

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARMANDO VILLAREAL-SANCHEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57620

FILED

SEP 14 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingersoll*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of driving or being in actual control of a vehicle while under the influence of alcohol and causing death. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.


First, appellant Armando Villareal-Sanchez contends that the district court erred by denying his motion for a mistrial. Villareal-Sanchez claims that he was denied a fair trial because the victim's wife did not testify about anything that was in dispute and her display of emotion while testifying was highly prejudicial and "tainted" the jury. The district court found that the victim's wife was one of two percipient witnesses, she did not cry throughout her testimony, she cried when she reported her observations of the accident, she did not cry hysterically, she was able to speak while she was crying, and her crying was not prejudicial. We conclude that the district court did not abuse its discretion by denying Villareal-Sanchez's motion for a mistrial. See Ledbetter v. State, 122 Nev. 252, 264, 129 P.3d 671, 680 (2006).

Second, Villareal-Sanchez contends that the district court erred by denying his motion to exclude expert testimony discussing blood-

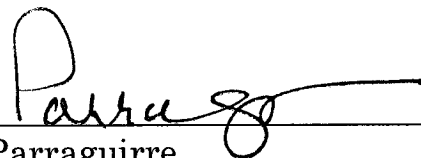
alcohol content and retrograde extrapolation because the blood sample was drawn after the statutory two-hour period had run. Villareal-Sanchez argues that the district court allowed the State to benefit from evidence it failed to collect or preserve through a timely blood draw and to use that evidence to bolster its case against him. The district court determined that the untimeliness of the blood draw went to the weight of the evidence and did not prevent the State's expert from offering an opinion on blood-alcohol content based on retrograde extrapolation. We have previously recognized the use of retrograde extrapolation in driving under the influence prosecutions, see Anderson v. State, 109 Nev. 1129, 1135, 865 P.2d 318, 321 (1993); see generally Sheriff v. Burcham, 124 Nev. 1247, 1259, 198 P.3d 326, 333 (2008), and we conclude that the district court did not abuse its discretion by denying Villareal-Sanchez's motion to exclude this evidence, see Mclellan v. State, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008).

Having considered Villareal-Sanchez's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

 _____, J.
Douglas

 _____, J.
Hardesty

 _____, J.
Parraguirre

cc: Hon. Valerie Adair, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk