

IN THE SUPREME COURT OF THE STATE OF NEVADA

MELVIN ERNEST VINCENT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 36044

**FILED**

JUL 26 2000

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction pursuant to a jury verdict of one count of driving under the influence with two or more previous convictions in the last seven years. The district court sentenced appellant to serve 12 to 36 months in the Nevada State Prison.

The jury in this case found appellant guilty of Counts I and III of the information. Count III charged appellant with having a blood alcohol content of 0.10 percent within two hours of driving. Count I charged appellant with driving under the influence. Appellant first contends that Count III should be reversed because NRS 484.379(1)(c), which prohibits a blood alcohol level of 0.10 percent or more within two hours of driving is unconstitutionally overbroad as applied to a person who ingested the alcohol after driving. However, we need not reach this issue in this appeal. Appellant's conviction on Count III is redundant, as it is merely an alternative means of committing the offense. See *Dossey v. State*, 114 Nev. 904, 909, 964 P.2d 782, 785 (1998). Accordingly, we vacate appellant's conviction on Count III.

As to his conviction on Count I, appellant contends that the evidence presented at trial was insufficient to support the jury's finding of guilt. Our review of the record

on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980).

In particular, we note that appellant told a police officer that he had had a beer before driving, appellant's eyes were bloodshot and watery, and appellant failed a horizontal gaze nystagmus test.

The jury could reasonably infer from the evidence presented that appellant was driving while under the influence of alcohol. 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, 624 P.2d 20 (1981).

Having concluded that appellant's contentions lack merit, we

ORDER this appeal dismissed.

Young J.  
Young  
Agosti J.  
Agosti  
Leavitt J.  
Leavitt

cc: Hon. James W. Hardesty, District Judge  
Attorney General  
Washoe County District Attorney  
Washoe County Public Defender  
Washoe County Clerk