

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NATHAN BRUDJAR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66433

FILED

APR 20 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
[Signature]
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of driving and/or being in actual physical control while under the influence of intoxicating liquor causing death and/or substantial bodily harm and reckless driving. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Appellant Nathan Brudjar contends that the evidence presented at trial was insufficient to support the jury's finding of guilt. Specifically, he asserts the State failed to prove he was the driver of the vehicle. We disagree.

When reviewing a challenge to the sufficiency of the evidence, 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). "[I]t is the function of the jury, not the appellate court, to weigh the evidence and pass upon the credibility of the witness." *Walker v. State*, 91 Nev. 724, 726, 542 P.2d 438, 439 (1975). And circumstantial evidence is enough to support a conviction. *Lisle v. State*,

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113 Nev. 679, 691-92, 941 P.2d 459, 467-68 (1997), *holding limited on other grounds by Middleton v. State*, 114 Nev. 1089, 1117 n.9, 968 P.2d 296, 315 n.9 (1998).

One witness testified he saw Brudjar get into his Cadillac and drive away from BJ's Brew Pub after he had been drinking alcoholic beverages. Another witness testified she immediately pulled over when she saw the collision. She noticed there was a fire under the hood of the Cadillac and ran to that car to see if she could help anyone. Before she reached the Cadillac, she saw one person get out of the Cadillac from the passenger side and run toward the fire station. When she reached the Cadillac, Brudjar was sitting in the driver's seat and she assisted him out of the vehicle. Another witness also testified he immediately responded to the accident and separately assisted Brudjar from the driver's seat of the Cadillac. An officer who responded to the scene testified that when she asked Brudjar if he was involved in the accident he informed her he was involved and he was driving the Cadillac.

Although Brudjar testified at trial and denied he was the driver of the Cadillac, the jury could reasonably infer from the evidence presented that Brudjar was the driver of the Cadillac. 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); *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992); *see also* NRS 484C.110(1); NRS 484C.430(1); NRS 484B.653(1)(a).

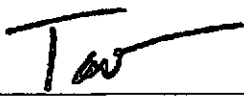
Brudjar also claims the district court abused its discretion by determining James Keohane was an alibi witness he had a duty to disclose and by allowing the State to comment about this during closing argument.

Brudjar's defense at trial was that his friend "Jimbo" was the driver of the Cadillac and he was the passenger. At trial, Brudjar testified that "Jimbo's" real name is James Keohane. Brudjar did not list Keohane as a witness or disclose Keohane's name to the State prior to trial, and Brudjar did not call Keohane as a witness at trial.

The district court may have abused its discretion by determining James Keohane was an alibi witness Brudjar had to disclose pursuant to NRS 174.233. Although Keohane would have been an exonerating witness, he was not an alibi witness because he could not place Brudjar away from the scene of the collision at the time of the collision. Moreover, Brudjar never called Keohane as a witness at trial. Therefore, Brudjar had no duty to disclose Keohane pursuant to NRS 174.233. The error, if any, was harmless because, although the district court held "the issue of the ability to subpoena and have Jimbo here as a witness is the subject of fair comment by both counsel at the time of closing," neither party made any such comment during their closing argument. *See Valdez v. State*, 124 Nev. 1172, 1189, 196 P.3d 465, 476 (2008) (defining nonconstitutional harmless error). Accordingly, we conclude no relief is warranted, and we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Kathleen E. Delaney, District Judge
Law Office of Benjamin Nadig, Chtd.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk