

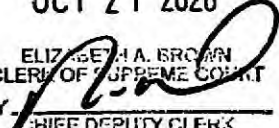
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ERIC JUSTIN CHRISTIANSEN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 79109-COA

FILED

OCT 21 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Eric Justin Christiansen appeals from a judgment of conviction, pursuant to a jury verdict, of driving under the influence of a controlled or prohibited substance causing substantial bodily harm to another person. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

Christiansen was driving a snowplow for the Nevada Department of Transportation (NDOT) on the Lake Tahoe side of Mt. Rose Highway in March 2018.<sup>1</sup> While approaching Country Club Drive, Christiansen lost control of the snowplow, striking Alan McMahon's vehicle, which was traveling uphill in the oncoming lane. The collision severely injured McMahon's left foot resulting in a below-knee amputation. Following the accident, Christiansen voluntarily submitted to a blood test, which showed that he was eight times over the legal limit for methamphetamine. The State subsequently charged Christiansen with one felony count of driving under the influence of a controlled or prohibited substance causing substantial bodily harm to another person pursuant to NRS 484C.110 and NRS 484C.430. Christiansen pleaded not guilty.

<sup>1</sup>We do not recount the facts except as necessary to our disposition.

During the four-day jury trial, an eyewitness, three state troopers, a criminalist, four NDOT employees, and an accident reconstructionist testified. The jury ultimately returned a guilty verdict. The district court sentenced Christiansen to a term of 60 to 180 months in prison and ordered restitution.

Christiansen presents several arguments on appeal. First, he argues that there was insufficient evidence to sustain his conviction. Second, Christiansen argues that the prosecutor's statements made during closing arguments incorrectly stated the State's burden to prove every element of the offense beyond a reasonable doubt, thereby resulting in prosecutorial misconduct. Finally, Christiansen argues that the district court erred by violating the Fifth and Sixth Amendments of the United States Constitution when it interfered with his ability to cross-examine one of the State's witnesses.

#### *Sufficiency of the Evidence*

We first consider Christiansen's argument regarding insufficiency of the evidence. When reviewing a challenge to the sufficiency of the evidence we consider "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." *Stewart v. State*, 133 Nev. 142, 144, 393 P.3d 685, 687 (2018) (internal citations omitted). "[I]t is the jury's function, not that of the court, to assess the weight of the evidence and determine the credibility of witnesses." *Rose v. State*, 123 Nev. 194, 202-03, 163 P.3d 408, 414 (2007) (alterations in original) (internal quotations omitted). We will not disturb a jury's verdict when it is supported by substantial evidence. *Stewart*, 133 Nev. at 144-45, 395 P.3d at 687. Evidence is insufficient where the prosecution has not produced "a

minimum threshold of evidence” upon which a conviction may be based. *State v. Walker*, 109 Nev. 683, 685, 857 P.2d 1, 2 (1993).

To support a conviction under the plain meaning of NRS 484C.430(1)(d)-(f), the State must prove the defendant (1) “is under the influence of a controlled substance” or “has a prohibited substance in his or her blood or urine, as applicable, in an amount that is equal to or greater than the amount set forth in subsection 3 or 4 of NRS 484C.110,” (2) “does any act or neglects any duty imposed by law while driving or in actual physical control of any vehicle on or off the highways of this State,” and (3) “the act or neglect of duty proximately causes,” (4) “the death of, or substantial bodily harm to, another person.” See NRS 484C.430(1). On appeal, Christiansen argues that there was insufficient evidence to establish that he engaged in any act or neglected a duty imposed by law, so as to have proximately caused the accident. We disagree.

As a preliminary matter, Christiansen does not challenge on appeal the sufficiency of the evidence as it relates to the first and fourth elements of NRS 484C.430.<sup>2</sup> Thus, we turn to the second and third elements. Christiansen argues that he did not breach any legal duty because the State failed to prove that he violated the law, and further argues that his conduct was not the proximate cause of McMahon’s injuries due to the inclement

---

<sup>2</sup>Of note, Christiansen had eight times the legal limit for methamphetamine in his system at or near the time of the accident. Any amount of methamphetamine over 100 nanograms per milliliter is the per se illegal level for driving with a prohibited substance. See NRS 484C.110(3)(g). Christiansen’s value was 813 nanograms per milliliter. Christiansen also conceded that McMahon sustained substantial bodily harm. Therefore, we need not address these two elements on appeal.

weather. The State, on the other hand, argues that it presented substantial evidence that Christiansen was driving too fast for the weather conditions and crossed the centerline of the highway into McMahon's vehicle, violating two traffic duties under Nevada law. The State also argues that because of these violations, Christiansen's conduct proximately caused McMahon substantial bodily harm, i.e., a below-knee amputation.

To satisfy the second element under NRS 484C.430, the State must prove that Christiansen acted in violation of or neglected a duty imposed by law while driving under the influence of a controlled substance or while driving with a prohibited substance in his blood or urine. NRS 484B.600 dictates that it is unlawful for any person to drive or operate a vehicle at either "a rate of speed greater than is reasonable or proper, having due regard for the traffic, surface and width of the highway, the weather and other highway condition" or "a rate of speed that results in the injury of another person or of any property." NRS 484B.200 requires that "upon all highways of sufficient width a vehicle must be driven upon the right half of the highway." In this case, the State was required to prove that the weather conditions necessitated a slower speed than the posted speed limit and that Christiansen's vehicle speed was too fast for the conditions. In addition, the State was required to prove that Christiansen was not driving on the "right half" of the highway or on his designated side, and that as a result of the violation of law or the neglect of duty, he caused the collision and the resulting injury.

At trial, the State presented evidence that the driving conditions that day were suboptimal due to snow and moisture, which required a slower rate of speed than the posted speed limit. Additionally, another snowplow driver, traveling at excessive speed—approximately the same speed as Christiansen on the date of the accident—lost control of his vehicle, which

became lodged in the excess snow accumulated from the snowplow but on his own side of the road. Further, in addition to the victim, an eyewitness, the responding state troopers, and Christiansen's own accident reconstructionist concluded that Christiansen crossed the centerline. Thus, we conclude that based on evidence presented, a rational jury could have concluded that while driving under the influence or with an excessive amount of a prohibited substance in his blood, Christiansen failed to decrease his speed as required by the weather conditions, and also failed to maintain his travel lane by crossing over the center line.

We now turn to the final element. The State also had to prove that Christiansen's failure to decrease his speed and stay in his travel lane proximately caused McMahon's substantial injury. The State was required to prove beyond a reasonable doubt that Christiansen, not a superseding cause, was the proximate cause of the accident.

The Nevada Supreme Court has held that "a criminal defendant can only be exculpated where, due to a superseding cause, he was in *no way* the 'proximate cause' of the result." *Etcheverry v. State*, 107 Nev. 782, 785, 821 P.2d 350, 351 (1991) (emphasis added). "An intervening act will supersede the original culpable act where the intervening act is an unforeseeable, independent, non-concurrent cause of the injury" and, as such, must "effectively[ ] break the chain of causation." *Bostic v. State*, 104 Nev. 367, 370, 760 P.2d 1241, 1243 (1988). Thus, "an intervening cause must be a 'superseding cause,' or the 'sole cause'" of the injury "in order to completely excuse the prior act." *Williams v. State*, 118 Nev. 536, 550, 50 P.3d 1116, 1125 (2002); *see also Etcheverry*, 107 Nev. at 785, 821 P.2d at 351.

We conclude that the State presented sufficient evidence to support the finding of proximate cause. The jury heard expert testimony about how methamphetamine affects the brain's reaction time and muscle

control and that there was no safe way for Christiansen to have been driving with the level of methamphetamine he had in his system. Additionally, several of the State's witnesses testified that they were able to navigate the inclement weather and there were no other reported accidents on that day. The only witness who encountered difficulty was another snowplow driver who admitted he had been driving too fast for the weather conditions. Further, the State presented testimony that it was foreseeable when the roads needed to be plowed that the driving conditions would be suboptimal and require drivers to proceed at lower speeds than posted. Based on the foregoing, a rational jury could have concluded that it was Christiansen's conduct, and not solely a superseding cause, which proximately caused McMahan's substantial injury.

After considering all of the essential elements of NRS 484C.430, we conclude that "any rational trier of fact" could have found Christiansen guilty "beyond a reasonable doubt." *See Stewart*, 133 Nev. at 144, 393 P.3d at 687.

#### *Prosecutorial Misconduct*

Next, we turn to Christiansen's argument that prosecutorial misconduct occurred during closing arguments. During closing, the prosecutor stated that "the contributory negligence of another[,] in this case the weather, does not exonerate the defendant unless the other's negligence was the sole cause of the injury. Sole cause. Again, if Mr. Christiansen was one percent responsible, he is guilty." (internal citations omitted). Christiansen argues that this statement improperly reduced the State's burden of proof. The State counters that the statement made during closing argument was a correct statement of law, and therefore, it was not plain error affecting Christiansen's substantial rights.

Because Christiansen failed to object to this alleged misconduct below, this court applies plain error review. *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018). Additionally, we apply a two-step analysis when considering claims of prosecutorial misconduct. *Valdez v. State*, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008) (“First, we must determine whether the prosecutor’s conduct was improper. Second, if the conduct was improper, we must determine whether the improper conduct warrants reversal.”). So here, applying plain error review, the court must determine whether there was prosecutorial misconduct, whether the misconduct was plain from the record, and whether the misconduct affected Christiansen’s substantial rights. *Id.*

Here, the State’s comments during closing argument regarding “one percent” guilt echo the foreseeability and proximate cause standards within NRS 484C.430 and relevant precedent. Further, analyzing this statement in the context of the State’s entire closing, the prosecutor was discussing the proximate cause elements of NRS 484C.430, not the burden of proof. As to proximate cause, the statement is not plainly erroneous, because for the weather to have exculpated Christiansen’s conduct, it must have been the *sole* cause of the accident. *See Williams*, 118 Nev. at 550, 50 P.3d at 1125; *see also Etcheverry*, 107 Nev. at 785, 821 P.2d at 351. Because the State’s comments made during closing were arguments applying proximate cause standards, and they were not plainly wrong under the law, they do not constitute prosecutorial misconduct. *See Jeremias*, 134 Nev. at 50, 412 P.3d at 48.

*The district court’s conduct regarding cross-examination of Sgt. Garretson*

Finally, we turn to whether the district court erred in allowing Sgt. Garretson to review the body cam video and then to be cross-examined outside the presence of the jury. During Christiansen’s cross-examination

of Sgt. Garretson, it became apparent that Sgt. Garretson would need to refresh her recollection with body cam footage that contained a recorded phone call between Sgt. Garretson and Trooper Kaplan. As this body cam footage had not yet been admitted into evidence, Christiansen requested the opportunity to refresh Sgt. Garretson's recollection outside the presence of the jury. The district court granted his request.

After Christiansen finished his initial inquiry, the district court asked Christiansen if he had any further questions for Sgt. Garretson that would require the use of the body cam footage. The court explained that this procedure would prevent having to excuse the jury every time Sgt. Garretson requested to refresh her recollection by reviewing the video. Christiansen did not object to this idea, but rather agreed with the court's suggestion. At this point, additional cross-examination of Sgt. Garretson took place outside the presence of the jury. Subsequently, the jurors were brought back into court and Christiansen completed his full cross-examination of Sgt. Garretson, without the use of the video since her recollection had already been refreshed. Sgt. Garretson testified consistently with her prior testimony outside of the jury's presence as well as with the events depicted on the video.


On appeal, Christiansen argues that the district court violated his Fifth and Sixth Amendment rights when it allowed him to cross-examine Sgt. Garretson outside the presence of the jury. Specifically, Christiansen argues that this procedure allowed Sgt. Garretson to "practice" her testimony and refresh her recollection instead of allowing Christiansen to use the footage for impeachment purposes when examining her in front of the jury, as he desired. In response, the State argues that Christiansen invited any error by asking the district court to follow this procedure, and





additionally argues that any alleged error resulting from the court's procedure was harmless. We agree with the State.

Failure to object during trial generally precludes appellate consideration of an issue; however, we may conduct plain-error review. *LaChance v. State*, 130 Nev. 263, 276, 321 P.3d 919, 928 (2014). But plain-error review is not ordinarily available where the complaining party invited the error. *See id.* (providing that "plain error does not exist when the complaining party contributed to the error because a defendant 'will not be heard to complain on appeal of errors which he himself induced or provoked the court or the opposite party to commit'" (quoting *Pearson v. Pearson*, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994))). Because Christiansen requested and agreed to the procedure to refresh Sgt. Garretson's recollection outside the presence of the jury, we conclude that in this circumstance Christiansen invited the error, if any.<sup>3</sup> *Id.* (explaining that the appellant invited the error because he "agreed to the procedure used in [his] case"). Therefore, we decline plain-error review. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

<sup>3</sup>However, even if there was error in the court's procedure, it was not plain error as it did not affect Christiansen's substantial rights or prejudice him because he was able to complete his cross-examination of Sgt. Garretson before the jury.

cc: Hon. Kathleen M. Drakulich, District Judge  
Karla K. Butko  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk