice that we must reverse the convictions and order a new trial. Therefore, the convictions are not against the manifest weight of the evidence. *See State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 451 (1997); *Hamilton*, 1st Dist. Hamilton Nos. C-200041 and C-200042, 2021-Ohio-1421, at ¶ 29.

{¶21} Reversal of a conviction and a grant of a new trial should only be done in "exceptional cases in which the evidence weighs heavily against the conviction." *Hamilton* at ¶ 29. The trial court is in the best position to judge the credibility of the witnesses and the weight to be given to the evidence presented. *Id.*; *Panzeca*, 1st Dist. Hamilton Nos. C-190474 and C-190475, 2020-Ohio-4448, at ¶ 20. This is not that exceptional case. Consequently, we overrule Padgett's second assignment of error and affirm his convictions.

Judgment affirmed.

MYERS, P.J., and **HENDON, J.,** concur.

SYLVIA S. HENDON, retired, from the First Appellate District, sitting by assignment.

Please note:

The court has recorded its own entry on the date of the release of this opinion.