

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICKIE LEAVITT DURAN A/K/A
VICKIE LEAVITT SITTLE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56728

FILED

JUL 14 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *S. Young*
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, leaving the scene of an accident causing injury, and child endangerment. Eighth Judicial District Court, Clark County; Michael Villani, Judge.¹

First, appellant Vickie Leavitt Duran contends that insufficient evidence was adduced to support the jury's verdict. Duran claims that (1) the victim's slow, reckless driving was the proximate cause of the accident; (2) there was no evidence presented that she knew she was involved in an accident and she pulled over as close to the accident scene and as quickly as possible; and (3) she did not "willfully" endanger her passenger-child. We disagree and conclude that the evidence, when viewed in the light most favorable to the State, is sufficient to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); Mitchell v. State, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008).

¹The Honorable Lee Gates, Senior Judge, presided over the 4-day jury trial.

Trial testimony indicated that Duran was driving in excess of the speed limit, with a blood alcohol content nearly four times the legal limit, when she crashed into the rear of the victim's vehicle. The victim's 10-month-old son died as a result of the accident. Duran's 10-year-old son was traveling with her at the time of the accident. Duran did not stop her vehicle at the scene of the accident, but instead, continued approximately 150-200 meters southbound until she eventually turned off the road and stopped in a parking lot. A witness approached Duran in the parking lot and she unsuccessfully tried to restart her car and flee, at one point telling the witness, "I don't know why I have to wait here, I'm the victim. I need to leave at this time." Duran instructed her son to get out of the car so they could walk home. Soon after, officers arrived at the scene. Officers noticed a strong alcohol odor and Duran's bloodshot eyes and slurred speech and administered a field sobriety test, which she failed. Duran informed one of the officers that she had consumed ten beers.

It is for the jury to determine the weight and credibility to give conflicting testimony, and a jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. See NRS 484C.130(1); NRS 484E.010(1);² NRS 200.508(1)(b)(1); McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992); Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); see also Williams v. State, 118 Nev. 536, 550, 50 P.3d 1116, 1125 (2002); Etcheverry v. State, 107 Nev. 782, 785, 821 P.2d 350, 351 (1991). Additionally, circumstantial evidence alone may sustain

²Duran was indicted and charged with violating former NRS 484.3795(1)(a)-(c), NRS 484.219, and NRS 484.223 prior to the revision of Chapter 484 of the Nevada Revised Statutes.

a conviction. See Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003).

Second, Duran contends that the district court erred by providing an improper jury instruction on proximate cause. We disagree. “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). Whether an instruction was an accurate statement of the law is reviewed de novo. See Funderburk v. State, 125 Nev. 260, 263, 212 P.3d 337, 339 (2009). Here, we conclude that the jury instruction was a correct statement of law and did not shift the burden of proof. See Williams, 118 Nev. at 550, 50 P.3d at 1125 (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)). Therefore, we conclude that the district court did not abuse its discretion or commit judicial error.

Third, Duran contends that the district court erred by failing to provide the jury with an instruction on gross misdemeanor child endangerment pursuant to NRS 200.508(2)(b)(1). Duran, however, did not request such an instruction and we conclude that she failed to demonstrate plain error entitling her to relief. 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.”); Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) (reviewing for plain error, “the burden is on the defendant to show actual prejudice or a miscarriage of justice”).

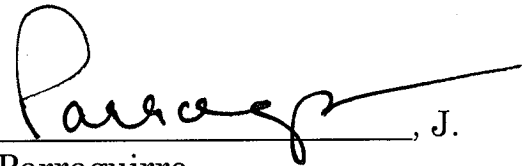
Finally, Duran contends that the district court erred by denying her request to have the jury view the scene of the accident. We disagree. The district court heard arguments from counsel and found that the jury could “get the idea of what it looks like from the pictures and the

photographs and everything else.” Additionally, Duran had the opportunity to cross-examine the witnesses who described the crime scene. Therefore, we conclude that the district court did not abuse its discretion by denying Duran’s request. See Spillers v. State, 84 Nev. 23, 28-29, 436 P.2d 18, 21 (1968) (this court reviews request for a jury view for an abuse of discretion), overruled in part on other grounds by Bean v. State, 86 Nev. 80, 89-90, 465 P.2d 133, 139 (1970); see also Bundy v. Dugger, 850 F.2d 1402, 1422 (11th Cir. 1988) (right to fair trial not violated by denial of request for jury view where, among other things, photographs of crime scene admitted and cross-examination of witnesses allowed). Accordingly, we

ORDER the judgment of conviction AFFIRMED.³


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

³Although we filed the amended fast track statement submitted by Duran, it fails to comply with the Nevada Rules of Appellate Procedure. The statement of facts section refers to matters in the record without specific citation to the appendix, see NRAP 3C(e)(1)(C); NRAP 28(e)(1). Counsel for Duran is cautioned that the failure to comply with the briefing requirements may result in the fast track statement being returned, unfiled, to be correctly prepared, NRAP 32(e), and in the imposition of sanctions, NRAP 3C(n).

cc: Hon. Lee Gates, Senior Judge
Hon. Michael Villani, District Judge
The Law Office of Dan M. Winder, P.C.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk