

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ASAY CHRISTIAN CROFTS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 73429

**FILED**

AUG 14 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Asay Christian Crofts appeals from a judgment of conviction entered pursuant to a jury verdict of two counts of driving under the influence of an intoxicating liquor and/or a controlled substance causing death or substantial bodily harm to another. Fourth Judicial District Court, Elko County; Alvin R. Kacin, Judge.

First, Crofts claims the district court erred by denying his motion to suppress evidence obtained from a blood draw. "Suppression issues present mixed questions of law and fact. This court reviews findings of fact for clear error, but the legal consequences of those facts involve questions of law that we review de novo." *State v. Beckman*, 129 Nev. 481, 485-86, 305 P.3d 912, 916 (2013) (internal quotation marks and citations omitted).

A blood sample drawn from an individual suspected of driving under the influence of alcohol and/or a controlled substance is a search. *Birchfield v. North Dakota*, \_\_\_ U.S. \_\_\_, \_\_\_, 136 S. Ct. 2160, 2173 (2016). Both the United States Constitution and the Nevada Constitution protect

individuals from unreasonable searches and seizures. U.S. Const. amend. IV; Nev. Const. art 1, § 18. Generally, a warrantless search is unreasonable and any evidence obtained must be suppressed, unless the individual consents to the search or the search falls within a recognized exception to the warrant requirement. *Missouri v. McNeely*, 569 U.S. 141, 148 (2013) (plurality opinion).

To be valid, an individual's consent to a search must be "voluntarily given, and not the result of duress or coercion, express or implied." *Schneckloth v. Bustamonte*, 412 U.S. 218, 248 (1973). "Voluntariness is a question of fact to be determined from all the circumstances, and while the subject's knowledge of a right to refuse is a factor to be taken into account, the prosecution is not required to demonstrate such knowledge as a prerequisite to establishing a voluntary consent." *Id.* at 248-49; *see also Birchfield*, \_\_\_ U.S. at \_\_\_, 136 S. Ct. at 2186 (reaffirming that even when an individual has been erroneously informed he is required to give a blood sample, the validity of his subsequent consent is still evaluated on the totality of the circumstances).

The district court made the following findings. Crofts was taken from the scene of the accident to the hospital in an ambulance. Elko County Sheriff's Deputy Ana Bribiesca was asked to follow the ambulance and request a blood sample from Crofts. She requested the blood sample by reading a "Request for Consent to an Evidentiary Test" card. The card stated, in relevant part,

There is reasonable cause to believe that you have been driving or were in actual physical control of a motor vehicle while under the influence of alcohol and/or a controlled substance or substances.

I am now requesting that you consent to an evidentiary test of your blood . . . to determine the alcohol and/or drug content of your blood [ ].

If you refuse to submit to any evidentiary test, I am entitled to seek a search warrant authoring [sic] me to secure from you, with the assistance of qualified medical personnel, up to three (3) sample [sic] of your blood for evidentiary testing and to, if you resist, use reasonable force to secure such blood samples from you.

You do not have a right to speak to a lawyer before making a decision about whether [sic] or not you are going to consent to an evidentiary test of your blood [ ].

Crofts initially expressed concern that Deputy Bribiesca would tell his boss that he had smoked marijuana, but, when she assured him that she would not, he consented to the blood draw.

The district court further found that Crofts was not seized within the meaning of the Fourth Amendment. Crofts appeared to be a reasonably intelligent young man, he was alert and oriented, and he spoke clearly and logically despite having fentanyl, alcohol, and marijuana in his system. And Deputy Bribiesca effectively advised Crofts that he had the right to refuse to consent to the blood draw, she did not suggest that a search warrant would automatically issue, and she dealt with him in a truthful manner.<sup>1</sup>

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<sup>1</sup>The district court noted that the accident occurred 12 days before the Nevada Supreme Court issued *Byars v. State*, 130 Nev. 848, 336 P.3d 939 (2014) (holding the statute that allowed police officers to use reasonable force to obtain a sample of a driver's blood was unconstitutional).

We conclude the district court's factual findings are supported by substantial evidence and are not clearly wrong, Crofts' consent was voluntary under the totality of the circumstances, and consequently Crofts was not subjected to an unreasonable search and the district court did not err in denying his suppression motion.<sup>2</sup>

Second, Crofts claims insufficient evidence supports his convictions because the State failed to prove he was the one driving the pickup truck at the time of the accident. 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 Crofts, Caleb Collins, Jeremiah Stills, and Casey Ross decided to leave a party where they had been drinking and playing drinking games. Crofts stumbled as the four of them walked out onto the porch. Collins offered to drive and Crofts said, "No, I'll drive. It's my truck." Ross also offered to drive and Crofts again said he would drive. When they got into the pickup truck, Crofts sat in the driver's seat, Ross sat in the middle, Stills sat in the passenger seat, and Collins sat on Still's lap.

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<sup>2</sup>To the extent Crofts argues his consent was not valid because the police did not have probable cause to believe he was the one driving the pickup truck, we conclude his argument lacks merit. *See Schneckloth*, 412 U.S. at 219 ("It is equally well settled that one of the specific established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent.").

Crofts, Collins, and Stills took Ross to his home. There, Crofts exited the truck from the driver's door so Ross could get out, they said their goodbyes, and Crofts got back into the driver's seat. Collins recalled that they headed toward Elko with Crofts in the driver's seat, Crofts' dog sitting in the middle, Stills sitting in the passenger seat, and he sitting on the dashboard with his back against the windshield.

After they passed through the Carlin tunnels, the pickup truck drifted off the road, went into a slide, and overturned down an embankment. Crofts and Collins were thrown from the truck and were severely injured. Stills did not make it out of the truck and was fatally injured. Deputy Bribiesca asked Crofts who was driving and he responded that he did not remember. Nevada Highway Patrol Sergeant Justin Ames observed that Crofts had bloodshot, glassy eyes and emitted a strong odor of alcohol. And Elko Police Officer Anthony Bandiero noted that Crofts had a prominent injury to his mouth, which was consistent with having struck a steering wheel during a car accident.

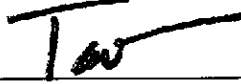
The jury also heard testimony that Crofts' blood sample tested positive for alcohol and contained quantities of marijuana and/or marijuana metabolite that were over the legal limit. And Collins suffered head trauma, four strokes, several broken vertebrae, four broken ribs, paralysis in his left hand, and memory problems.

We conclude a rational juror could reasonably infer from this testimony that Crofts drove the pickup truck while under the influence of alcohol and marijuana, lost control of the pickup truck, and caused Stills' death and Collins' substantial bodily harm. See NRS 484C.430(1); *Hernandez v. State*, 118 Nev. 513, 531, 50 P.3d 1100, 1112 (2002)

(circumstantial evidence is enough to 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, sufficient evidence supports its verdict. *See Bolden v. State*, 97 Nev. 71, 73, 624 13.2d 20, 20 (1981).

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

  
\_\_\_\_\_, C.J.  
Silver

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

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

cc: Hon. Alvin R. Kacin, District Judge  
Gary D. Woodbury  
Attorney General/Carson City  
Elko County District Attorney  
Elko County Clerk