

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

24-P-1218

COMMONWEALTH

vs.

JARID C. MELLOR.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

After a trial in the District Court, a jury convicted the defendant of one count of operating under the influence of liquor (OUI) in violation of G. L. c. 90, § 24 (1) (a) (1). On appeal, the defendant challenges the conviction based on sufficiency of evidence and erroneous admission of blood alcohol concentration (BAC) test results. We affirm.

Background. We recite the facts in the light most favorable to the Commonwealth. See Commonwealth v. Tavares, 484 Mass. 650, 651 (2020). On May 13, 2023, around 11:30 P.M., a driver who drove for Uber and Lyft (Uber driver) "came upon a car that had just been in an accident" and saw "the whole driver's side [] just destroyed" and "bits and pieces of the car

all over the place." The driver's side front airbags and both front side airbags had deployed, and the car had a cracked front windshield.

The Uber driver stopped and saw the defendant crawling out of the passenger side of the vehicle headfirst. The Uber driver did not see anyone else in the vehicle. He saw that the defendant was "confused," "unsteady," "stumbling to the side," and "couldn't stand up straight." The Uber driver noticed that the defendant was "really disoriented," slurring his words, and smelled like alcohol.

A police officer responded to the scene. The officer detected the smell of alcohol on the defendant. The defendant was bleeding from his face, where he had cuts to his forehead and chin, and he remembered being hit by an airbag. Although the defendant's car keys were in his pocket, the defendant told the officer that he was not driving the vehicle and that his friend, "Adam," had been driving. The defendant told the officer that after the crash, "Adam" got out of the car from the driver's side door and left the scene. He did not give "Adam's" last name or any other information about him. When the officer asked the defendant where he had been driving from, the defendant gave inconsistent responses. The officer asked the defendant why someone else was driving his car, and the defendant responded that he was "too drunk to drive." The

defendant had difficulty finding his driver's license even though the officer was able to easily see it in the defendant's wallet. Based on the officer's observations and interactions with the defendant, he formed an opinion that the defendant was drunk.

The officer arrested the defendant and drove him to the police station for booking. During the drive to the station, the defendant stated that he knew he was too drunk to be driving that night and that was why his friend had been driving. While he was being booked at the police station, the defendant said he did not remember when the police arrived and that he thought he was still inside the car when they arrived. The booking officer saw that the defendant had "red, bloodshot eyes" and was unsteady on his feet. The booking officer also smelled alcohol on the defendant and noticed he was slurring his speech. The defendant agreed to take a breath test.

Prior to trial, the Commonwealth filed a motion in limine to admit the breath test report form (report), which, in addition to stating the primary BAC "test results" as .07 percent, showed "breath test sequence details" including the first BAC "subject test" result as .07 percent and the second BAC "subject test" result as .08 percent. The Commonwealth stated in its motion in limine that it redacted the report to

comply with 501 Code Mass. Regs. § 2.15 (2016).¹ The judge allowed the motion, writing in a margin endorsement that the defendant did not object to the motion.

At trial, defense counsel stated that she did not object to the admission of the breath test result "indicat[ing] some amount of alcohol was consumed," but objected "to using the specific number." Defense counsel further requested that the two subject test results be redacted. Over the defendant's objections, the judge admitted the unredacted report in evidence.

Discussion. The defendant argues that the Commonwealth failed to present sufficient evidence to establish beyond a reasonable doubt that the defendant operated the vehicle. See Commonwealth v. Wurtzberger, 496 Mass. 203, 206 (2025) (to sustain conviction of OUI, Commonwealth must prove inter alia that defendant "operated a motor vehicle"). We disagree.

When reviewing a challenge to the sufficiency of the evidence, we consider whether, after viewing the evidence and drawing all reasonable inferences in the light most favorable to the Commonwealth, any rational trier of fact could find that each of the essential elements of the crime has been proved

¹ According to 501 Code Mass. Regs. § 2.15(2)(b), "the lower of the two breath samples shall be truncated to two decimal places and reported as the arrestee's BAC."

beyond a reasonable doubt. See Commonwealth v. Latimore, 378 Mass. 671, 677-678 (1979).

Sufficient evidence of operation may be shown if a person in the driver's seat of a vehicle intentionally performs "any act" that "will set in motion the motive power" of the vehicle (citation omitted). Wurtzberger, 496 Mass. at 206. Although no one saw the defendant sitting in the driver's seat of the vehicle, the Uber driver saw him climbing out of the passenger side by himself and the responding officer found that the driver's side door was too damaged to be opened. Despite the defendant's claim that his friend, "Adam," had been driving the vehicle, no one else was seen in the vehicle or in the area. "Proof of operation of a motor vehicle may 'rest entirely on circumstantial evidence'" (citation omitted). Commonwealth v. Petersen, 67 Mass. App. Ct. 49, 52 (2006). The front-facing driver's side airbag had deployed, but the front-facing passenger's side airbag had not. See Commonwealth v. Lagotic, 102 Mass. App. Ct. 405, 409 (2023) (evidence sufficient where airbags inflated and there was "absence of evidence" suggesting someone other than defendant was operating vehicle [citation omitted]). Moreover, the defendant's vehicle keys were in his pocket, the vehicle belonged to him, and he admitted that he tried to restart the vehicle immediately after the crash. See Commonwealth v. McGillivray, 78 Mass. App. Ct. 644, 647 (2011)

(evidence that defendant turned ignition key was sufficient to permit jury to conclude he "operated" motor vehicle). Viewing the evidence in the light most favorable to the Commonwealth, the evidence was sufficient for a rational juror to find that the defendant operated the vehicle by driving prior to the accident and attempting to start the vehicle thereafter.

The defendant also contends that: (1) the judge abused his discretion by admitting in evidence the .08 percent BAC result because it was inadmissible under 501 Code Mass. Regs. § 2.15; (2) the two BAC results were improperly admitted in an impairment-only case without expert testimony; (3) the prejudicial value of the BAC results outweighed the probative value; and (4) because the Commonwealth initially represented that it would redact the .08 percent BAC result but subsequently changed its position to argue for its admission, judicial estoppel barred the Commonwealth from entering it in evidence. We need not determine whether the admission of the BAC results was erroneous because even if there was error, it did not amount to a substantial risk of a miscarriage of justice² because the

² The defendant concedes that he did not specifically object to the admission of the BAC results on the third and fourth grounds, supra, such that we review those claimed errors for a substantial risk of a miscarriage of justice. The Commonwealth maintains that because the defendant also did not object to the report's admission on the grounds that the higher BAC result needed to be redacted but objected because "it contained his numerical BAC and the subject test results," that issue was also

evidence against the defendant was overwhelming. See Commonwealth v. Cruz, 445 Mass. 589, 591 (2005) ("An error is not prejudicial if it did not influence the jury, or had but very slight effect" [quotation and citation omitted]); Commonwealth v. Dussault, 71 Mass. App. Ct. 542, 545 (2008) (no substantial risk of miscarriage of justice where evidence was "overwhelming" and "[t]he defendant failed to demonstrate how the error made an impact on the jury's deliberations").

The jury heard substantial evidence of the defendant's impairment. The defendant twice told police that he was too drunk to drive, gave inconsistent responses to the officer's questions, and had difficulty finding his driver's license. The jury also heard evidence from multiple witnesses that the defendant exhibited "classic" signs of intoxication -- appearing unsteady on his feet, smelling of alcohol, appearing confused and disoriented with red and bloodshot eyes, and slurring his speech. See Commonwealth v. Gallagher, 91 Mass. App. Ct. 385, 392-393 (2017) (admission of improper opinion of impairment not prejudicial where "defendant exhibited classic symptoms of alcohol intoxication: her eyes were bloodshot and glassy; an odor of alcohol emanated from her person; her speech was

not properly preserved. Even if we conclude the error was prejudicial, we determine that the defendant has not demonstrated a substantial risk of miscarriage of justice.

slurred; she admitted to drinking three beers; [and] . . . she could not stand straight").

Even without evidence of the BAC results, "there was substantial evidence from which the jury could conclude that the defendant was operating his vehicle while under the influence of alcohol."³ Commonwealth v. Rumery, 78 Mass. App. Ct. 685, 688 (2011). See Commonwealth v. Vermette, 43 Mass. App. Ct. 789, 798 (1997) ("The essential question is whether the error had, or might have had, an effect on the jury and whether the error contributed to or might have contributed to the verdicts").

Judgment affirmed.

By the Court (Meade,
D'Angelo & Tan, JJ.⁴),

A handwritten signature in blue ink, appearing to read "Paul Little".

Clerk

Entered: July 28, 2026.

³ Furthermore, the judge instructed the jury at the close of the case that although they could consider a breath test result for the purpose of "determining whether the Defendant had consumed any alcohol," they could "not draw any inference from those results as to whether or not the defendant was under the influence of alcohol." "The jury are presumed to follow the judge's instructions." Commonwealth v. Maynard, 436 Mass. 558, 571 (2002).

⁴ The panelists are listed in order of seniority.