

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GERMAN ORLANDO GONZALEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66584

FILED

APR 14 2015

TRACIEK LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of felony driving under the influence of intoxicating liquor. Sixth Judicial District Court, Humboldt County; Richard Wagner, Judge.

Appellant German Orlando Gonzalez claims that insufficient evidence supports his conviction because the State failed to prove the corpus delicti of the crime with evidence that was independent of his extrajudicial admissions.

We review the evidence in the light most favorable to the prosecution and determine whether “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008). The Nevada Supreme Court has held that “[c]ircumstantial evidence alone can . . . sustain a criminal conviction,” *Buchanan v. State*, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003) (footnote omitted), and “that the corpus delicti of a crime must be proven independently of the defendant’s extrajudicial admissions,” *Byars v. State*,


130 Nev. ___, ___, 336 P.3d 939, 948 (2014) (internal quotation marks omitted).


Prior to the admission of Gonzalez' extrajudicial statements, Teresa Dini testified that she heard a loud bang, went outside and saw that her car had been damaged. Dini called the police, reported the hit-and-run, and waited outside. Dini further testified that she saw Gonzalez—her next-door neighbor—drive by on a private road that was accessible to the public. Gonzalez pulled into his driveway, turned the ignition switch off, then turned it back on again, and got out of the car. Officer Farstveet arrived on the scene at 10:40 pm. Officer Farstveet observed Gonzalez stumbling in front of his car, noticed that the car was running and its lights were on, and asked Gonzalez not to get into the car. Officer Farstveet subjected Gonzalez to various field sobriety tests and arrested him for driving under the influence after he failed those tests. Gonzalez was taken to a hospital and his blood was drawn at 12:09 a.m. The blood was tested and found to have a blood-alcohol concentration of .204.

We conclude that the State proved the corpus delicti of the crime before Gonzalez' extrajudicial admissions were admitted into evidence and that a rational juror could reasonably find that Gonzalez was in actual physical control of a vehicle while intoxicated. See NRS 484C.110(1) (establishing the elements for driving under the influence); *Doyle v. State*, 112 Nev. 879, 892, 921 P.2d 901, 910 (1996) (describing the independent proof necessary to satisfy the corpus delicti rule), *overruled on other grounds by Kaczmarek v. State*, 120 Nev. 314, 333, 91 P.3d 16, 29 (2004). 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 its verdict. See *Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Sixth Judicial District Court, Dept. 1
Pershing County Public Defender
Attorney General/Carson City
Humboldt County District Attorney
Humboldt County Clerk