

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

STATE OF MISSOURI,

Respondent,

v.

LESLIE M. BAKER,

Appellant.

DOCKET NUMBER WD78391

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: August 16, 2016

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable James F. Kanatzar, Judge

JUDGES

Special Division: Zel M. Fischer, Special Judge, Presiding; Mark D. Pfeiffer, Chief Judge; and Gary D. Witt, Judge

ATTORNEYS

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MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT

STATE OF MISSOURI,)
)
Respondent,)
v.) **OPINION FILED:**
) **August 16, 2016**
LESLIE M. BAKER,)
)
Appellant.)

WD78391

Jackson County

Before Special Division Judges: Zel M. Fischer, Special Judge, Presiding; Mark D. Pfeiffer, Chief Judge; and Gary D. Witt, Judge

Mr. Leslie M. Baker (“Baker”) appeals his conviction of the class B felony of driving while intoxicated (“DWI”), chronic offender, following a bench trial on stipulated evidence in the Circuit Court of Jackson County, Missouri (“trial court”). Baker was sentenced to six years’ imprisonment.

In Baker’s sole point on appeal, he asserts that the trial court erred in overruling his motion for judgment of acquittal at the close of the State’s case, because there was insufficient evidence to support a DWI conviction. Baker does not challenge that he was in an intoxicated condition when the police officer made contact with him. Instead, he argues that this is an “engine-not-running” case, and the State did not present “significant additional evidence” that he drove his vehicle while intoxicated.

AFFIRMED.

Special Division holds:

1. “A person commits the crime of ‘driving while intoxicated’ if he operates a motor vehicle while in an intoxicated or drugged condition.” § 577.010. As used in Chapter 577, “the term ‘drive’, ‘driving’, ‘operates’ or ‘operating’ means physically driving or operating a motor vehicle.” § 577.001.1.2.

2. To sustain a criminal conviction for DWI in cases where the motor vehicle's engine was not running, the State is required to present significant additional evidence relating to the "drive" element of the crime, which may include: lights inside or outside the vehicle were illuminated; the key was in the ignition; the accused was found behind the steering wheel; the accused was the sole occupant of the vehicle; the vehicle was found in a lane of traffic; and the vehicle was registered to the accused. Further, a relatively brief period of time from a defendant's erratic driving and his arrest in an intoxicated condition can be sufficient to establish the temporal connection between a defendant's intoxication and driving or operating the vehicle.

3. Here, the police officer arrived at the scene five minutes after dispatch received an eyewitness's 9-1-1 call, placing Baker in the driver's seat and as the sole occupant of his vehicle. When the officer arrived, he observed Baker attempting to stagger away from his vehicle, leaving the vehicle's lights illuminated, key in the ignition, and front driver's-side door ajar, in the middle of an intersection reserved for lanes of traffic. Baker stumbled and ultimately fell face down in a grassy area adjacent to the public road some twenty-five feet from where he left his vehicle unattended. When the officer detained Baker, he observed an overpowering odor of intoxicants coming from Baker's person. Baker's eyes were bloodshot and watery; his speech was slurred and mumbling; his balance was uncertain, and he was swaying, staggering, stumbling, and falling down. The officer observed in plain view in Baker's vehicle two open and largely consumed plastic McCormick whiskey bottles. At the scene, Baker refused to take field sobriety tests and was belligerent in refusing to do so. The intersection was a busy one with moderate to heavy traffic such that it is unreasonable to conclude that Baker's vehicle had been parked in the middle of the intersection for very long before a witness called in the irregularity in the roadway. The officer arrested Baker on suspicion of DWI and transported him to the Blue Springs police station where Baker refused to submit to a chemical breath test.

4. We conclude that this constitutes sufficient and significant circumstantial evidence for a reasonable trier of fact to find beyond a reasonable doubt that Baker drove or operated his vehicle in temporal connection to his severe intoxication. Accordingly, the trial court did not err in overruling Baker's motion for judgment of acquittal and in finding him guilty of DWI in violation of section 577.010.

Opinion by: Mark D. Pfeiffer, Chief Judge

August 16, 2016

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