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STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2012 KA 1565

STATE OF LOUISIANA

VERSUS

JASON MELERINE

Judgment Rendered: MAY 02 2013

Appealed from the
22nd Judicial District Court
In and for the Parish of Washington, Louisiana
Trial Court Number 10-CR8-109927

Honorable William Crain, Judge

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Plaintiff – State of Louisiana

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Attorney for Appellant
Defendant – Jason Melerine

BEFORE: PARRO, WELCH, AND KLINE,¹ JJ.

¹ Hon. William F. Kline, Jr., retired, is serving as judge *ad hoc* by special appointment of the Louisiana Supreme Court.

WELCH, J.

The defendant, Jason Melerine, was charged by grand jury indictment with two counts of vehicular homicide, violations of La. R.S. 14:32.1. He pled not guilty and, following a jury trial, was found guilty as charged. The defendant filed a post verdict judgment of acquittal, which was denied. On each count, he was sentenced to eighteen years at hard labor, with the first three years of each sentence to be served without benefit of probation, parole, or suspension of sentence. The trial court also imposed a \$10,000.00 fine. The sentences were ordered to run concurrently. The defendant now appeals, designating one assignment of error. We affirm the convictions and sentences.

FACTS

On the evening of June 26, 2010, the nineteen-year-old defendant and some friends went bowling at Tiffany Lanes in Mandeville. The defendant was with Jason Crain, Beth Bria, Desirae Gabler, and Eddie Gabler, Desirae's younger brother. They all rode together in Jason's truck. Desirae was the defendant's girlfriend, and Jason and Beth were engaged. At the bowling alley, Jason, Beth and the defendant drank among themselves two pitchers of beer. After bowling, they went to the drive-through of Daiquiris and Creams in Mandeville. Everyone ordered a daiquiri except Eddie. The defendant had a large daiquiri called "Ecstasy" with an extra shot of alcohol added to the drink. They drove back to the defendant's house in Franklinton in Washington Parish. From the defendant's house, the group got into separate vehicles and drove to Jason's house. Desirae drove Eddie home before going to Jason's house.

Desirae became sick from drinking too much and began vomiting. At about 1:00 a.m. on June 27, 2010, Desirae's mother, Rachael, called Desirae's cell phone and spoke to her daughter. At approximately 4:30 a.m., Rachael called her daughter on her cell phone, but she did not answer. Rachael called again and

Desirae answered and told her mother she was sick and handed the phone to the defendant. Rachael told the defendant that Desirae was supposed to be home at 3:00 a.m. The defendant told Rachael that he would bring Desirae home.

The defendant drove Desirae home in Desirae's truck. Jason and Beth, with Jason driving, followed in the defendant's 1997 Chevrolet pickup truck. After dropping off Desirae, the defendant got into his truck, with Jason and Beth riding in the front as passengers. At about 4:50 a.m., the defendant was driving on La. Highway 424. As he came into a right-hand curve at a high rate of speed, traveling south, the defendant lost control of his truck. The truck slid off the right side of the roadway and slammed into a tree. The impact caused the bed of the truck to separate from the vehicle. Jason and Beth were killed in the crash. Beth suffered blunt force trauma to the right side of her body, resulting in massive internal tearing of her right lung, causing her to bleed to death. Jason suffered blunt force impact to the mid-face, resulting in extensive fracturing of his skull and tearing of the interior of his brain. The defendant sustained cuts and scrapes to his face and forehead, and injured his shoulder.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues the evidence was insufficient to support the convictions of vehicular homicide. Specifically, the defendant contends the evidence proved only that it was his reckless operation of his truck, instead of intoxication, that caused the collision.

A conviction based on insufficient evidence cannot stand as it violates due process. See U.S. Const. amend. XIV; La. Const. art. I, § 2. The standard of review for the sufficiency of the evidence to uphold a conviction is 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. **Jackson v. Virginia**, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789,

61 L.Ed.2d 560 (1979). See also La. Code Crim. P. art. 821(B); **State v. Ordodi**, 2006-0207 (La. 11/29/06), 946 So.2d 654, 660; **State v. Mussall**, 523 So.2d 1305, 1308-10 (La. 1988). The **Jackson** standard of review, incorporated in Article 821, is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. When analyzing circumstantial evidence, La. R.S. 15:438 provides that, in order to convict, the factfinder must be satisfied the overall evidence excludes every reasonable hypothesis of innocence. See State v. Patorno, 2001-2585 (La. App. 1st Cir. 6/21/02), 822 So.2d 141, 144.

Prior to the 2012 amendment, La. R.S. 14:32.1 provided in pertinent part:

A. Vehicular homicide is the killing of a human being caused proximately or caused directly by an offender engaged in the operation of, or in actual physical control of, any motor vehicle, aircraft, watercraft, or other means of conveyance, whether or not the offender had the intent to cause death or great bodily harm, whenever any of the following conditions exists and such condition was a contributing factor to the killing:

(1) The operator is under the influence of alcoholic beverages as determined by chemical tests administered under the provisions of R.S. 32:662.^[2]

(2) The operator's blood alcohol concentration is 0.08 percent or more by weight based upon grams of alcohol per one hundred cubic centimeters of blood.

* * * * *

(4) The operator is under the influence of alcoholic beverages.

Under the vehicular homicide statute, the “[S]tate . . . must prove that an offender’s unlawful blood alcohol concentration combined with his operation of a vehicle to cause the death of a human being.” **State v. Taylor**, 463 So.2d 1274, 1275 (La. 1985). It is insufficient for the State to prove merely that the alcohol consumption “coincides” with the accident. **Taylor**, 463 So.2d at 1275. Causation

² If the person had a blood alcohol concentration at that time of 0.08 percent or more by weight, it shall be presumed that the person was under the influence of alcoholic beverages. La. R.S. 32:662(A)(1)(c). If the person was under the age of twenty-one years at the time of the test and had a blood alcohol concentration at that time of 0.02 percent or more by weight, it shall be presumed that the person was under the influence of alcoholic beverages. La. R.S. 32:662(A)(1)(d).

is a question of fact which has to be considered in light of the totality of circumstances surrounding the ultimate harm and its relation to the actor's conduct. **State v. Kalathakis**, 563 So.2d 228, 231 (La. 1990).

The defendant contends that, while the State did prove intoxication, it failed to prove that his intoxication "was more than just a coincidence to the accident." According to the defendant, his speech was not slurred and he did not exhibit any signs that he was inebriated. Further, "considering his careful driving throughout the night, it was only coincidental that [he] was intoxicated at the time he spoke with the police and EMS."

We note the defendant testified at trial that he drank beer and a daiquiri with a shot of liquor prior to the wreck. The defendant later testified, however, that he was not "100 percent for certain" if he was driving his truck at the time of the crash. According to the defendant, he remembered dropping off Desirae, then walking back toward his truck. After this point, however, he stated, "I don't remember anything." When reminded on cross examination that he told everyone that night that he was responsible for the accident and the deaths of his friends, the defendant testified, "I don't have any recollection of that."

In closing argument, defense counsel, reiterating the defendant's theory of innocence, suggested that the defendant may not have been driving his truck just prior to the crash. Defense counsel further suggested that the defendant's intoxication was not the direct cause of the crash. However, on appeal, the defendant does not assert both theories of innocence in his brief. Abandoning the theory that he was not the driver, the defendant concedes that he was driving his truck when he crashed, and argues only the causation issue, insisting that it was his reckless operation of his truck, and not his intoxication, that caused the collision. Accordingly, we confine our review to the causation issue. See Uniform Rules of Louisiana Courts of Appeal, Rule 2-12.4.

Louisiana State Police Trooper Steven Manning, with Troop L in Mandeville, trained in accident reconstruction, investigated the accident scene. In documenting the crash site, Trooper Manning, along with another trooper, developed a report known as a "Total Station," which used survey equipment and GPS coordinates to map out the crash site by points assigned to the many variables at the scene. This information could then be used to reconstruct how the crash occurred and to estimate the speed the defendant was traveling. Trooper Manning testified at trial that the crash site was about 300 feet south of D.C. Crain Road. According to Trooper Manning, the defendant drove around a right-hand curve and crossed the center line into the other lane of travel. There was a right-hand curve warning sign with a recommended traveling speed of 40 m.p.h. The defendant overcorrected to the right, and his truck traveled right and went off the roadway. As the defendant steered back to the left, the truck began to yaw, traveling forward and slightly sideways. The truck struck a tree, rotated around the tree, and continued to slide until coming to rest near a second tree. The initial impact against the tree caused the bed of the truck to tear from the vehicle and travel across the highway where it came to rest on the opposite shoulder of the roadway. Trooper Manning estimated the defendant's minimum speed to be 80 m.p.h.

Trooper Manning spoke to the defendant at the scene. As the trooper had the defendant walk to the front of his police unit, the defendant told him that he was driving, and that it was his fault. Trooper Manning instructed the defendant to stop speaking and **Mirandized** him. The defendant then stated that he was driving his truck from Thomas toward Pine and that he went around the curve too fast and crashed. The defendant said, "It's my fault. Take me to jail." Trooper Manning testified at trial that the defendant swayed as he stood and appeared to be unsteady on his feet. He could smell alcohol on the defendant's breath, and he noticed the defendant's eyes were glassy and bloodshot. When he asked the defendant if he

had been drinking, the defendant said he drank about six beers.

At this point, the defendant agreed to undergo field sobriety tests (FST). The defendant tested poorly on all three tests, the horizontal gaze nystagmus, the walk-and-turn, and the one-leg stand. On the initial observation page of his FST report, Trooper Manning noted the defendant's balance was "swaying" and "unsure," his speech was "slurred," and the level of impairment was "obvious." The defendant was issued a ticket for DWI. The defendant was then taken to the Washington Parish Sheriff's Office in Franklinton where he underwent a breathalyzer test administered by Trooper Manning. The defendant was again **Mirandized** and submitted to a chemical test for intoxication. Based on the defendant's breath sample taken with the Intoxilyzer 5000 machine, which Trooper Manning was certified to use, the defendant's blood alcohol content (BAC) was .101 percent.

Lieutenant Todd Wood, shift supervisor with the Louisiana State Police at Troop L, testified at trial and was qualified as an expert in accident reconstruction. Based on the information he personally accumulated at the crash site, photographs, and the Total Station report, Lieutenant Wood calculated that the defendant was traveling at least 100 m.p.h. when he crashed. Further, Lieutenant Wood found the roadway the defendant had driven off of to be in very good condition and that there were no other factors that could have caused the crash, such as physical defects in the road, missing signage, or a bad shoulder.

Based on the testimony of Trooper Manning and Lieutenant Wood, the jury's guilty verdicts indicated the reasonable conclusion that the defendant's intoxicated condition was a contributing factor in the deaths of Jason and Beth. See La. R.S. 14:32.1(A); **State in Interest of R.V.**, 2011-138 (La. App. 5th Cir. 12/13/11), 82 So.3d 402; **State v. Thomas**, 2005-2210 (La. App. 1st Cir. 6/9/06), 938 So.2d 168, 173-75, writ denied, 2006-2403 (La. 4/27/07), 955 So.2d 683. In

the absence of internal contradiction or irreconcilable conflict with physical evidence, one witness's testimony, if believed by the trier of fact, is sufficient support for a requisite factual conclusion. An appellate court is constitutionally precluded from acting as a "thirteenth juror" in assessing what weight to give evidence in criminal cases; that determination rests solely on the sound discretion of the trier of fact. **Thomas**, 938 So.2d at 174-75. The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness, including an expert. **State v. Ducksworth**, 496 So.2d 624, 634 (La. App. 1st Cir. 1986). When a case involves circumstantial evidence and the trier of fact reasonably rejects the hypothesis of innocence presented by the defense, that hypothesis falls, and the defendant is guilty unless there is another hypothesis which raises a reasonable doubt. See **State v. Moten**, 510 So.2d 55, 61 (La. App. 1st Cir.), writ denied, 514 So.2d 126 (La. 1987).

The evidence clearly established the defendant had an unlawful blood alcohol concentration while he was driving his truck. Witnesses testified the defendant drank beer and a daiquiri on the night he wrecked his truck. The evidence further supports the jury's finding that the defendant's inebriated condition caused him to wreck his truck, which resulted in the deaths of Jason and Beth. Under these circumstances, given the defendant's reckless manner of driving, it was reasonable for the jury to infer that his intoxication contributed to his running off the road while traveling between 80 m.p.h. and 100 m.p.h., losing control of his truck, and hitting a tree. See **State v. Trahan**, 93-1116 (La. App. 1st Cir. 5/20/94), 637 So.2d 694, 701-02. Accordingly, there was sufficient evidence of a causal relationship between the defendant's blood alcohol concentration and the deaths of the victims to support the convictions.

After a thorough review of the record, we find that the evidence supports the jury's unanimous verdicts. We are convinced that viewing the evidence in the

light most favorable to the State, any rational trier of fact could have found beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, that the defendant was guilty of vehicular homicide because his intoxication, combined with his operation of his vehicle, caused the deaths of Jason and Beth. See Thomas, 938 So.2d at 175.

For the foregoing reasons, the defendant's convictions and sentences are affirmed.

CONVICTIONS AND SENTENCES AFFIRMED.