IN THE SUPREME COURT OF THE STATE OF NEVADA

JEROME AUSTIN LINDESMITH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48566

FILED

JUL 09 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 felony driving under the influence of a prohibited substance (DUI). Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge. The district court sentenced appellant Jerome Lindesmith to serve a prison term of 12 to 36 months.

Lindesmith contends that the evidence presented at trial was insufficient to support the jury's finding of guilt. Specifically, Lindesmith claims that there was no evidence that he was impaired because the trooper only initiated a traffic stop for speeding. Additionally, Lindesmith argues that he failed the field sobriety tests due to cold weather and spasms in his muscles caused from a prior injury. 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.[1]

In particular, we note that Trooper David Cox testified that Lindesmith was driving alone in his vehicle, and that radar indicated that Lindesmith was traveling at 61 miles per hour in a 35 mile-per-hour zone. Trooper Cox also testified that, in his opinion, Lindesmith was unable to safely operate a vehicle because he was under the influence of marijuana. Rebecca Scheffer, a criminalist at the Washoe County Crime Lab, testified that Lindesmith's urine contained prohibited levels of controlled substances, testing positive for cocaine metabolite in the amount of 8,200 nanograms per milliliter and marijuana metabolite in an amount greater than 400 nanograms per milliliter.[2]

The jury could reasonably infer from the evidence presented that Lindesmith drove a vehicle with a prohibited amount of a controlled substance in his blood or urine.[3] It is for the jury to determine the weight

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[1]See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

[2]See NRS 484.379(3) ("It is unlawful for any person to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access with an amount of a prohibited substance in his blood or urine").

[3]Lindesmith's challenge to the sufficiency of the evidence focuses on the evidence of impairment. We note, however, that Lindesmith was

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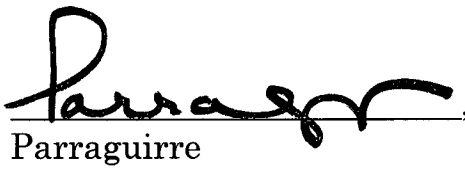
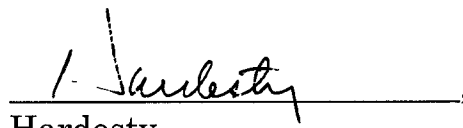
and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.[4]

Having considered Lindesmith's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.



_____, J.
Parraguirre



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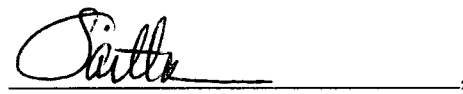

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charged with DUI based on a per se theory and impairment is not an element of the offense. See NRS 484.379(3).

[4]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).

cc: Hon. Connie J. Steinheimer, District Judge
Michael V. Roth
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk