

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAULINE KRELL A/K/A PAULINE  
BEAGLEY KRELL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 49196

**FILED**

DEC 14 2007

JAMETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY J. Alvarado  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of felony driving under the influence. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge. The district court sentenced appellant Pauline Krell to serve a prison term of 24 to 72 months.

Krell contends that the evidence presented at trial was insufficient to support the jury's finding of guilt. Specifically, Krell contends that the State failed to present sufficient evidence demonstrating that she "willfully" drove because she was in a "dissociative state" due to ingestion of the prescription medication Ambien.

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>1</sup> In particular, we note that Krell parked in the throughway of a grocery store parking lot. When told to move out of the throughway, Krell reversed her vehicle and hit another vehicle, pulled

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<sup>1</sup>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).

forward, and reversed again. Medical personnel that responded to the scene testified during the trial that Krell was alert and oriented to person, time, and place. Subsequent tests revealed her blood alcohol content was .162 and .150. At trial, Krell presented expert testimony that she was "sleepdriving." Nonetheless, the jury could reasonably infer from the evidence presented that Krell was in physical control of a vehicle in an area with public access with a blood alcohol level over .08.<sup>2</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, substantial evidence supports the verdict.<sup>3</sup>

In a related argument, Krell contends that the jury was "misled" by a jury instruction that stated

our law provides that "no act committed by a person while in a state of voluntary intoxication is less criminal by reason of his or her having been in such condition."

This provision of the law means that if the evidence shows that the defendant was voluntarily intoxicated when allegedly he or she committed the offense charged, his or her intoxication is not a defense to such charge.

Krell specifically contends that this instruction "did not differentiate between the lack of good judgment that a conscious but intoxicated person would display and actual unconscious, and therefore not willful, acts of a person who was in a dissociative state."

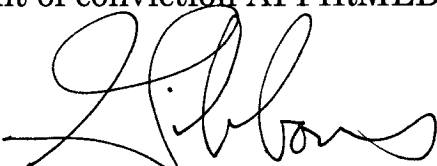
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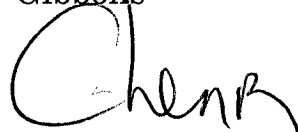
<sup>2</sup>NRS 484.379.


<sup>3</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).

Initially, we note that defense counsel did not object to the jury instruction. The failure to object to a jury instruction generally precludes appellate review. This court may nevertheless address an alleged error if it was plain and affected the appellant's substantial rights.<sup>4</sup> We conclude that the jury instruction was not plain error and did not affect Krell's substantial rights.<sup>5</sup>

Having concluded that Krell's contentions lacks merit, we  
ORDER the judgment of conviction AFFIRMED.

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

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

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

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

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<sup>4</sup>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.").

<sup>5</sup>See Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) (stating that when conducting a review for plain error, "the burden is on the defendant to show actual prejudice or a miscarriage of justice").