

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEVIN EVERETT MARTIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81208-COA

FILED

JUN 07 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Devin Everett Martin appeals from a judgment of conviction, pursuant to a jury verdict, of driving under the influence of alcohol with a prior felony conviction for driving under the influence. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Martin argues the district court erred by allowing into evidence retrograde extrapolations of his blood alcohol level. Martin claims this evidence was more prejudicial than probative because the State's expert failed to consider the factors discussed in *State v. Eighth Judicial Dist. Court (Armstrong)*, 127 Nev. 927, 936, 267 P.3d 777, 783 (2011), rendering her opinion unreliable.

We review the admission of evidence for abuse of discretion. *Id.* at 931, 267 P.3d at 780. Relevant evidence is inadmissible "if its probative value is substantially outweighed by the danger of unfair prejudice." NRS 48.035(1). Retrograde extrapolation is a means of estimating a person's blood alcohol level at a time prior to the drawing of a blood sample, and it requires information regarding the rates at which alcohol is absorbed and

eliminated. *Armstrong*, 127 Nev. at 932, 267 P.3d at 780. It is relevant evidence, *see id.* at 932, 267 P.3d at 781, but it may be unfairly prejudicial if it “is likely to move a jury to declare guilt based solely on a reaction to the blood alcohol level and the very real devastation caused by drunk driving rather than proof that the defendant was driving while under the influence or with a prohibited blood alcohol level,” *id.* at 934, 267 P.3d at 782.


Armstrong set out personal factors to consider in order to make a retrograde extrapolation sufficiently reliable. *Id.* at 936, 267 P.3d at 783. However, *Armstrong* involved a single blood test, and the court explained that “the significance of personal factors is influenced by the number of blood alcohol tests.” *Id.* at 936, 267 P.3d at 783. Here, the State’s expert testified that she did not need to consider the remainder of the *Armstrong* factors because the number of blood samples taken from Martin (three) and the length of time between the draws were sufficient to establish his known alcohol elimination rate from which she based her retrograde extrapolation calculation.

Moreover, to account for witness testimony of Martin’s actions at the accident scene, the State’s expert performed two additional retrograde extrapolation calculations to compensate for the possibility that Martin consumed alcohol just before the accident. In doing the analysis, the expert had to assume the just-consumed alcohol was still absorbing while all prior consumed alcohol had already been absorbed. Martin presented no evidence that this was unreasonable. Therefore, we conclude Martin has failed to demonstrate that the district court abused its

discretion by allowing into evidence the retrograde extrapolations of Martin's blood alcohol level. Accordingly, we

ORDER the judgment of conviction AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Connie J. Steinheimer, District Judge
Washoe County Alternate Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

¹To the extent Martin challenges the admission of a body camera video into evidence during his trial, we need not address this claim because he presents no relevant authority or cogent argument in support of his contention. See *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).