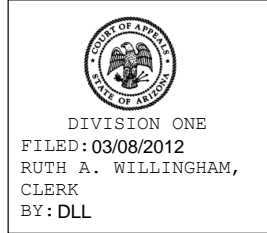


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,) No. 1 CA-CR 10-0789
)
Appellee,) DEPARTMENT E
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
JONATHAN LEIGH SOSNOWICZ,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR20098-171268-001 SE

The Honorable Maria Del Mar Verdin, Judge

AFFIRMED

Thomas C. Horne, Attorney General Phoenix
by Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Division
and W. Scott Simon, Assistant Attorney General
Attorneys for Appellee

Neal W. Bassett Phoenix
Attorney for Appellant

H A L L, Judge

¶1 Jonathan Leigh Sosnowicz (defendant) appeals his convictions and sentences for one count of second degree murder and three counts of aggravated assault. In this memorandum decision, we address the following issue we deem not worthy of

publication in our concurrently filed opinion: Whether the trial court erred when it granted the State's motion to preclude defense counsel from asking Maricopa County medical examiner William Stano, M.D., to tell the jury the blood alcohol content (BAC) of the victim (J.P.) at the time of his death. In this decision we set forth only the details of the case necessary to our resolution of the issue presented; a fuller version of the circumstances of the case is provided in the opinion.

¶12 Before Dr. Stano testified, the State orally requested that the trial court preclude defense counsel from asking Dr. Stano what J.P.'s BAC was at the time of his death. The State argued that his specific BAC was not relevant, but did not object to admitting evidence that J.P. had alcohol in his system at the time of his death.

¶13 In response to the State's argument that J.P.'s BAC was irrelevant and therefore inadmissible,¹ see Arizona Rules of Evidence 402, defense counsel contended that it may have been relevant to show if J.P. was intoxicated, if he had difficulty walking or standing, or if it "contributed to the accident in some way." The trial court granted the State's request to withhold J.P.'s BAC from the jury. We review a trial court's

¹ The State also argues that Dr. Stano, as a medical examiner, was not qualified to reveal J.P.'s BAC because it was determined by the toxicologist and not Dr. Stano. Because we resolve this issue on other grounds, we decline to address this argument.

ruling regarding the relevance and admissibility of evidence for an abuse of discretion. *State v. Bigger*, 227 Ariz. 196, 208, ¶ 42, 254 P.3d 1142, 1154 (App. 2011).

¶4 Dr. Stano testified that J.P.'s consumption of alcohol did not affect how he died. Moreover, defendant failed to demonstrate how disclosing the additional information of J.P.'s BAC was relevant to buttress defendant's claim that his striking J.P. with the Hummer was a non-criminal accident. For example, no evidence was presented that could have led a jury to find that J.P.'s level of intoxication contributed to the accident, which might have been the case had there been testimony that J.P. stumbled or veered into the path of the Hummer. Further, if Dr. Stano had been permitted to reveal J.P.'s BAC without commenting further on what the BAC meant in relation to J.P.'s intoxication and effect on his body, as defense counsel suggested, the jury may have been misled as to its significance. See Ariz. R. Evid. 403. We conclude that the trial court did not err in precluding evidence of J.P.'s BAC.

¶15 For the foregoing reasons and those set forth in our opinion, we affirm defendant's convictions and sentences.

_____/s/_____
PHILIP HALL, Judge

CONCURRING:

_____/s/_____
MICHAEL J. BROWN, Presiding Judge

_____/s/_____
PATRICIA K. NORRIS, Judge