

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JACOB EDWARD PANGBORN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70173

FILED

NOV 18 2016

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

ORDER OF AFFIRMANCE

Appellant Jacob Pangborn appeals from a judgment of conviction entered pursuant to a jury verdict of driving under the influence of intoxicating liquor with two or more prior DUI convictions. Fourth Judicial District Court, Elko County; Alvin R. Kacin, Judge.

First, Pangborn claims the district court committed reversible error by allowing the State to present the testimony of witnesses who were not listed in the original criminal information as required by NRS 173.045(2) and were not timely noticed as required by NRS 174.234(1). We review a district court's decision regarding whether to allow a witness to testify for abuse of discretion. *See Mitchell v. State*, 124 Nev. 807, 819, 192 P.3d 721, 729 (2008).

The district court heard argument on Pangborn's motion to strike the State's notice of witnesses. It found the notice was filed one day late because the preceding Monday was a holiday and not a judicial day, the State made a mistake and did not act in bad faith, and Pangborn failed to demonstrate he was prejudiced by the untimely notice. We note Pangborn expressly declined to seek a continuance, and we conclude the

district court did not abuse its discretion in allowing the State's witnesses to testify. See NRS 174.234(1)(a)(2), (3)(a); NRS 174.295(2).


Second, Pangborn claims insufficient evidence supports his conviction because the State failed to demonstrate he was under the influence of alcohol at the time he was operating the vehicle and the accident occurred. We review the evidence in the light most favorable to the prosecution and determine whether "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).


The jury heard testimony that law enforcement, fire, and medical personnel responded to a report of a vehicle crash. The vehicle was upside down, Pangborn was trapped inside, and the door had to be forced open to get him out. No alcohol containers were observed inside or immediately around the vehicle, and Pangborn did not consume any alcohol after law enforcement personnel arrived on the scene. Pangborn said he rolled his vehicle while going 55 miles per hour on Trescatles Avenue and, before that, he had been drinking at Dotty's and drank seven or eight beers. Pangborn's speech was slurred, his eyes were bloodshot and watery, and he smelled of alcohol. He agreed to perform field sobriety tests and the officer conducting the tests concluded he was under the influence of an alcoholic beverage and could not safely operate a motor vehicle. The jury was shown video footage of Pangborn performing the field sobriety tests, and it heard testimony that Pangborn's blood was drawn and tested positive for alcohol.


We conclude a rational juror could reasonably infer from this testimony that Pangborn was under the influence of alcohol while he was operating the vehicle. See NRS 484C.110(1)(a); *Hernandez v. State*, 118

Nev. 513, 531, 50 P.3d 1100, 1112 (2002) (“[C]ircumstantial evidence alone may support a conviction.”). 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 its verdict. *See Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

Having concluded Pangborn is not entitled to relief, we
ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Alvin R. Kacin, District Judge
Elko County Public Defender
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk