IN THE SUPREME COURT OF THE STATE OF NEVADA

ANNA MARIE JACKSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44562

FILED

JUL 05 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Appeal from a judgment of conviction, upon a jury verdict, of felony DUI and from an order denying a motion for a new trial. Second Judicial District Court, Washoe County; Janet J. Berry and Steven P. Elliott, Judges.

Appellant Anna Jackson was convicted of felony DUI in connection with the death of Officer Michael Scofield of the Reno Police Department (RPD). The district court sentenced Jackson to serve two years in prison. The parties are familiar with the facts, and we do not recount them except as relevant to our discussion.[1]

Jury instruction on proximate cause

Jackson argues first that the district court's jury instruction on proximate cause was erroneous. Jackson's defense at trial was that the owners of property adjacent to the accident scene negligently failed to trim overgrown foliage, reducing the visibility for drivers entering and exiting the road. She contends that this negligence was the proximate cause of the accident that killed Scofield, and should cut off her criminal liability.

This argument is fatally flawed. The overgrown foliage near the parking lot driveway was a pre-existing condition and, as such, could

[1]See State v. Dist. Ct. (Jackson), 121 Nev. ____, 116 P.3d 823 (2005).

not constitute a superseding cause of the accident.[2] As we noted in Williams v. State, an intervening or superseding cause "which relieves the criminal actor of responsibility is one which 'breaks the chain of causation' after the defendant's original act."[3]

Because the alleged negligence of the property owner is a pre-existing condition, the district court did not err by limiting the jury's consideration of contributory negligence only to Scofield's potentially negligent conduct. The alleged negligence of the property owners is simply irrelevant to Jackson's criminal liability for Scofield's death.

Exclusion of evidence

Jackson also challenges the district court's refusal to admit evidence that the property owners trimmed the foliage and removed advertising signs from the area shortly after the accident. The district court excluded this evidence under NRS 48.095, which mandates the exclusion of evidence of subsequent remedial measures. Neither NRS 48.095 nor FRE 407, its federal counterpart, mention this rule's applicability to criminal cases. Additionally, the rule does not exclude evidence of remedial measures undertaken by third parties. NRS 48.095's policy not to discourage safety measures has no application where evidence is offered against a party that did not make the subsequent changes.[4]

---

[2]See Williams v. State, 118 Nev. 536, 551, 50 P.3d 1116, 1126 (2002); Bostic v. State, 104 Nev. 367, 370, 760 P.2d 1241, 1243 (1988).

[3]Williams, 118 Nev. at 551, 50 P.3d at 1126 (quoting People v. Autry, 43 Cal. Rptr. 2d 135, 140 (Cal. Ct. App. 1995)).

[4]Pau v. Yosemite Park & Curry Co., 928 F.2d 880, 881 (9th Cir. 1991); Mehojah v. Drummond, 56 F.3d 1213, 1215 (10th Cir. 1995).

However, the evidence at issue is wholly irrelevant to Jackson's liability in this matter since the visibility conditions at the accident scene were a pre-existing condition. We will affirm a decision by the district court that reaches the correct result, even if based upon the wrong rule or standard.[5] Therefore, because the evidence was not relevant, we conclude the district court properly excluded it.

Jackson also claims the district court erred when it excluded evidence of RPD policies she alleged would prove Scofield was driving negligently at the time of the accident. These policies required officers to operate both their lights and sirens when responding to an accident. The evidence at trial indicated that Scofield had his lights on, but was running his siren only intermittently.

Again, we conclude the district court properly excluded this evidence. Under NRS 484.261, police officers have discretion either to use both audible and visual signals or visual signals only. In addition, NRS 484.607 states that the use of lamps, even without the siren, is presumed to be adequate warning to pedestrians and other drivers. These statutes delineate the proper statutory duties governing the drivers of emergency vehicles and supersede internal department policy; therefore, the district court correctly excluded the RPD policies.

Conclusion

None of Jackson's arguments justify a new trial. The jury instructions given by the district court were an accurate statement of the law. The district court also properly excluded evidence that the property

---

[5]Sengel v. IGT, 116 Nev. 565, 570, 2 P.3d 258, 261 (2000).

owners later trimmed the foliage adjacent to the accident scene, as well as RPD policies that were superseded by statute.[6] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Janet J. Berry, District Judge
Hon. Steven P. Elliott, District Judge
Kenneth A. Stover
Dennis E. Widdis
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

---

[6]We have considered Jackson's claim that the State withheld exculpatory evidence relevant to her defense in violation of Brady v. Maryland, 373 U.S. 83 (1963). Because, as noted above, the property owners' alleged negligence is wholly irrelevant to the question of Jackson's criminal responsibility for the accident, the evidence allegedly withheld was neither material nor helpful to Jackson's defense. Therefore, no Brady violation occurred.