IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA, DEPARTMENT OF MOTOR VEHICLES AND PUBLIC SAFETY,

Appellant,

vs.

RICHARD OLSEN STEIMER, JR.,

Respondent.

No. 36953

FILED
JAN 02 2002
JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
CHIEF DEPUTY CLERK

ORDER OF REVERSAL

This is an appeal of a district court order reversing an administrative hearing officer's affirmance of a license revocation.

Appellant first contends that the district court erred in finding that the witness statement describing respondent as the driver was inadmissible hearsay. Hearsay evidence is admissible in administrative hearings under the general hearsay exception, and under NRS 233B.123(1) if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs.[1] In Evans, we also rejected the argument that allowing hearsay testimony violated the confrontation clause and the right to cross-examine witnesses.[2]

As in Evans and State Department of Motor Vehicles v. Kiffe,[3] the statements here were obtained in the normal course of the officer's routine investigation of the traffic accident, and he adequately corroborated them.[4] The eyewitness gave the officer a clear description of the driver, and the officer then questioned respondent, who matched the description. In Kiffe, we concluded that the officer's observation of Kiffe next to the stopped vehicle adequately corroborated the information the

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[1]State, Dep't Mtr. Veh. v. Evans, 114 Nev. 41, 44, 952 P.2d 958, 960 (1998).

[2]Id. at 45, 952 P.2d at 960-61.

[3]101 Nev. 729, 709 P.2d 1017 (1985).

[4]See Evans, 114 Nev. at 42, 952 P.2d at 959; Kiffe, 101 Nev. at 732, 709 P.2d at 1019.

officer was provided as to the identity of the driver. Similarly, the officer in this case independently obtained ample corroborating evidence that respondent was the driver and was under the influence. Respondent was standing near the scene of the accident, produced the vehicle's ignition key from his pocket and could not explain how he obtained possession of the key, was identified as being alone in the vehicle at the time of the accident, had bloodshot watery eyes, and was slurring his speech. The district court thus erred in finding that the hearing officer improperly allowed the hearsay statements into evidence.

Appellant next contends that the district court erred in finding that absent the witness's statements, the officer did not have adequate grounds to believe respondent was driving while intoxicated. Because we hold that the witness's statements were properly admitted, we need not address this contention. We note however, that in Evans, we clarified that the Department of Motor Vehicles (DMV) need not prove that the person "was in fact driving or in actual physical control of a vehicle, only that the officer directing him to be tested had reasonable grounds to believe" that this was the case.[5]

Last, appellant contends that the district court erred in considering respondent's argument regarding the admissibility of the blood test results. Respondent did not object to the admission of the results at the administrative proceeding. He later argued to the district court that the results should not have been admitted because the DMV did not prove that the breathalyzer was unavailable before requesting a blood test, and the district court agreed.

This court has concluded that a party who failed to preserve an argument by raising it at the trial level waived the issue.[6] There is no statutory requirement that the DMV prove the unavailability of the breathalyzer before asking for consent to take a blood test. To imply such a requirement would be inconsistent with our holdings that NRS 484.383 should be liberally construed to achieve the legislative intent of removing

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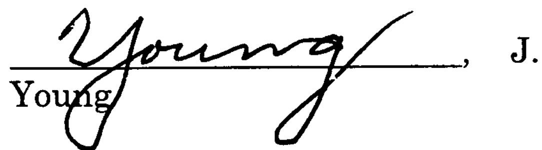
[5]Evans, 114 Nev. at 45, 952 P.2d at 961.

[6]Diamond Ent., Inc. v. Lau 113 Nev. 1376, 1378, 951 P.2d 73, 74 (1997) (citing Montesano v. Donrey Media Group, 99 Nev. 644, 650 n. 5, 668 P.2d 1081, 1085 n. 5 (1983) (citations omitted)).

drunk drivers from the state's highways.[7] We decline to imply such a requirement. The investigating officer testified that the breathalyzer was out of order and that he requested, and respondent agreed, to voluntarily submit to a blood test. This testimony was uncontroverted and this issue was not raised until respondent sought to overturn the hearing officer's adverse decision. Respondent thus waived this issue; though, alternatively, it lacks merit.

We agree with appellant that the district court erred in reversing the administrative hearing officer's decision. Accordingly, we

ORDER the judgment of the district court REVERSED.



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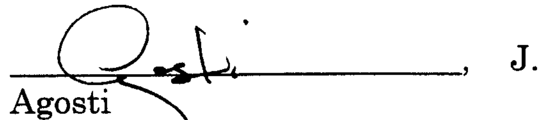
Young



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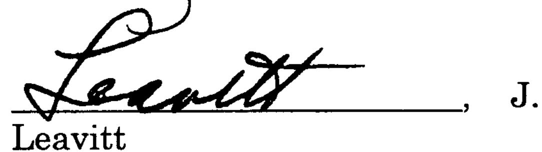

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Leavitt

cc: Hon. Nancy M. Saitta, District Judge
Attorney General/DMV/Las Vegas
Law Offices of John G. Watkins
Clark County Clerk

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[7]See, e.g., Galvan v. State, 98 Nev. 550, 553, 655 P.2d 155, 156 (1982); State, Dep't of Mtr. Vehicles v. Brough, 106 Nev. 492, 496, 796 P.2d 1089, 1092 (1990); State v. Smith, 105 Nev. 293, 297, 774 P.2d 1037, 1040 (1989).

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