

IN THE SUPREME COURT OF THE STATE OF NEVADA

MITCHELL BLASCHE,

No. 37140

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

**MAY 18 2001**

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of driving under the influence causing death in violation of NRS 484.3795. The district court sentenced appellant to serve 80 to 200 months in prison.

Appellant first contends that the State adduced insufficient evidence to support the jury's verdict. In particular, appellant argues that the State failed to present sufficient evidence that appellant's act of driving while under the influence and neglect of duty proximately caused the victim's death. We disagree.

When reviewing a claim of insufficient evidence, the relevant inquiry is "'whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'"<sup>1</sup> Furthermore, "it is the jury's function, not that of the court, to assess the weight of the evidence and determine the credibility of witnesses."<sup>2</sup>

<sup>1</sup>Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)) (emphasis in original omitted).

<sup>2</sup>McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

Our review of the record on appeal reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. The State presented evidence that appellant was driving under the influence and that he made an improper left turn without signaling or yielding the right-of-way to oncoming traffic. The State also presented sufficient evidence that appellant's conduct was the proximate cause of the victim's death.

This court has consistently held that "[t]he fact that the deceased was guilty of negligence directly contributing to his death does not exonerate the accused, unless [the] deceased's negligence was the sole cause of death."<sup>3</sup> To prove that a drunk driver was the proximate cause of an accident, the State need only prove that the victim's negligence was not the sole cause of his injury.<sup>4</sup>

Here, the jury considered conflicting evidence as to whether the speed of the victim's motorcycle was the sole cause of the victim's injuries. The jury could reasonably infer from the evidence presented that the victim's conduct was not the sole cause of the injury and that appellant's conduct was a proximate cause of the injury. 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.<sup>5</sup>

Appellant also contends that the verdict forms were so vague and confusing that the verdict returned did not

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<sup>3</sup>Trent v. Clark Co. Juv. Ct. Services, 88 Nev. 573, 577, 502 P.2d 385, 388 (1972) (quoting R. Anderson, Wharton's Criminal Law & Procedure § 986 (1957)); see also Etcheverry v. State, 107 Nev. 782, 785, 821 P.2d 350, 351 (1991).


<sup>4</sup>See Etcheverry, 107 Nev. at 785, 821 P.2d at 351.

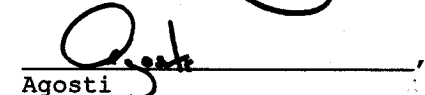
<sup>5</sup>See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981).

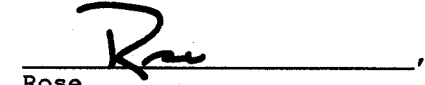
reflect the jury's true intentions. In particular, appellant complains that the jury failed to mark any of the boxes identifying the theory upon which the jury found him guilty: driving while under the influence; driving with a blood alcohol level of 0.10 or more; or having a blood alcohol level of 0.10 or more within two hours after driving. Appellant's contention is belied by the record. The jury marked all three boxes on the verdict form, indicating that the jury found that the State had proved all three theories beyond a reasonable doubt.

Having considered appellant's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

  
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Shearing J.

  
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Agosti J.

  
\_\_\_\_\_  
Rose J.

cc: Hon. John S. McGroarty, District Judge  
Attorney General  
Clark County District Attorney  
James L. Buchanan II  
Clark County Clerk