

Circuit Court for Baltimore County
Case No. C-03-CR-23-003687

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 303

September Term, 2024

ROBERT ANTHONY APONTE

v.

STATE OF MARYLAND

Leahy,
Zic,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 7, 2025

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Convicted by the Circuit Court for Baltimore County of driving a vehicle while impaired by alcohol and related offenses, Robert Anthony Aponte, appellant, presents for our review a single issue: whether the evidence is insufficient to sustain the conviction of driving a vehicle while impaired by alcohol. For the reasons that follow, we shall affirm the judgment of the circuit court.

At trial, the State called Baltimore County Police Detective Anthony Abbene, who testified that at approximately 1:17 a.m. on January 1, 2021, he was “on patrol” when the following occurred:

A call was received for someone leaving a party that was intoxicated. The description of the vehicle was . . . a Jeep Cherokee and it gave the general vicinity, I believe, on Sparrows Point, where the vehicle had left from. As I was in the area, I observed a vehicle parked on the side of North Point Boulevard partially in the roadway at an angle.

The vehicle . . . initially caught my attention because the headlights were on and it just looked off and it was coming, it was on the northbound side of North Point Boulevard, which would indicate that it had just come from Sparrows Point, because Sparrows Point is to the south of that area.

* * *

[The vehicle] was at an angle partially in the shoulder or I guess curb edge of the roadway, partially in a driveway to a business. There was a, like an apron into a business right there that was closed at the time with a gate coming across.

And the presence of that vehicle in that area, again, with the headlights on, at that time, drew my attention because for one, the business was closed and for two, the way it was parked was, looked abnormal because it was partially in the roadway. And it looked like it could be struck by a vehicle coming northbound if the person like was on the . . . line and close to the edge.

The State subsequently entered into evidence a video recording made by Detective Abbene’s “body worn camera,” which shows the detective approaching the vehicle, repeatedly knocking on the window of the driver’s door, and twice asking the driver, whom Detective Abbene identified in court as Mr. Aponte, to “roll the window down.” Detective Abbene testified: “[A]s soon as [Mr. Aponte] looked up, I don’t know if he realized that it was the police or if he thought that someone was trying to attack him. But he put his hand on the shifter, and I feared, being that close to the car, that he was going to try and drive away and injure me.” The detective told Mr. Aponte: “Don’t, don’t drive away, don’t drive away.”

Detective Abbene testified that when Mr. Aponte opened the door of the vehicle, the detective “detected the odor of an alcoholic beverage emanating from the interior of the vehicle,” and Mr. Aponte displayed “indicators of someone that would be under the influence of an alcoholic beverage.” The video recording reflects that when the detective asked Mr. Aponte, “what are we doing,” Mr. Aponte replied: “I’m going home.” Detective Abbene asked Mr. Aponte if he “had anything to drink” that evening, and he replied, “early in the a.m.,” approximately sixty to ninety minutes prior. Detective Abbene testified that after Mr. Aponte refused to “perform standardized field sobriety tests,” the detective, “based on what [he] observed . . . and the totality of everything that [he] saw [and] heard,” concluded that he “had enough probable cause to determine that [Mr. Aponte] was impaired,” and placed him under arrest.

Following the close of the State’s case, defense counsel argued, among other arguments, that there was “no testimony that there was any driving whatsoever.” During

argument, the court stated, in pertinent part: “We, we can play the video, but I saw a large wet stain on the pavement immediately adjacent to the vehicle, coming from under the vehicle and on the passenger side, which would also connote something like, like air conditioner exhaust There’s, there’s condensation that leaks from the vehicle, but it doesn’t do it when just parked.”

Following argument, the court agreed that the engine of Mr. Aponte’s vehicle “was not running[] nor was the ignition on,” he “was . . . described as potentially and probably being asleep at the time,” there was “no[] evidence that [the key to the vehicle] was actually” in the ignition, and the vehicle was not located “in the actual lane of travel.” Nevertheless, the court found “on balance sufficient evidence to find beyond a reasonable doubt that the element of drive is sustained,” and convicted Mr. Aponte of the offenses.

Mr. Aponte contends that, for numerous reasons, the court erred “[i]n finding [him] guilty of the ‘driving’ element of driving while impaired.” *See* Md. Code (1977, 2020 Repl. Vol.), § 21-902(b)(1)(i) of the Transportation Article (“TA”) (a “person may not drive or attempt to drive any vehicle while impaired by alcohol”). We disagree. TA § 11-114 defines “drive” as “to drive, operate, move, or be in actual physical control of a vehicle.” The Supreme Court of Maryland has stated:

What constitutes “actual physical control” will inevitably depend on the facts of the individual case. The inquiry must always take into account a number of factors, however, including the following:

- 1) whether or not the vehicle’s engine is running, or the ignition on;
- 2) where and in what position the person is found in the vehicle;

- 3) whether the person is awake or asleep;
- 4) where the vehicle's ignition key is located;
- 5) whether the vehicle's headlights are on;
- 6) whether the vehicle is located in the roadway or is legally parked.

No one factor alone will necessarily be dispositive of whether the defendant was in “actual physical control” of the vehicle. Rather, each must be considered with an eye towards whether there is in fact present or imminent exercise of control over the vehicle or, instead, whether the vehicle is merely being used as a stationary shelter. Courts must in each case examine what the evidence showed the defendant was doing or had done, and whether these actions posed an imminent threat to the public.

Perhaps the strongest factor informing this inquiry is whether there is evidence that the defendant started or attempted to start the vehicle's engine.

Atkinson v. State, 331 Md. 199, 216-17 (1993).

Here, the court noted that the video recording made by Detective Abbene's body worn camera reflected a “large wet stain on the pavement immediately adjacent to [Mr. Aponte's] vehicle, coming from under the vehicle and on the passenger side,” and consistent with air conditioner “condensation” that a vehicle does not create “when just parked.” The State produced evidence that the detective discovered Mr. Aponte sitting in the driver's seat of the vehicle. The headlights of the vehicle were on, and the vehicle was located “at an angle partially in the shoulder or . . . curb edge of the roadway” and “partially in a driveway to a [closed] business.” During his conversation with Detective Abbene, Mr. Aponte stated that he previously had something to drink and was “going home.” Finally, the detective testified that when he made contact with Mr. Aponte, he “put his hand on the

shifter,” as if “he was going to . . . drive away.” From this evidence, a rational trier of fact could conclude beyond a reasonable doubt that Mr. Aponte, while intoxicated, drove his vehicle to the location where he was discovered by Detective Abbene, and hence, the evidence is sufficient to sustain the conviction of driving a vehicle while impaired by alcohol.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**