

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES RICHARD DANIELS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53818

FILED

MAY 07 2010

TRACIE LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of driving under the influence causing death. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

First, appellant James Richard Daniels contends that insufficient evidence was adduced to support the jury's verdict. We are unable to meaningfully review Daniels' claim because he did not include transcripts of the 5-day jury trial in the appendix submitted on appeal. See Thomas v. State, 120 Nev. 37, 43 & n.4, 83 P.3d 818, 822 & n.4 (2004) ("Appellant has the ultimate responsibility to provide this court with 'portions of the record essential to determination of issues raised in appellant's appeal.'" (quoting NRAP 30(b)(3))); Greene v. State, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) ("The burden to make a proper appellate record rests on appellant."). Therefore, we conclude that Daniels has failed to demonstrate that his contention has merit.¹

¹On February 2, 2010, we entered an order directing counsel for Daniels to file in this court, within 20 days, a supplemental appendix containing the trial transcripts. We noted that the transcripts were necessary for this court's review of the issues raised and, if counsel failed to comply, the appeal would be resolved on the record submitted. Counsel for Daniels failed to respond to this court's order.

Second, Daniels contends that the district court erred by providing improper jury instructions on blood alcohol content and proximate cause. "The district court has broad discretion to settle jury instructions, and this court reviews the district court's decision for an abuse of that discretion or judicial error." Crawford v. State, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005); see also Jackson v. State, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001) ("An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason."). Daniels, however, has failed to include the jury instructions in the appendix submitted on appeal. See Thomas, 120 Nev. at 43 & n.4, 83 P.3d at 822 & n.4; Greene, 96 Nev. at 558, 612 P.2d at 688. Nevertheless, we are able to review his claims based on the documents submitted and conclude that the district court did not abuse its discretion. See NRS 484.3795(1)(b)-(c) (now codified as NRS 484C.430(1)(b)-(c)); Williams v. State, 118 Nev. 536, 550, 50 P.3d 1116, 1125 (2002) (approving of instruction stating that "an intervening cause must be a 'superseding cause,' or the 'sole cause' in order to completely excuse the prior act" (citation omitted)). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Valorie Vega, District Judge
Mueller Hinds & Associates
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk