IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIE J. WILTZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45935

FILED

MAY 11 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of driving under the influence causing death. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge. The district court sentenced appellant Willie J. Wiltz to serve a prison term of 96-240 months.

Wiltz contends that the district court erred by refusing to allow him to present evidence and closing argument supporting the defense theory that the victim's death was caused by her failure to wear a seat belt. Wiltz claims that he was entitled to present this evidence and have the district court appropriately instruct the jury "because it was relevant to the element of causation of [the victim's] injuries." Wiltz argues that the State failed to prove causation beyond a reasonable doubt, and therefore, his conviction should be reversed and the matter remanded for a new trial. We disagree.

In Etcheverry v. State, this court stated:

> [A] criminal defendant can only be exculpated where, due to a superseding cause, he was in no way the "proximate cause" of the result. Any "intervening cause must, effectively, break the chain of causation." Thus, an intervening cause must be a superseding cause, or the sole cause of

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> the injury in order to completely excuse the prior act.[1]

In applying this general principle to evidence concerning the failure to wear a seat belt, other jurisdictions have held that such evidence is inadmissible because the failure to wear a seat belt cannot alone cause injury without some other force.[2] We agree and conclude that evidence concerning a victim's failure to wear a seat belt is not relevant to the jury's determination of proximate cause. Therefore, we conclude that the district court did not abuse its discretion by granting the State's motion in limine and excluding evidence that the victim was not wearing her seat belt at the time of the accident.[3]

Additionally, our review of the record on appeal reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.[4] In particular, we note that the State presented evidence that Wiltz was driving under the influence of an intoxicating liquor, at a high rate of speed, when he collided with the victim as she was in the process of making a left-hand turn. The victim was subsequently ejected from her vehicle and later died.

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[1]107 Nev. 782, 785, 821 P.2d 350, 351 (1991) (citations omitted) (quoting Bostic v. State, 104 Nev. 367, 370, 760 P.2d 1241, 1243 (1988)).

[2]See Union v. State, 642 So. 2d 91 (Fla. Dist. Ct. App. 1994); State v. Lund, 474 N.W.2d 169 (Minn. Ct. App. 1991); State v. Nester, 336 S.E.2d 187 (W. Va. 1985); State v. Turk, 453 N.W.2d 163 (Wis. Ct. App. 1990).

[3]See Williams v. State, 118 Nev. 536, 551 & n.55, 50 P.3d 1116, 1125 & n.55 (2002).

[4]See Mason v. State, 118 Nev. 554, 559, 51 P.3d 521, 524 (2002) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

We conclude that the jury could reasonably infer from the evidence presented that the victim's conduct was not the sole cause of the injury and that Wiltz's conduct was a proximate cause of the injury.[5] A jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.[6] Therefore, we conclude that the State presented sufficient evidence to support the jury's verdict.[7]

Finally, Wiltz contends that the district court erred by allowing a verdict form that was impermissibly vague and confusing. Wiltz claims that "it is quite possible that the jury did not even find that [he] proximately caused the accident or the injuries to [the victim]." Wiltz did not object to the verdict form.[8] This court may nevertheless address an alleged error if it was plain and affected the appellant's substantial rights.[9] "To be plain, an error must be so unmistakable that it is apparent

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[5]See Trent v. Clark Co. Juv. Ct. Services, 88 Nev. 573, 577, 502 P.2d 385, 388 (1972) (quoting R. Anderson, Wharton's Criminal Law & Procedure § 986 (1957)); see also Etcheverry, 107 Nev. at 785, 821 P.2d at 351.

[6]See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

[7]See NRS 484.3795.

[8]See Rippo v. State, 113 Nev. 1239, 1259, 946 P.2d 1017, 1030 (1997) (the failure to raise an objection with the district court generally precludes appellate consideration of an issue).

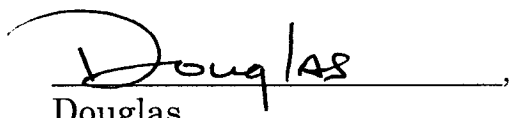
[9]See NRS 178.602 ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.").

from a casual inspection of the record."[10] In this case, we conclude that Wiltz has failed to demonstrate plain error.

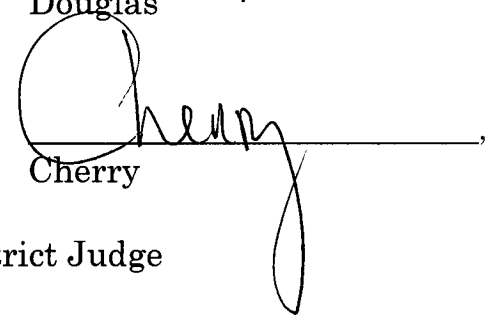
Therefore, having considered Wiltz's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.[11]

_____, J.
Gibbons



_____, J.
Douglas



_____, J.
Cherry

cc: Hon. Michelle Leavitt, District Judge
Draskovich & Oronoz, P.C.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

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[10]Garner v. State, 116 Nev. 770, 783, 6 P.3d 1013, 1022 (2000), overruled on other grounds by Sharma v. State, 118 Nev. 648, 56 P.3d 868 (2002).

[11]We note that there is a clerical error in the judgment of conviction. The judgment incorrectly states that Wiltz was convicted pursuant to a guilty plea. In fact, Wiltz was convicted pursuant to a jury verdict. Following this court's issuance of its remittitur, the district court shall correct this error in the judgment of conviction. See NRS 176.565 (providing that clerical error in judgments may be corrected at any time); Buffington v. State, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994) (explaining that district court does not regain jurisdiction following an appeal until supreme court issues its remittitur).