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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1001**

State of Minnesota,
Respondent,

vs.

Dan Jay Drexler,
Appellant.

**Filed April 30, 2012
Affirmed
Rodenberg, Judge**

Hennepin County District Court
File No. 27CR1029198

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

Michael O. Freeman, Hennepin County Attorney, Thomas A. Weist, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Leslie J. Rosenberg, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Halbrooks, Judge; and Ross, Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

Appellant was convicted of two counts of first-degree driving while impaired and one count of providing false information to police. Appellant challenges his conviction

of both counts of first-degree driving while impaired, arguing that the evidence presented at his trial was not sufficient to establish beyond a reasonable doubt that he was in physical control of the vehicle. Appellant does not challenge his conviction for providing false information to police. We affirm.

FACTS

At approximately 6:30 p.m. on May 29, 2010, Officer Chad Clauson of the Bloomington Police Department was on a routine patrol near the intersection of 90th Street and Lyndale Avenue in Bloomington when he observed a vehicle stalled in that intersection and blocking the southbound lanes of Lyndale Avenue. Appellant, who was alone, was trying to push the vehicle across the northbound lanes of Lyndale Avenue into a nearby parking lot.

Because the vehicle was blocking traffic, Officer Clauson approached appellant to offer assistance. Officer Clauson spoke to appellant, and “[h]e said that he was attempting to leave the parking lot and that his car had stalled on him and that he didn’t think that his car would start again.”

Officer Clauson instructed appellant to get behind the wheel of the stalled vehicle, and the officer used his police squad car to push appellant’s vehicle across Lyndale Avenue and into a parking lot. Appellant then exited his vehicle and began to walk away from it. Officer Clauson could see that appellant had some sort of injury and needed the assistance of a cane to walk.

As the appellant was walking away, Officer Clauson ran a check on the stalled vehicle’s license-plate number, and discovered that the license plate displayed on the

vehicle had been issued to a different vehicle. Officer Clauson approached appellant to discuss this inconsistency. While speaking to appellant, Officer Clauson could see that there was a set of keys on the driver's seat of the stalled vehicle. Officer Clauson also noticed that appellant had a strong odor of alcohol about him, had glassy and watery eyes, and was slurring his speech. He asked appellant if he had consumed alcohol that day, and appellant admitted that he had. Officer Clauson administered a horizontal gaze nystagmus test and a preliminary breath test, but did not have appellant perform any balance tests due to the appellant's physical ailment. Based on the results of these tests, Officer Clauson took appellant into custody. Upon his arrest, appellant identified himself by his deceased brother's name and provided a driver's license that had been issued to his brother. Officer Clauson brought appellant to the police station and administered an Intoxilyzer exam. The Intoxilyzer revealed an alcohol concentration of .14. On the date of the arrest, appellant at no time indicated to the officer that anyone else had been with him in the vehicle, indicating only that the vehicle had "stalled on him."

Appellant was charged with two counts of first-degree driving while impaired and one count of providing false information to police. On September 20, 2010, after having waived his right to a jury trial, appellant was convicted of all three counts following a bench trial. At trial, the parties stipulated to all facts related to the driving-while-impaired charges except for the question of whether the appellant had driven, operated, or been in physical control of the motor vehicle.

At trial, appellant denied having driven the vehicle, claiming that he had been allowing someone to test drive it and that the vehicle had stalled while the other person

was driving it. However, the appellant conceded that he had not told the officer on May 29, 2010, that someone else had been driving the vehicle. Appellant also denied that the keys were in the vehicle.

Following closing arguments, the district court made the following findings on the record:

I did not find defendant's testimony credible and I did find the police officer's testimony credible. I find that the defendant told the officer and I find as a matter of fact that the defendant was attempting to leave the parking lot when the car stalled. *That in fact the defendant admitted that he had been driving.* The officer saw the keys on the seat near the driver's side.

(Emphasis added.)

On that basis, and on stipulated facts with respect to the other elements, the district court found the appellant guilty of the two counts of driving while impaired and of one count of providing false information to police.

DECISION

In considering the sufficiency of evidence, this court applies the same standard of review to a district court's findings following a bench trial that it would apply to a jury's verdict. *State v. Cox*, 278 N.W.2d 62, 65 (Minn. 1979). This court's review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the fact-finder to reach the decision that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court must assume the fact-finder "believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn.

1989). This is especially true when resolution of the matter depends primarily on conflicting testimony. *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980). The reviewing court will not disturb the verdict if the fact-finder, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense.

Bernhardt v. State, 684 N.W.2d 465, 476–77 (Minn. 2004).

The sole issue on appeal is whether there was sufficient evidence for the fact-finder to reasonably conclude that appellant “dr[o]ve, operate[d], or [was] in physical control” of the stalled vehicle. Minn. Stat. § 169A.20, subd. 1 (Supp. 2009).

Because the district court specifically found that the arresting officer’s testimony was credible and that appellant’s testimony was not, this court disregards the appellant’s testimony where it contradicts the testimony of the officer. *See Moore*, 438 N.W.2d at 108 (recognizing that, on review of a finding of guilt, the reviewing court must assume the fact-finder “believed the state’s witnesses and disbelieved any evidence to the contrary”). Therefore, this court accepts as fact the officer’s testimony that appellant admitted that the vehicle had “stalled on him and that he didn’t think that his car would start again,” and accepts as fact the officer’s testimony with respect to the keys.

Appellant’s admission that the vehicle had “stalled on him,” when combined with the fact that appellant was the only person found with the vehicle; the officer observed keys on the driver’s seat; and appellant identified himself by giving a false name and date of birth and gave police another person’s driver’s license, all provided the district court

with sufficient evidence to conclude beyond any reasonable doubt that appellant had driven, operated, or been in physical control of the vehicle.

Interpreting appellant's statement that the vehicle had "stalled on him" as an admission that appellant had driven the vehicle was reasonable given the other evidence, and it was not clear error for the district court to so interpret appellant's statement.

Appellant's pro se supplemental brief addresses credibility determinations by the fact-finder. This court must defer to the fact-finder's determination. *Moore*, 438 N.W.2d at 108. The pro se supplemental brief also addresses facts that are not in the record, and are therefore not appropriate for consideration. *See* Minn. R. Crim. P. 28.02, subd. 8 (limiting the record on appeal to "the papers filed in the district court, the offered exhibits, and the transcript of the proceedings, if any").

The district court credited the officer's testimony that appellant admitted that the vehicle had "stalled on him," interpreted this as an admission that appellant had driven the vehicle, and found as a matter of fact that appellant had driven the vehicle. The district court concluded that all three counts alleged in the complaint had been proven beyond a reasonable doubt. The district court's findings and conclusions are amply supported by the record.

Affirmed.