

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL EDWARD HOULIHAN,

No. 38523

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

JAN 03 2002

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of driving under the influence. The district court sentenced appellant Michael Edward Houlihan to serve 24 to 60 months in prison, to run consecutive to the sentence in another case.

Houlihan first contends that the district court abused its discretion by admitting the affidavit of the individual who tested his blood to determine its alcohol content. Houlihan argues that the affidavit was inadmissible hearsay and that the error in admitting the affidavit is not harmless. NRS 50.320 and 50.325 specifically provide that the affidavit of a qualified individual offered to prove the concentration of alcohol in a blood sample is admissible in a felony trial unless the defendant objects in writing to admitting the affidavit.<sup>1</sup> If the defendant objects in writing, "the court shall not admit the affidavit . . . into evidence and the prosecution may cause the person to testify in court to any information contained in the affidavit."<sup>2</sup> Even assuming that Houlihan complied with NRS 50.320(3) in objecting to the use of the affidavit at trial, we conclude that any error was harmless because the individual who tested Houlihan's blood and prepared the affidavit testified at trial.<sup>3</sup> Her testimony was consistent with the information contained in the affidavit and established

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<sup>1</sup>NRS 50.320(1)(b), (3); NRS 50.325(1).

<sup>2</sup>NRS 50.320(3).


<sup>3</sup>See NRS 178.598.

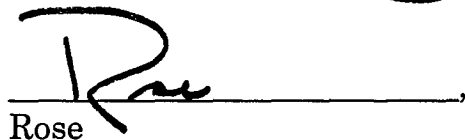
that Houlihan's blood alcohol content was .249. We therefore conclude that Houlihan is not entitled to relief on this claim.


Houlihan next contends that the affidavit does not comply with NRS 484.393 because it does not indicate whether the test was performed on whole blood.<sup>4</sup> Houlihan therefore concludes that the blood test result was inadmissible. We disagree. The affidavit admitted in this case clearly states that the blood sample tested contained whole blood. Moreover, the individual who tested the blood testified at trial that the sample she tested contained whole blood. Accordingly, we conclude that Houlihan's contention is without merit.

Having considered Houlihan's claims and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

  
Shearing, J.

  
Rose, J.

  
Becker, J.

cc: Hon. John P. Davis, District Judge  
Attorney General/Carson City  
Nye County District Attorney/Tonopah  
Robert E. Glennen III  
Nye County Clerk

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<sup>4</sup>NRS 484.393(1)(b) provides that the results of a blood test are not admissible unless, among other things, "[t]he test was performed on whole blood."