

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Appellee,*

*v.*

RICARD ALLEN DIGGS,  
*Appellant.*

No. 2 CA-CR 2024-0057  
Filed January 7, 2026

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
NOT FOR PUBLICATION  
*See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).*

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Appeal from the Superior Court in Pinal County  
No. S1100CR202201848  
The Honorable Daniel Washburn, Judge

**AFFIRMED**

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COUNSEL

Kristin K. Mayes, Arizona Attorney General  
Alice M. Jones, Deputy Solicitor General/Section Chief of Criminal Appeals  
By Madeline Shupe, Assistant Attorney General, Phoenix  
*Counsel for Appellee*

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**MEMORANDUM DECISION**

Presiding Judge Kelly authored the decision of the Court, in which Judge Brearcliffe and Judge Sklar concurred.

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K E L L Y, Presiding Judge:

¶1 Ricard Diggs appeals his convictions and sentences for four counts of aggravated driving while under the influence of alcohol (DUI). He claims the trial court erred by denying his Rule 20, Ariz. R. Crim. P., motion for judgment of acquittal. For the following reasons, we affirm.

**Factual and Procedural Background**

¶2 “We view the facts in the light most favorable to sustaining the jury’s verdicts and resolve all reasonable inferences against” Diggs. *State v. Felix*, 237 Ariz. 280, ¶ 2 (App. 2015). In September 2022, Diggs was pulled over by a City of Maricopa police officer for driving at an excessive speed. The officer determined that Diggs had a revoked Colorado license, and observed that Diggs exhibited signs and symptoms of impairment. In addition, there were empty bottles of alcohol in his vehicle, which Diggs admitted to having consumed. He was arrested at the scene, and the arresting officer started a fifteen-minute “deprivation period” while he transported Diggs to the police station. At the station, Diggs was administered an Intoxilyzer breath test that registered a blood alcohol level over .10. Diggs was charged with four separate counts of aggravated DUI, with count one alleging he had driven under the influence of alcohol while his license was suspended or revoked, count two alleging he had driven while he had an alcohol concentration of .08 or more and his license was suspended or revoked, count three alleging he had driven under the influence of alcohol while he had two prior DUI convictions in the previous eighty-four months, and count four alleging he had driven while he had an alcohol concentration of .08 or more and had two prior DUI convictions in the previous eighty-four months. His case proceeded to a jury trial in October 2023.

¶3 Following the state’s presentation of evidence, Diggs moved for a judgment of acquittal, arguing both that law enforcement failed to properly follow the correct procedures for breath-testing and that the evidence was insufficient for the jury to conclude that Diggs was “impaired

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to the slightest degree.” The trial court denied the motion as to each count. The jury found Diggs guilty on all four counts, and the court later sentenced Diggs to concurrent ten-year prison terms, with credit for 482 days. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

**Discussion**

¶4 On appeal, Diggs argues the trial court erred in denying his Rule 20 motion for judgment of acquittal because “[t]he procedures of the ‘deprivation period’ were clearly not properly followed.” Specifically, he contends that because the arresting officer testified it may have been “possible that he wouldn’t have been aware of a belch or burp” that might have corrupted the “deprivation period” while he transported Diggs to the police station, Diggs’s Blood Alcohol Concentration (BAC) results were insufficient to support a guilty verdict.

¶5 Under Rule 20(a)(1), “the court must enter a judgment of acquittal on any offense charged . . . if there is no substantial evidence to support a conviction.” See *State v. Andersen*, 255 Ariz. 320, ¶ 7 (App. 2023) (“Substantial evidence ‘is proof that reasonable persons could accept as adequate and sufficient to support a conclusion of defendant’s guilt beyond a reasonable doubt.’” (quoting *State v. West*, 226 Ariz. 559, ¶ 16 (2011))). We review the denial of a Rule 20 motion de novo, “viewing the evidence in a light most favorable to sustaining the verdict.” *West*, 226 Ariz. 559, ¶ 15 (quoting *State v. Bible*, 175 Ariz. 545, 595 (1993)).

¶6 An aggravated DUI is committed when a person drives or is in actual physical control of a vehicle “[w]hile under the influence of intoxicating liquor,” or “[i]f the person has an alcohol concentration of 0.08 or more within two hours of driving,” and “the person’s driver license or privilege to drive is . . . revoked” or “[w]ithin a period of eighty-four months commits a third” DUI. A.R.S. §§ 28-1381(A)(1)-(2), 28-1383(A)(1)-(2). Diggs was charged with four distinct counts of aggravated DUI, with counts one and three alleging he had driven while he was under the influence of intoxicating liquor, and counts two and four alleging that he had driven while he had an alcohol concentration of .08 or more. Our supreme court has stated: “[A] person is driving under the influence of intoxicants if his control of his vehicle is to the [s]lightest degree affected by his consumption of the intoxicant.” *Davis v. Waters*, 103 Ariz. 87, 90 (1968).

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¶7 Diggs argues that because the “deprivation period” was not properly followed, there was insufficient evidence “to find [him] guilty of the charges.” However, as stated above, counts one and three did not require evidence of a BAC, but rather that Diggs was “to the [s]lightest degree affected by his consumption of the intoxicant,” *Id.* at 90, that his license was revoked, and that he had driven while he had two prior DUI convictions in the previous eighty-four months, respectively, *see* § 28-1383(A)(1)-(2).

¶8 The state presented substantial evidence to support the jury’s finding of guilt on counts one and three. At trial, the arresting officer testified that Diggs passed him at approximately 2:05 a.m. while driving at a high rate of speed and in excess of the posted twenty-five miles-per-hour speed limit. The officer had to accelerate his own vehicle to between seventy and eighty-five miles per hour to initiate a traffic stop. The officer then approached Diggs, who was sitting behind the wheel. As the officer approached, Diggs immediately lit a cigarette, then handed the officer an Arizona I.D. card and stated that he was “dealing” with his Colorado driver license. The officer ran Diggs’s name in a law enforcement database and learned that his Colorado driver license was revoked. Diggs stated he was “coming from a bar,” and that he had consumed “one glass of wine.” The officer noticed Diggs exhibiting many of the typical signs of impairment, which included slurred speech, and “droopy,” “watery[,] and bloodshot” eyes.

¶9 Diggs agreed to participate in field sobriety tests. During the horizontal gaze nystagmus test, the officer observed that both of Diggs’s eyes exhibited a lack of smooth pursuit. During the test, Diggs had been sucking on a mint, which the officer identified as a “masking technique.” Diggs initially agreed to participate in a preliminary breath test; however, he did not provide enough air in the machine, and he eventually stated he “wouldn’t do it.” The officer then arrested Diggs.

¶10 The officer conducted an inventory search of Diggs’s vehicle and found three unopened bottles of alcohol, an empty beer can, and a half-full bottle of whiskey. After being advised of his Miranda rights, Diggs stated he had started drinking at 11:00 a.m., “took four shots from the open bottle of . . . whiskey” at his residence, and left for the bar “where he had two more shots,” a beer, and a glass of wine.

¶11 As to the evidence supporting Diggs’s prior convictions, a Colorado law enforcement officer testified that Diggs was convicted of two separate DUIs in October 2015 and that he was on felony parole on

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September 6, 2022. Additionally, the state admitted evidence that Diggs's Colorado driver license was revoked.

¶12 Given the officer's testimony regarding the general signs and symptoms of alcohol consumption, as well as Diggs's driving and statements, a reasonable jury could easily conclude that Diggs was impaired to the slightest degree. *See Davis*, 103 Ariz. at 90; *see also Andersen*, 255 Ariz. 320, ¶ 7. Furthermore, the state presented evidence that Diggs's license was suspended or revoked and that he had two prior DUI convictions in the previous eighty-four months, which Diggs does not challenge on appeal. Therefore, the state presented substantial evidence from which a reasonable jury could conclude that Diggs was guilty of counts one and three. *See A.R.S. §§ 28-1381(A)(1), 28-1383(A)(1)-(2), 13-708; Andersen*, 255 Ariz. 320, ¶ 7.

¶13 We now review whether the state presented substantial evidence to support the jury's conclusion that Diggs had a blood alcohol concentration above .08, as required in counts two and four. *See Andersen*, 255 Ariz. 320, ¶ 7. Section 28-1323(A)(4), A.R.S., provides: "The results of a breath test administered for the purpose of determining a person's alcohol concentration are admissible as evidence" if, among other requirements, "[t]he operator who conducted the test followed an operational checklist approved by the department of health services or the department of public safety . . . ." The operational checklist requires a fifteen-minute "deprivation period" immediately before the test, and "[t]he testimony of the operator is sufficient to establish this requirement." *State v. King*, 213 Ariz. 632, ¶ 32 (App. 2006) (alteration in *King*) (quoting § 28-1323(A)(4)).

¶14 At trial, the arresting officer testified that after he arrested Diggs, he checked that Diggs did not have access to any food or alcohol, that he had not vomited, and that at 2:50 a.m. the officer had begun the fifteen-minute "deprivation period" while transporting Diggs to the police station. During the "deprivation period," Diggs was handcuffed and seated behind the officer in the police vehicle. Once at the police station, a breath alcohol test was conducted by another officer, while the arresting officer continued watching Diggs. Diggs's first breath sample was taken at 3:13 a.m. and the result was .111 BAC, and the second result at 3:20 a.m. was .112 BAC.

¶15 A forensic scientist testified that if an individual "burps up stomach content into his mouth and then swallows it down without notifying the officer . . . or the officer noticing," the breath alcohol test would not be invalidated because "a burp" has "to actually re-gurge . . . it

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has to bring up regurgitation from the stomach, and the stomach content has to contain alcohol” for the mouth’s alcohol content to be affected.

¶16 Diggs asserts that because the arresting officer testified it may have been “possible that he wouldn’t have been aware of a belch or burp” during the deprivation period while transporting Diggs to the police station, Diggs’s BAC results provided insufficient evidence to support his convictions under counts two and four. Additionally, he argues that because the officer who conducted the Intoxilyzer test “did not know if [the arresting officer] left Mr. Diggs alone for any period of time in the police station during the deprivation period, or if he was not observing him during the period of time at the police station,” the deprivation period procedure was not properly followed.

¶17 However, the arresting officer testified that he did not hear Diggs make any regurgitation sounds while he was transported to the police station, nor did he see any “vomit” or “crumbs” in his car, and that he continued to watch Diggs at the police station. The officer further testified that while it was possible Diggs had made the type of burp or belch that would have affected the deprivation period, it was not probable. In the absence of any evidence suggesting such an event occurred, Diggs’s argument relies purely on speculation, which is not enough to support reversal of his convictions. See *State v. Diaz*, 223 Ariz. 358, ¶ 13 (2010). Finally, “[a]ny lack of perfection [in tests used to measure BAC] affects the weight the jury may wish to accord the evidence obtained by [those] test[s], not its admissibility.” *State v. Campoy*, 214 Ariz. 132, ¶ 12 (App. 2006) (alteration in *Campoy*) (quoting *State v. Velasco*, 165 Ariz. 480, 486 (1990)). Given all of this evidence, a reasonable juror could have concluded that the arresting officer credibly testified that Diggs had not regurgitated in a way that invalidated the results of the BAC tests. See *State v. Buccheri-Bianca*, 233 Ariz. 324, ¶ 38 (App. 2013) (“It is not the province of an appellate court to reweigh evidence or reassess the witnesses’ credibility.”). Accordingly, the state presented sufficient evidence for the jury to conclude that Diggs’s BAC was above .08 within two hours of driving. *Andersen*, 255 Ariz. 320, ¶ 7. See §§ 28-1381(A)(2), 28-1383(A)(1)-(2). The trial court therefore did not err in denying Diggs’s motion for judgment of acquittal. See *West*, 226 Ariz. 559, ¶ 15; see also Ariz. R. Crim. P. 20(a)(1).

**Disposition**

¶18 For the foregoing reasons, we affirm Diggs’s convictions and sentences.