

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAUNNET JAMES LEMAY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59066

FILED

APR 12 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angerson*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of driving under the influence. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

Appellant Maunnet James Lemay contends that the district court abused its discretion by prohibiting him from asserting a “last-gulp” defense. See NRS 484C.110(4). The district court determined that Lemay was not entitled to raise this affirmative defense because he had not provided the required notice to the State. See id. Furthermore, the State did not “open the door” to this affirmative defense by eliciting testimony that Lemay admitted to drinking after his vehicle became high-centered on a rock because an officer testified that he discovered Lemay in actual physical control of the vehicle after he admitted to consuming the alcohol. The “last-gulp” defense is only available as an affirmative defense when the defendant presents evidence that he “consumed a sufficient quantity of alcohol after driving or being in actual physical control of the vehicle.” Id. (emphasis added). No such evidence was presented. Therefore, we conclude that the district court did not abuse its discretion by prohibiting Lemay from asserting the defense, see Nelson v. State, 123 Nev. 534, 548, 170 P.3d 517, 527 (2007); Brown v. State, 107 Nev. 164, 167, 807 P.2d

1379, 1381 (1991) (“the accused . . . must comply with established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence” (internal quotations omitted)), and we

ORDER the judgment of conviction AFFIRMED.

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Hon. David A. Hardy, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk