

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARK ALLAN RICHARDSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 48242

**FILED**

OCT 17 2007

JANE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of felony driving under the influence (DUI). Second Judicial District Court, Washoe County; Robert H. Perry, Judge. The district court sentenced appellant Mark Allan Richardson to serve a prison term of 12-30 months and ordered him to pay a fine of \$2,000.

First, Richardson contends that his right to be protected against double jeopardy was violated when the State charged him with the instant felony DUI after the Sparks Municipal Court dismissed the case.<sup>1</sup> We disagree. NRS 174.085(5)(b), “clearly and unambiguously,”<sup>2</sup> provides that the prosecuting attorney “may voluntarily dismiss a complaint . . . [b]efore trial if the crime with which the defendant is charged is a misdemeanor . . . without prejudice to the right to file another complaint.” In this case, the Sparks Municipal Court granted the city attorney’s

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<sup>1</sup>In support of his argument, Richardson cites to NRS 174.085(5)-(6), NRS 178.554, NRS 178.562(1) and Turpin v. Sheriff, 87 Nev. 236, 238 n.4, 484 P.2d 1083, 1085 n.4 (1971).

<sup>2</sup>Sheriff v. Marcus, 116 Nev. 188, 192-93, 995 P.2d 1016, 1019 (2000).

request to dismiss the misdemeanor DUI charge against Richardson. The municipal court order stated that the city attorney sought a voluntary dismissal because “the District Attorney’s Office will be filing felony charges” against Richardson. Therefore, we conclude that Richardson’s contention is without merit.

Second, Richardson contends that one of the prior convictions used to enhance the instant case to a felony was invalid. Specifically, Richardson claims that his second DUI conviction was “void” because the criminal complaint charged duplicative offenses in a single count – DUI in violation of both the Washoe County Code and Nevada Revised Statutes.

Our review of the record reveals, however, that the district court did not err in admitting the misdemeanor conviction in question for enhancement purposes. Richardson was charged with violating WCC 70.3865 and NRS 484.379, both prohibiting driving under the influence and containing the same elements. The record indicates that Richardson pleaded guilty to only one misdemeanor offense, therefore, he cannot claim that he was prejudiced in any way. Moreover, even if the criminal complaint improperly charged him with duplicative offenses in a single count, Richardson’s guilty plea to only one offense cured any such defect.<sup>3</sup> Therefore, we conclude that Richardson has failed to demonstrate that the misdemeanor conviction was invalid or that it was otherwise improperly used to enhance the instant DUI to a felony.

Finally, Richardson contends that the evidence presented at trial was insufficient to support the jury’s finding that he was guilty

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<sup>3</sup>See Arascada v. District Court, 44 Nev. 37, 40, 189 P. 621, 622 (1920).

beyond a reasonable doubt. Specifically, Richardson claims that the State failed to demonstrate that he was in actual physical control of the vehicle.

Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.<sup>4</sup> In particular, we note that Officer Ronald Dreher testified that he noticed Richardson's truck parked askew on a public street, stating that "the right front tires were very close to the curb, and the . . . rear tires were very far away from the curb." Officer Dreher testified that from approximately fifty feet away, he could hear the radio "up very loud." Richardson was discovered passed out in the front seat of the vehicle, "slumped over to the side," with "his behind in the driver's seat, his feet in the area where you would drive the vehicle normally." Officer Dreher saw the keys in the ignition and eventually found "a half-full open bottle of vodka" under the driver's seat.

Robert McDonald, a friend of Richardson's, testified that he put the keys in the ignition after discovering that Richardson had left them behind in his house. McDonald found Richardson sleeping in the vehicle and stated that he placed the keys in the ignition so they would be easily found. McDonald did not recall turning on the radio and stated that he did not smell the odor of alcohol in the truck. Richardson testified that he "probably" had two drinks with another friend before sleeping in his truck. Criminologist Richard Bell testified that Richardson's blood alcohol content measured 0.330.

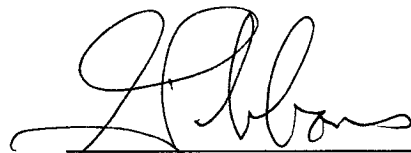
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<sup>4</sup>See Mason v. State, 118 Nev. 554, 559, 51 P.3d 521, 524 (2002) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

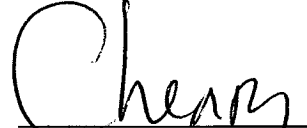
Based on the above, we conclude that the jury could reasonably infer from the evidence presented that Richardson committed the crime beyond a reasonable doubt.<sup>5</sup> It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, sufficient evidence supports the verdict.<sup>6</sup> Moreover, we note that circumstantial evidence alone may sustain a conviction.<sup>7</sup> Therefore, we conclude that the State presented sufficient evidence to support the jury's verdict.

Having considered Richardson's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

 \_\_\_\_\_, J.

Gibbons

 \_\_\_\_\_, J.

Cherry

 \_\_\_\_\_, J.

Saitta

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<sup>5</sup>See NRS 484.379(1); see also Barnier v. State, 119 Nev. 129, 67 P.3d 320 (2003); Rogers v. State, 105 Nev. 230, 773 P.2d 1226 (1989).

<sup>6</sup>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).

<sup>7</sup>See Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003).

cc: Hon. Robert H. Perry, District Judge  
Edwin T. Basl  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk