

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN J. PENNINGTON, AND
MATTEL, INC., A DELAWARE
CORPORATION,
Appellants,
vs.
ROBERT STUART,
Respondent.

No. 40495

FILED

SEP 02 2004

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

ORDER OF AFFIRMANCE

Appellants Steven Pennington and Mattel, Inc. appeal from a judgment and denial of several post-trial motions. Eighth Judicial District Court, Clark County; Mark W. Gibbons, Judge.

This case arises from a \$23,199,417.49 jury verdict in favor of respondent, Robert Stuart, who was rendered both paraplegic and blind as a result of a single-car rollover accident. Pennington and Mattel argue that they should be granted a new trial because the district court improperly refused to instruct the jury on the doctrine of “imminent peril.” We disagree with Pennington and Mattel’s contentions.

“[A] party is entitled to have the jury instructed on all of his case theories that are supported by the evidence,”¹ even if the evidence is minimal. Here, Pennington testified that he observed an oncoming vehicle swerve into his lane and then return into the oncoming lane. Although the jury was entitled to an “imminent peril” instruction because Pennington’s testimony supported his contention that he was subjected to

¹Silver State Disposal v. Shelley, 105 Nev. 309, 311, 774 P.2d 1044, 1045 (1989).


an emergency situation by this oncoming vehicle, we conclude that the district court's error was harmless, pursuant to NRCP 61.²

The failure to give the "imminent peril" instruction was harmless because the overwhelming evidence established that Pennington was at fault. Two witnesses testified that Pennington told them that he may have dozed off. The parties agree that Pennington's rental car fishtailed and then rolled over into the desert after Pennington set the cruise control at seventy-two miles per hour and lost control of the vehicle. The accident occurred in daylight and during good weather. Therefore, we conclude that the "imminent peril" instruction would not have changed the jury's verdict. Thus, the grant of a new trial is not warranted.

We have considered all other issues on appeal and find them without merit.

Therefore, we ORDER the judgment of the district court AFFIRMED.

 _____, C.J.
Shearing

 _____, J.
Agosti

 _____, J.
Becker

²NRCP 61 provides, in pertinent part, "The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties."

cc: Eighth Judicial District Court Dept. 7, District Judge
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