

IN THE SUPREME COURT OF THE STATE OF NEVADA

CESAR MANUEL BERNAL-CUADRA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 62899

FILED

JAN 15 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *T. Malou*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of DUI causing death or substantial bodily harm. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

First, appellant Cesar Manuel Bernal-Cuadra contends that insufficient evidence supports his conviction. We disagree because the evidence, when viewed in the light most favorable to the State, is sufficient to support the conviction beyond a reasonable doubt. See *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Vega v. State*, 126 Nev. ___, ___, 236 P.3d 632, 639 (2010).

Testimony at trial established that Bernal-Cuadra was stopped in his vehicle at a traffic light waiting to make a left-hand turn. The glare from the setting sun was intense and made vision difficult. Bernal-Cuadra admitted in his written statement that he "was unable to see due to the sun." Despite the impairment to his vision, Bernal-Cuadra made the turn, hitting and running over a pedestrian crossing in the crosswalk. The pedestrian was then run over by the car behind Bernal-Cuadra and later died. Bernal-Cuadra admitted to officers that he smoked marijuana the night before. The results of his blood tests, conducted a few hours after the collision, revealed the presence of 45


nanograms per milliliter of carboxy THC, a marijuana metabolite, and 2.5 nanograms per milliliter of Delta-9 THC, an active component of marijuana. The results of his urine test revealed the presence of 330 nanograms per milliliter of carboxy THC. From this evidence, a rational juror could reasonably infer that Bernal-Cuadra committed the charged offense. See NRS 484C.110(3)(g), (h); NRS 484C.430(1)(f); see also NRS 484B.280(1)(a); NRS 484B.603(1). 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. See *Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

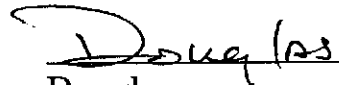
Second, Bernal-Cuadra contends that the district court erred by disallowing evidence of the victim's blood-alcohol level because that evidence would have explained why the victim entered the crosswalk against the signal. The district court concluded that the evidence was irrelevant for this purpose and we conclude Bernal-Cuadra fails to demonstrate an abuse of discretion. See *McLellan v. State*, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008). To the extent Bernal-Cuadra contends that the district court erred by disallowing this evidence because it was relevant to support his defense that the victim was not legally in the crosswalk, we decline to address the contention because it is not supported by cogent argument. See *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

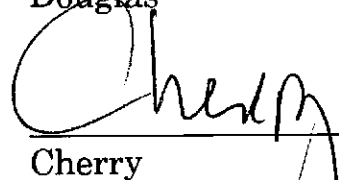
Third, Bernal-Cuadra contends that the taking of his blood sample without a valid search warrant violated the Fourth Amendment to the federal constitution. See U.S. Const. Amend. IV. We review this claim for plain error because the record before this court does not indicate, and

Bernal-Cuadra does not assert, that he filed a motion to suppress and/or challenged the admission of this evidence in the district court. *See Dieudonne v. State*, 127 Nev. ___, ___, 245 P.3d 1202, 1208 (2011). We conclude Bernal-Cuadra fails to demonstrate that the district court plainly erred by not sua sponte suppressing this evidence, *see Vega*, 126 Nev. at ___, 236 P.3d at 637 (“To amount to plain error, the error must be so unmistakable that it is apparent from a casual inspection of the record.” (internal quotations omitted)), and we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Jerome Polaha, District Judge
Ian E. Silverberg
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk