IN THE UTAH COURT OF APPEALS

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State of Utah, Plaintiff and Appellee, v. Dennis J. Garcia, Defendant and Appellant.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20080606-CA F I L E D (December 24, 2009) 2009 UT App 384

Third District, Salt Lake Department, 061901607
The Honorable Randall N. Skanchy

Attorneys: Deborah Katz Levi, Salt Lake City, for Appellant
Mark L. Shurtleff and Kenneth A. Bronston, Salt Lake City, for Appellee

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Before Judges Orme, Davis, and Thorne.

ORME, Judge:

We have determined that "[t]he facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument." Utah R. App. P. 29(a)(3). Moreover, the issues presented are readily resolved under applicable law. We conclude that the evidence was sufficient to support the jury's verdict that Defendant was guilty of automobile homicide.[1] See Utah Code Ann. § 76-5-207(2) (Supp. 2009).[2]

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1. Defendant admittedly did not preserve the exact sufficiency of the evidence arguments presented on appeal and thus urges plain error on the part of the trial court in denying his motion for a directed verdict and in submitting the case to the jury. Because we conclude that the evidence was sufficient to support the jury's verdict on the two elements he is now challenging, it necessarily follows that the trial court did not commit plain error in submitting the case to the jury. See generally State v. Holgate, 2000 UT 74, ¶ 13, 10 P.3d 346 ("To demonstrate plain error, a defendant must establish that '(i) an error exists; (ii) the error should have been obvious to the trial court; and (iii) the error is harmful, i.e., absent the error, there is a reasonable likelihood of a more favorable outcome for the appellant, or phrased differently, our confidence in the verdict is undermined.'") (citation omitted).

2. We cite to the current version of this statute as a convenience to the reader. The recent amendments to this section

(continued...)

Viewed in the light most favorable to the jury's verdict, the evidence as a whole supports, beyond a reasonable doubt, that Defendant was in the driver's seat and thus driving at the time of the accident. See State v. Hirschi, 2007 UT App 255, ¶ 15, 167 P.3d 503 ("When a jury verdict is challenged on the ground that the evidence is insufficient, . . . [w]e review the evidence and all inferences which may reasonably be drawn from it in the light most favorable to the verdict[.]") (emphasis added) (first alteration and omission in original) (citation and internal quotation marks omitted). Specifically, DNA evidence confirmed that Defendant's hair was found just above the front driver-side window. And the traffic investigator's testimony established that the lack of damage to the center console and steering wheel precluded the possibility that a passenger could have ended up in the driver's seat during the course of the accident. Also, Defendant's injuries were consistent with the damage done to the front driver-side door, including cuts on his head and scalp and injuries to his left leg, whereas the damage to the front seats and inside the back of the car was consistent with a front passenger having been thrown from the front passenger seat to the back of the car. Blood on the backseat, where the victim was found face down, was also consistent with cuts to the victim's face. Finally, the investigator testified that "[t]here's no way" the victim was the driver or that any unaccounted-for occupant could have been driving and thrown from the car. See State v. Lawson, 688 P.2d 479, 481, 483 (Utah 1984) (determining "substantial circumstantial evidence" supported the jury's conclusion that the defendant had been driving the vehicle, even though no witnesses actually saw him driving, when witnesses saw him exiting the vehicle, and the evidence did not support that anyone else could have been driving the vehicle).

As to the separate claim that the evidence did not support the jury's determination that Defendant drove negligently, see generally Utah Code Ann. § 76-5-207(2)(c), evidence at the accident scene and an investigator's reconstruction of the accident showed that the car was traveling at approximately sixty-five miles per hour when it crossed the double center line and that, after braking hard, it lost control, resulting in the fatal crash. The posted speed limit was sixty miles per hour; it was around 1:00 a.m. during early March; the conditions were dark, wet, and overcast; and Defendant was driving five miles per hour above the posted speed limit with alcohol and marijuana in his system. Drivers are required to adjust their speed, as

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2. (...continued)
do not affect our analysis. See Utah Code Ann. § 76-5-207 amendment notes (2008 & Supp. 2009).

necessary, based on the weather or existing conditions. See Utah Code Ann. § 41-6a-601(1)(e) (2005). It is reasonable for the jury to have concluded that a prudent person would have slowed down under the wet, dark conditions existing at the time of the accident, or at least driven at the posted speed limit, to avoid losing control of the car in the event braking became necessary. See generally Horsley v. Robinson, 112 Utah 227, 186 P.2d 592, 596 (1947) ("Where the road and weather conditions make driving hazardous, reasonable prudence requires a proportionate increase in the care of the driver to avoid injury to his passengers," and such a driver has a "duty . . . to drive his vehicle at such a rate of speed that he c[ould] sufficiently control the same so that he does not foreseeably jeopardize the safety of his passengers.").

The jury's conclusion that Defendant was negligent is bolstered by the fact that he was intoxicated when he chose to speed on a wet, dark road. See Utah Code Ann. § 76-5-207(2)(a), (2)(c) (Supp. 2009) (requiring proof of both simple negligence and alcohol or drug use). Indeed, his blood alcohol level was .15--almost two times the legal driving limit. See id. § 76-5-207(2)(a)(i), (2)(a)(iii). See generally State v. Ruben, 663 P.2d 445, 448 (Utah 1983) (stating, at a time when the standard for automobile homicide was criminal negligence,[3] that "[w]hile it is no longer appropriate to consider intoxication and negligence as a single element, it is appropriate to consider the degree and effects of intoxication as a 'factor' in determining whether a defendant's conduct was criminally negligent").

Defendant points out that there was no evidence indicating what caused the car to cross the center line and, having chosen not to testify at trial, hypothesizes that an animal could have darted in front of the car. The jury heard this same argument and still concluded Defendant was negligent. Such a conclusion is entirely reasonable. One of the reasons why prudent drivers respect bad road conditions and slow down when it is dark and wet is to better enable them to brake without skidding or swerving in the event something unexpected unfolds on the roadway in front of them. See Horsley, 186 P.2d at 597. And what caused Defendant to swerve, be it an animal or simple ineptitude, does not change the fact that rather than slowing down, or even driving the

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3. The automobile homicide statute now requires only simple negligence. See Utah Code Ann. § 76-5-207(2)(c) (Supp. 2009).

posted speed limit, Defendant chose to speed on a wet, dark road, while he was intoxicated.

Affirmed.

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Gregory K. Orme, Judge

WE CONCUR:

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James Z. Davis, Judge

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William A. Thorne Jr., Judge