

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEAN A. ANDERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41008

FILED

AUG 13 2003

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of felony driving under the influence, a violation of NRS 484.379(1) and NRS 484.3792(1)(c). The district court sentenced appellant Dean Anderson to serve a term of 24 to 72 months in the Nevada State Prison.

Anderson's sole argument is that the evidence presented at trial was insufficient to support the jury's finding of guilt. Particularly, Anderson argues the State did not prove beyond a reasonable doubt that he was driving the car and that he was intoxicated. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.¹

In particular, we note there was testimony at trial that Anderson's red Corvette had been observed speeding and weaving between lanes on a highway by an off-duty Elko County police officer. The officer radioed in Anderson's license plate number and a description of the car's

¹See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

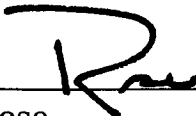
sole occupant to his dispatcher. A Nevada Highway Patrol officer testified that he responded to the tip and found Anderson's car pulled over to the side of the road a few miles beyond where he had been reported seen. Anderson was standing outside of the car, having run out of gas. There was no one else in Anderson's car, and no pedestrians were visible along the highway. The officer testified that Anderson walked toward him unsteadily and asked for a ride to the nearest town to obtain gas. The officer testified that Anderson spoke to him with slurred speech, was red in the face, and smelled of alcohol. Anderson said he had not had anything to drink but then performed poorly in field sobriety tests, and the officer took him into custody. The officer asked Anderson if he had been driving his car, and Anderson answered yes. The officer asked Anderson again if he had been drinking, and Anderson replied that he had consumed three or four beers. The officer also touched the hood of Anderson's car and observed that it was warm, indicating it had been driven very recently. Police personnel oversaw the drawing of a sample of Anderson's blood at the local hospital, and Anderson's blood-alcohol level measured 0.124 when tested at a laboratory in Washoe County.


We conclude that the jury could reasonably infer from the evidence presented that Anderson was driving the Corvette² and that he was intoxicated beyond the legal limit. We note that it is for the jury to determine the weight and credibility to give conflicting testimony, and the


²We note that there was sufficient evidence introduced at trial to show that Anderson was in "actual physical control" of the car, as discussed in our recent opinion Barnier v. State, 119 Nev. ___, 67 P.3d 320 (2003). See also Rogers v. State, 105 Nev. 230, 773 P.2d 1226 (1989).

jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.³

Having concluded that Anderson's contention lacks merit, we
ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

cc: Hon. Andrew J. Puccinelli, District Judge
Lockie & Macfarlan, Ltd.
Attorney General Brian Sandoval/Carson City
Elko County District Attorney
Elko County Clerk

³See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).