

IN THE SUPREME COURT OF THE STATE OF NEVADA

TERRY BARCUS,
Appellant,
vs.
ESTATE OF CURTIS WILSON,
Respondent.

No. 46355

FILED

MAY 30 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment on a jury verdict in a personal injury action. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition.

NRS 486.341

On appeal, the parties have raised an interesting question as to whether NRS 486.341, Nevada's motorcycle lane-use statute, applies only to vehicles traveling in the same direction as motorcycles or whether it applies to all vehicles sharing the road with motorcycles, regardless of whether such vehicles are traveling in the same or opposite direction as the motorcycle.¹

¹NRS 486.341 provides:

Every motorcycle or moped when being driven on the highway is entitled to full use of the traffic lane it is occupying, and a person shall not drive another motor vehicle in a manner which would deprive any such motorcycle or moped of such use.

In particular, appellant Terry Barcus argues that the district court abused its discretion by refusing to give appellant his proposed instruction that NRS 486.341 applies to all vehicles sharing the road with a motorcycle, and that any violation of NRS 486.341 was negligence per se. Respondent, on the other hand, maintains that the statute is intended to protect motorcycle drivers from crowding through traffic moving in the same direction.

In considering the proposed instruction, the district court concluded that NRS 486.341 was intended to apply only to vehicles traveling in the same direction as the motorcycle. We agree. Iowa employs a motorcycle lane-use statute that is analogous to NRS 486.341.² In interpreting that statute, the Iowa Supreme Court held that despite the express language of Iowa's lane-use statute, its motorcycle statutes were intended to ensure safe usage of travel lanes when motorcycles and cars were driving side-by-side, and that the statute was not intended to apply to vehicles traveling in the opposite direction.³ Although the legislative history of NRS 486.341 is silent⁴ as to where NRS 486.341 was drawn from, we must interpret our state's traffic laws to minimize conflict with

²Iowa Code 321.275(4) provides in relevant part, "a motor vehicle shall not be operated in a manner depriving a motorcycle or motorized bicycle the full use of a lane".

³Meyer v. City of Des Moines, 475 N.W.2d 181, 184 (Iowa 1991).

⁴The only legislative intent we could glean from the legislative history was that the overriding purpose of NRS Chapter 486 was to promote motorcycle safety amidst growing concerns about motorcycle accidents. Hearing on A.B. 285, Senate Transportation Committee, 56th Leg. (Nev., April 6, 1971) (testimony of Senator Archie Pozzi).

the traffic laws of other states,⁵ and we believe that Iowa reasonably interpreted its analogous motorcycle lane-use statute.⁶ Therefore, we conclude that NRS 486.341 only applies to vehicles traveling alongside motorcycles.

As a result, we conclude that the district court did not abuse its discretion when it refused to give Barcus's proposed NRS 486.341 negligence per se instruction.

Method of Voir Dire

Barcus also contends that the district court's method of voir dire violated NRS 16.030(4). Barcus admits that he failed to object to the district court's method of voir dire at trial. Failure to object to an error below precludes appellate review unless the defect results in plain error.⁷ Although the district court's jury selection procedure in this case did not appear to follow the method set forth in NRS 16.030(4), we are not

⁵NRS 484.011 provides in relevant part:

The purposes of this chapter are to:

....

2. Minimize the differences between the traffic laws of the State of Nevada and those of other states.

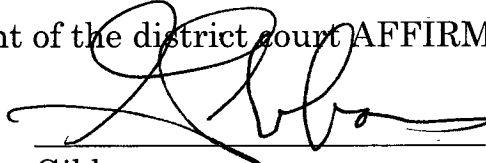
⁶Notably, NRS 486.351, which is part of the same statutory scheme as NRS 486.341, applies only to vehicles traveling in adjacent lanes. Under NRS 486.351(1), motorcyclists may not travel "between moving or stationary vehicles occupying adjacent lanes." NRS 486.341 and NRS 486.351 were likely meant to apply to similar situations where a motorcycle and a vehicle are traveling in adjacent lanes, not where a vehicle is attempting to make a left turn in front of a motorcycle.

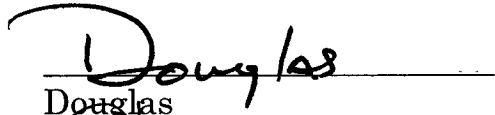
⁷Torres v. Farmers Ins. Exchange, 106 Nev. 340, 345 n.2 (1990).

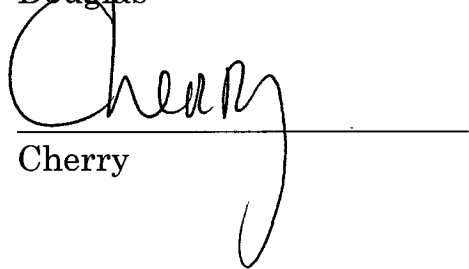
convinced that Barcus was substantially prejudiced by this method of voir dire so as to warrant reversal, because Barcus was still able to exercise all of his peremptory challenges.⁸

As to the district court's refusal to dismiss a juror for cause, we conclude that the district court did not abuse its discretion.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Lee A. Gates, District Judge
Israel Kunin, Settlement Judge
Delanoy Schuetze & McGaha, P.C.
Watson Rounds
Eighth District Court Clerk

⁸We note for future reference, however, that although the district court's failure to follow NRS 16.030(4) may not have been substantially prejudicial in this case, it could well be prejudicial in other cases.

⁹See Blake v. State, 121 Nev. 779, 795, 121 P.3d 567, 577 (2005) (the district court has broad discretion when ruling on challenges for cause).