

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

19-P-1419

COMMONWEALTH

vs.

MICHAEL J. DAVIDSON.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

Following a jury-waived trial in the District Court, the defendant, Michael J. Davidson, was convicted of negligent operation of a motor vehicle.¹ He claims on appeal that the judge erred in denying his motion for a required finding of not guilty. We affirm.

Background. The judge could have found the following facts. On July 21, 2017, shortly before 7 A.M., a civilian was driving on Mayflower Street in the town of Carver. As he approached a "45-degree angle corner," he "saw a car stuck up on an embankment, a set of rocks," on the side of the road. He realized that the car had crashed, approached it, and saw the defendant "slumped over the steering wheel." The car was still

¹ As discussed, infra, the defendant was also charged with operating under the influence of drugs (fourth offense), and found not guilty of that offense.

running. The civilian called 911, and the defendant "started to come to, wake up a little bit." The defendant asked the civilian "what was going on." After a brief conversation, the defendant "put the car into reverse and the car just moved maybe a foot or so because of the way it was lodged on the rocks." The civilian reached into the car and "turned the key and took the keys out of the ignition." The civilian "engaged back with 911" and advised that the defendant "was conscious again and he was trying to leave the scene, but [the civilian] had shut the car off." Emergency assistance arrived "less than [five] minutes" after the civilian called 911.

Nicholas Burba, a firefighter, paramedic, and emergency medical technician arrived at the scene of the crash, saw the car "up on a rock," and assessed the defendant. Burba testified to the defendant's constricted, "pinpoint" pupils, noticed that the defendant "just kind of was out of it," and administered emergency care. While Burba provided medical assistance, the defendant "admitted to taking heroin." Burba administered Narcan. As a result, the defendant's alertness level improved, heart rate increased, and "breathing increased." Burba ultimately transported the defendant to the hospital.

Officer David Heikkila of the Carver Police Department arrived at the crash scene "a little before" 7 A.M. He observed the defendant sitting in the car "with his head back, mouth

open, eyes shut behind the driver's side." After waking the defendant, Officer Heikkila asked him "if he knew where he was and what had happened." The defendant responded "that he was okay and that he had caused something but then he lost consciousness." When the defendant woke up again, Officer Heikkila asked him to provide his driver's license. The defendant fumbled through his wallet, and was unable to locate his license, even though Officer Heikkila could see it in one of the wallet pockets. After Burba took the defendant to the hospital, Officer Heikkila conducted an inventory search of the car, during which he discovered, in the driver's side door pocket, a spoon with a brown substance, cotton swab, and hypodermic needle. Later, at the hospital, the defendant told Officer Heikkila that he had used heroin, but claimed that he did so "after the accident." The defendant also admitted that he "attempted to leave the scene." Photographs depicting the car and accident scene were also admitted in evidence.

Discussion. In evaluating whether a motion for required finding of not guilty was properly denied, the reviewing court "must consider whether, viewing the evidence in the light most favorable to the Commonwealth, notwithstanding the contrary evidence presented by the defendant . . . any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Commonwealth v. Rivera, 425 Mass. 633, 648

(1997). See Commonwealth v. Latimore, 378 Mass. 671, 676-677 (1979). "Circumstantial evidence is sufficient to find someone guilty beyond a reasonable doubt and inferences drawn from such circumstantial evidence need only be reasonable and possible; it need not be necessary or inescapable" (quotation and citation omitted). Commonwealth v. Grandison, 433 Mass. 135, 141 (2001).

Here, the defendant contends that the evidence was insufficient to sustain a conviction of negligent operation of a motor vehicle. "To obtain a conviction of negligent operation of a motor vehicle pursuant to G. L. c. 90, § 24(2) (a), the Commonwealth must prove that the defendant (1) operated a motor vehicle (2) upon a public way (3) negligently so that the lives or safety of the public might be endangered." Commonwealth v. Ross, 92 Mass. App. Ct. 377, 379 (2017). The defendant's claim centers on the third element. Specifically, he contends that the evidence failed to "prove how his driving may have endangered public lives or safety." We disagree.

The evidence, viewed in the light most favorable to the Commonwealth, showed that the defendant was found at the scene of a crash, in the driver's seat of the car, stuck on a large rock off the side of the road, with the car still running. No one else was in the car. He admitted that he had "caused something," and the circumstantial evidence warranted the conclusion that the defendant had driven the car off the road.

See Commonwealth v. Petersen, 67 Mass. App. Ct. 49, 53 (2006), quoting Commonwealth v. Best, 381 Mass. 472, 483 (1980) ("That the case against [the defendant] was 'circumstantial' in some sense of that dubious term does not suggest that the proof was insufficient"). A rational factfinder could have inferred that the defendant was driving at a considerable rate of speed in view of the car being lodged on top of the large rock, which was depicted in the photographs admitted in evidence. Further, the photographs depicted a sunny day and a road clean from debris, obstacles, moisture, or other elements that could have caused the crash. Also, the car was still running when the civilian happened on the scene.

Moreover, the defendant admitted to taking heroin, and Officer Heikkila found a spoon with a brown substance on it, along with a cotton swab and a hypodermic needle, in the pocket of the driver's side door. Although it is possible that the defendant used the heroin after the crash, as he told Officer Heikkila, a rational factfinder was free to reject that self-serving claim. A rational factfinder could have concluded, instead, that the defendant injected heroin prior to the crash, and that the influence of the heroin caused or contributed to the crash. While this inference was not necessary or inescapable, it was reasonable and possible in view of all of

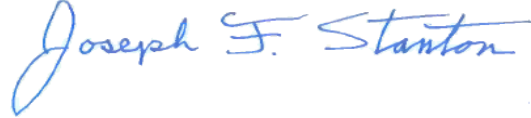
the above-mentioned facts.² See Grandison, 433 Mass. at 141. Finally, the defendant attempted to leave the scene after being approached by the civilian, and later admitted to Officer Heikkila that he attempted to leave the crash scene. A rational factfinder could have considered this as evidence of consciousness of guilt. See Commonwealth v. Booker, 386 Mass. 466, 470 (1982) (evidence of defendant's flight relevant to show consciousness of guilt). In view of the totality of the evidence, we conclude that the Commonwealth presented sufficient evidence for a rational factfinder to conclude that the defendant negligently operated a motor vehicle so that the lives or safety of the public might have been endangered. See Ross, 92 Mass. App. at 379. See also Commonwealth v. Sousa, 88 Mass. App. Ct. 47, 51 (2015) ("The question is whether the defendant's

² The defendant also contends that the judge's not guilty finding on the operating under the influence count precludes a guilty finding on the operating to endanger count. This claim is unavailing. See Ross, 92 Mass. App. Ct. at 380 ("The fact that the jury ultimately did not convict the defendant of OUI does not preclude their consideration of the evidence of intoxication in considering the negligent operation charge").

driving had the potential to cause danger to the public, not whether it actually did").

Judgment affirmed.

By the Court (Meade, Milkey &
Neyman, JJ.³),



Clerk

Entered: February 2, 2021.

³ The panelists are listed in order of seniority.