

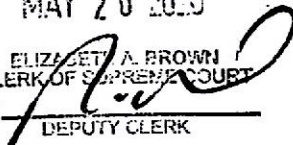
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RIGOBERTO CHAVEZ-SOLORZANO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78935-COA

FILED

MAY 20 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Rigoberto Chavez-Solorzano appeals a judgment of conviction, pursuant to a jury verdict, of one count of reckless driving resulting in death, two counts of reckless driving resulting in substantial bodily harm, and one count of involuntary manslaughter. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

On Christmas Eve, 2018, at approximately noon, Chavez-Solorzano and Hilario Perales were engaged in a street race heading eastbound on East Lake Mead Boulevard near Belmont Street in North Las Vegas. Although the speed limit was 35 miles per hour, both vehicles were traveling well above the speed limit. Chavez-Solorzano later stated that he was traveling 60 miles per hour. Meanwhile, Jamie Garcia-Lopez, his wife Maribel Aleman, and their son, Alexander Garcia-Aleman, were driving in a Toyota Corolla westbound on East Lake Mead Boulevard towards Panaderia Salvadoreña, a bakery immediately east of Palmer Street, to buy bread for Christmas dinner. Jamie was the driver, Maribel was in the back seat behind Jamie, and Alexander was in the front passenger seat.¹

¹We do not recount the facts except as necessary to our disposition.

As Jamie approached the bakery, he slowed to make a left hand turn, waited for seven vehicles to pass, observed the oncoming lanes to be open, and began to turn left. Perales and Chavez-Solorzano continued speeding towards Palmer Street, with Perales in the lead. Perales observed Jamie turning left and applied his brakes. Chavez-Solorzano, in a black Volkswagen Golf, passed Perales on the right and very quickly thereafter smashed into the side of the Toyota Corolla. The force of the collision caused Maribel to be ejected from the Corolla. Jamie and Alexander were transported to the hospital, as was Chavez-Solorzano, but Maribel was found deceased at the scene. The impact was so forceful that Chavez-Solorzano's rear wheels went airborne, and the speedometer on his Volkswagen was stuck at 82 miles per hour.

Chavez-Solorzano was indicted for two counts of reckless driving resulting in substantial bodily harm, one count of reckless driving resulting in death, and one count of involuntary manslaughter.

At trial, the State presented considerable evidence to prove Chavez-Solorzano's excessive speed. First, the State presented surveillance footage from the Bighorn Casino, as well as Panaderia Salvadoreña, both of which showed the collision. Second, the State presented testimony from multiple eyewitnesses—including Sheila Logan, Larry Logan, Paul O'Neal, Karla Davis, and Perales—all whom testified that Chavez-Solorzano was excessively speeding. Third, the State presented testimony from North Las Vegas Police Officer Trevor Desousa, who investigates automobile collisions. Officer Desousa testified that using the momentum and crush formulas, as well as other computer models with different braking percentages, he calculated Chavez-Solorzano's speed at roughly 67 to 80 miles per hour. Fourth, the State presented testimony from North Las

Vegas Police Officer Andy Navarro, who testified that following the collision, he spoke with Chavez-Solorzano at the scene of the collision, but did not arrest him until he was discharged from the hospital later the same day. Chavez-Solorzano stated that he had been driving at about 60 miles per hour. Later, after Chavez-Solorzano had been transported to the hospital, he was coherent and he provided a written statement to Officer Navarro declaring that he had been driving 60 miles per hour.²

Chavez-Solorzano presented no witnesses, and stipulated that the collision caused the death of Maribel. The jury found Chavez-Solorzano guilty on all four counts, and the district court sentenced him to concurrent and consecutive terms resulting in an aggregate prison sentence of 48 to 144 months.

On appeal, Chavez-Solorzano avers that (1) the State presented insufficient evidence to show that he was the proximate cause of the collision because Jamie's failure to yield before turning left was the proximate cause, and (2) the testimony of Officer Desousa was based on "speculation and guesswork" and should be suppressed because three different formulas were not used to calculate the Volkswagen's speed. We disagree.

Sufficient evidence supports Chavez-Solorzano's three convictions for reckless driving resulting in substantial bodily harm or death

Chavez-Solorzano only challenges the proximate cause element of the indictment, which was necessary for his conviction. He contends that he was not the proximate cause of the collision because Jamie failed to yield

²Dr. Allison McNickle, a trauma surgeon at University Medical Center, testified that Jamie and Alexander suffered extensive injuries following the collision.

by turning left. The State argues that Chavez-Solorzano was the proximate cause, but even if Jamie's left turn contributed to the accident, Chavez-Solorzano would only be exonerated if Jamie was the sole cause of the accident. The State further asserts that Jamie was not the sole cause because of Chavez-Solorzano's excessive speed. We agree with the State.

When reviewing whether sufficient evidence supports a criminal conviction, we consider "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." *Stewart v. State*, 133 Nev. 142, 144, 393 P.3d 685, 687 (2017) (emphasis and internal quotations omitted). "[I]t is the jury's function, not that of the court, to assess the weight of the evidence and determine the credibility of witnesses." *Rose v. State*, 123 Nev. 194, 202-03, 163 P.3d 408, 414 (2007) (alteration in original) (internal quotations omitted). We will not disturb a verdict supported by substantial evidence. *Stewart*, 133 Nev. at 144-45, 393 P.3d at 687.

"[R]eckless driving causing death or substantial bodily harm— includes a criminal intent . . . akin to criminal or gross negligence." *Cornella v. Justice Court*, 132 Nev. 587, 599, 377 P.3d 97, 106 (2016). Under the reckless driving statute,

a person who does any act or neglects any duty imposed by law while driving or in actual physical control of any vehicle on a highway or premises to which the public has access in willful or wanton disregard of the safety of persons or property, *if the act or neglect of duty proximately causes the death of or substantial bodily harm to another person*, is guilty of a category B felony.

NRS 484B.653(9) (2019).³ (Emphasis added.) “It is unlawful for any person to drive or operate a vehicle of any kind or character at . . . [a] rate of speed greater than that posted by a public authority.” NRS 484B.600(1)(c). Pursuant to NRS 484B.253, “[t]he driver of a vehicle within an intersection intending to turn to the left shall yield the right-of-way to any vehicle approaching from the opposite direction.”

On appeal, the only element that Chavez-Solorzano challenges under NRS 484B.653(9) is whether he was the proximate cause of the accident and therefore the injuries to Jamie and Alexander and the death of Maribel. Thus, the question Chavez-Solorzano raises on appeal is whether his “act or neglect of [a] duty proximately cause[d] the death of or substantial bodily harm to” Jamie, Maribel, and Alexander. Chavez-Solorzano argues that Jamie was the proximate cause of the accident because he failed to yield when making the left hand turn (i.e., Jamie had a duty to yield under NRS 484B.253). *See Williams v. State*, 118 Nev. 536, 550, 50 P.3d 1116, 1125 (2002) (“‘Proximate Cause’ is that cause which is natural and a continuous sequence, unbroken by any other intervening causes, that produces the injury and without which the injury would not have occurred.”). Nevada law, however, holds that “an intervening cause

³In 2019, NRS 484B.653(6) (2011) was renumbered as NRS 484B.653(9) (2019), the current version, and no substantive changes were made to the statute. *Compare* 2011 Nev. Stat., ch. 294, § 31, at 1638 *with* 2019 Nev. Stat., ch. 129, § 3, at 686. This statutory renumbering does not affect this analysis. Therefore, this court’s order only refers to this statute as NRS 484B.653(9). *See, e.g., Delucchi v. Songer*, 133 Nev. 290, 293-94, 396 P.3d 826, 829 (2017) (“When the Legislature amends a statute, [t]here is a general presumption in favor of prospective application. When an amendment clarifies, rather than substantively changes a prior statute, the amendment has retroactive effect.” (alteration in original) (emphasis added) (citation and internal quotations omitted)).

must be a superseding cause, or the *sole cause* of the injury in order to completely excuse the prior act.” *Etcheverry v. State*, 107 Nev. 782, 785, 821 P.2d 350, 351 (1991) (emphasis in original); see also *Williams v. State*, 118 Nev. 536, 550, 50 P.3d 1116, 1125 (2002) (approving a jury instruction that stated “[t]he contributory negligence of another does not exonerate the defendant unless the other’s negligence was the sole cause of injury”).

Here, when viewing the evidence in a light most favorable to the State, a rational juror could have concluded that Chavez-Solorzano’s excessive speed—which Chavez-Solorzano himself admitted was at least 25 miles per hour over the speed limit, and thus, was a violation of NRS 484B.600(1)(c)—contributed (i.e., proximately caused) the collision. In addition to Chavez-Solorzano’s own admissions, the State proved his excessive speed with (1) two surveillance tapes, (2) the testimony of five witnesses who all testified that Chavez-Solorzano was excessively speeding, (3) Officer Desousa’s testimony that calculated Chavez-Solorzano’s speed between 67 and 80 miles per hour, and (4) the broken speedometer on Chavez-Solorzano’s Volkswagen, which was stuck at 82 miles per hour.

Thus, even if the jury concluded that Jamie failed to yield when making the left hand turn, the jury could have rationally concluded that Chavez-Solorzano’s excessive speed contributed to the accident, and thus, Jamie was not the sole cause of the collision. Thus, sufficient evidence was presented by the State to show that Chavez-Solorzano was a proximate cause of the injuries of Jamie and Alexander, as well as the death of Maribel. Further, the jury’s function is to assess the weight and credibility of the evidence, *Rose*, 123 Nev. at 202-03, 163 P.3d at 414, which we will not disturb on appeal. Thus, we conclude that sufficient evidence supports

Chavez-Solorzano's three convictions for reckless driving resulting in substantial bodily harm or death.

The district court did not plainly err in admitting Officer Desousa's testimony to show Chavez-Solorzano's speed

Chavez-Solorzano contends that the State's witness, Officer Desousa, engaged in "speculation and guesswork, giving estimations and approximations rather than accurate calculations," concerning Chavez-Solorzano's speed. He further argues that Desousa's testimony should be suppressed pursuant to *Hallmark v. Eldridge*, 124 Nev. 492, 498, 189 P.3d 646, 650 (2008), because Officer Desousa failed to use the momentum theory, the crush theory, or video analysis methods to determine Chavez-Solorzano's speed. The State contends that Officer Desousa testified that he used both the momentum theory and the crush theory in calculating Chavez-Solorzano's speed, and relied primarily upon the momentum theory because it gave Chavez-Solorzano the benefit of the doubt with a lower speed calculation. The State points out that Chavez-Solorzano never objected to Officer Desousa's methodologies or calculations at trial. We agree with the State.

Because Chavez-Solorzano failed to object to Officer Desousa's calculations at trial, we review for plain error. Under plain error review, the "appellant must demonstrate that: (1) there was an error; (2) the error is plain, meaning that it is clear under current law from a casual inspection of the record; and (3) the error affected the defendant's substantial rights." *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018) (internal quotation marks omitted). "[A] plain error affects a defendant's substantial rights when it causes actual prejudice or a miscarriage of justice (defined as a grossly unfair outcome)." *Id.* at 51, 412 P.3d at 49 (internal quotation marks omitted).

Here, Chavez-Solorzano has not shown any error pertaining to the testimony of Officer Desousa. Chavez-Solorzano contends that, because Officer Desousa failed to use three different calculations, his testimony was unreliable “guesswork” that should be “suppressed.” As the State points out, however, Officer Desousa explained that he used momentum and crush theories to perform his calculations. Thus, Chavez-Solorzano’s contentions are belied by the record. Officer Desousa did testify that he did not know how to calculate Chavez-Solorzano’s speed based off the video tape alone, but nonetheless, Chavez-Solorzano provides no legal authority to show that the failure to use this method constitutes reversible error, particularly given that Officer Desousa used at least two other methods to calculate the Volkswagen’s speed. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (“It is appellant’s responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed [on appeal].”). Thus, we conclude that Chavez-Solorzano has not demonstrated a plain error that prejudiced his substantial rights.⁴ Accordingly, we

⁴We further note that, even if Officer Desousa’s testimony was erroneously admitted into evidence, any such error was harmless. *See Hubbard v. State*, 134 Nev. 450, 459, 422 P.3d 1260, 1267 (2018) (“An error is harmless and not reversible if it did not have a substantial and injurious effect or influence in determining the jury’s verdict.”). Here, in addition to Officer Desousa’s speed calculations, the State presented evidence of Chavez-Solorzano’s excessive speed with (1) his own written and oral admissions that his speed was 60 miles per hour, (2) two surveillance tapes, (3) the testimony of multiple witnesses—besides Officer Desousa—who testified that Chavez-Solorzano was excessively speeding, and (4) the broken speedometer on Chavez-Solorzano’s Volkswagen, which was stuck at 82 miles per hour. Thus, even if error occurred concerning Officer Desousa’s testimony, it was harmless.

ORDER the judgment of conviction AFFIRMED.⁵


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Eric Johnson, District Judge
Mueller & Associates
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁵Chavez-Solorzano provided no argument challenging his conviction for involuntary manslaughter and therefore we do not specifically address that conviction.