IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE PETER LYNARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38401

FILED

NOV 0 8 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of driving while under the influence of a controlled substance causing the death of another. The district court sentenced appellant George Peter Lynard to serve two consecutive prison terms of 24 to 240 months.

On September 9, 1999, at approximately 9:00 a.m., Lynard was driving southbound on State Route 28 in Lake Tahoe, Nevada. Lynard drove his vehicle across the double yellow line and crashed head-on into Hans and Patricia Roleff's vehicle. The Roleffs died as a result of the injuries they sustained in the collision. Lynard survived. Thereafter, a jury convicted Lynard of two counts of driving while under the influence of a controlled substance causing the death of another, for driving with over 2 grams of THC per milliliter in his blood. Lynard filed the instant appeal.

02-19289

First, Lynard contends that his conviction should be reversed because NRS 484.3795(1)(f) violates the Equal Protection Clauses and the Due Process Clauses of the United States and Nevada Constitutions.[1] In particular, Lynard argues that there is no evidence that an individual with two nanograms of marijuana per milliliter of blood is impaired in his ability to drive a motor vehicle. We conclude that Lynard's contention lacks merit. This court recently rejected arguments identical to Lynard's in Williams v. State.[2] For the reason stated in Williams, we likewise reject Lynard's contentions.

Second, Lynard contends that the district court erred in denying his motion to suppress because Lynard's consent to the blood draw was not knowingly given.[3] In particular, Lynard notes that he had been given Demerol an hour before he consented to the blood draw, and had earlier given blood to several uniformed health care professionals who assured Lynard they were not law enforcement officers and were there to help him. We conclude that Lynard's contention lacks merit.

---

[1]U.S. Const. amend. XIV, § 1; Nev. Const. art 4, § 21.

[2]Williams v. State, 118 Nev. ___, 50 P.3d 1116 (2002), petition for cert. filed, ___ U.S.L.W. ___ (U.S. Oct. 1, 2002) (No. 02-533).

[3]Lynard also contends that there was no reason to believe that he was driving under the influence of controlled substances because the witnesses at the accident who had direct contact with Lynard testified that he exhibited no signs of being under the influence. Because we conclude that Lynard consented to the blood draw, we need not address whether reasonable grounds existed for the blood draw as required by NRS 484.383.

A search or seizure based on consent is lawful where the state can show that the defendant's consent "was voluntary and not the result of duress or coercion."[4] Voluntariness depends on "whether a reasonable person in the defendant's position, given the totality of the circumstances, would feel free to decline a police officer's request or otherwise terminate the encounter."[5]

We conclude that there was substantial evidence in support of the district court's conclusion that Lynard's consent was voluntary.[6] At the suppression hearing, Officer Jerry Seevers testified that he identified himself to Lynard as Trooper Seevers with the Nevada Highway Patrol and asked Lynard to voluntarily submit to a blood draw; Lynard agreed. Trooper Seevers also testified that, at the time Lynard consented to the blood draw, Lynard was cooperative, coherent, and answered Seevers' questions. Notably, there was no evidence presented that Trooper Seevers coerced or tricked Lynard into consenting to the blood draw, and no testimony that Lynard consented to the blood draw believing it was to be used only for purposes of medical treatment. Accordingly, the district court did not abuse its discretion in denying Lynard's motion to suppress.

---

[4]State v. Burkholder, 112 Nev. 535, 539, 915 P.2d 886, 888 (1996) (citing Schneckloth v. Bustamonte, 412 U.S. 218, 248 (1973)).

[5]Id. (citing Florida v. Bostick, 501 U.S. 429, 434 (1991)).

[6]See Canada v. State, 104 Nev. 288, 291, 756 P.2d 552, 553 (1988).

Third, Lynard contends that there is insufficient evidence in support of his conviction. In particular, Lynard contends that the State adduced insufficient evidence that his blood contained THC in excess of two nanograms per milliliter. We disagree.

"The relevant inquiry for this Court 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.'"[7] Here, the record on appeal reveals sufficient evidence to establish Lynard's blood contained THC in excess of two nanograms per milliliter beyond a reasonable doubt. In particular, Dana Russell, a forensic specialist, testified that Lynard's blood contained 2.2 nanograms per milliliter of THC. Although Lynard argues that Russell's testimony was not reliable because the test contained a margin of error of twenty percent, the jury could reasonably infer from this evidence that Lynard drove a motor vehicle while his blood contained THC in excess of two nanograms per milliliter.

Finally, Lynard contends that his conviction should be reversed because the State failed to preserve the vials of blood so that Lynard could conduct independent testing. Lynard did not raise the issue in a pretrial motion and raised no pertinent objection at trial. Therefore,

---

[7]Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

we need not consider Lynard's final contention because he raises it for the first time on appeal.[8]

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

ORDER the judgment of conviction AFFIRMED.

_____, J.
Shearing

_____, J.
Leavitt

_____, J.
Becker

cc: Hon. Janet J. Berry, District Judge
Jeffrey D. Morrison
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

---

[8]See McKenna v. State, 114 Nev. 1044, 1054, 968 P.2d 739, 746 (1998) ("Where a defendant fails to present an argument below and the district court has not considered its merit, we will not consider it on appeal.").