Affirmed and Opinion Filed November 29, 2017

In The

Court of Appeals

Fifth District of Texas at Dallas

No. 05-16-00792-CR

LACIE DEE PARDUN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 366th Judicial District Court
Collin County, Texas
Trial Court Cause No. 366-83652-2015

MEMORANDUM OPINION

Before Justices Francis, Myers, and Whitehill
Opinion by Justice Francis

A jury convicted Lacie Dee Pardun of manslaughter and also found she used her car as a deadly weapon. The trial court sentenced her to ten years in prison. In five issues, appellant brings complaints about the sufficiency of the evidence to support her conviction, the failure to define "under the influence" in the jury charge, the admission of her toxicology results, and cumulative error. For reasons set out below, we overrule all issues and affirm the trial court's judgment.

At 9:30 a.m. on December 13, 2014, Harold Chrisenberry was driving with his wife to visit their son, who lived off State Highway 78 in rural Collin County. The highway is a two-lane roadway with a narrow, three-foot shoulder. The weather was dry and sunny. When Chrisenberry was about 100 yards north of his son's driveway, he began slowing down and

activated his left-turn blinker. A line of motorcycles was in the oncoming traffic lane. Chrisenberry checked his rearview mirror and saw a Chevrolet Blazer, driven by appellant, coming up behind him at a high rate of speed. Appellant did not appear to be slowing down, and believing it was "inevitable" he was going to be hit "some way or another," Chrisenberry tried to speed up and move right onto the narrow shoulder to give the vehicle room to pass him. As he did, appellant swerved to the right as well. Chrisenberry then tried to move left out of her way. According to Chrisenberry, appellant hit her brakes and either lost control of her vehicle or overcorrected and clipped the rear bumper of his truck. The Blazer then skidded into the oncoming traffic lane and collided head-on with a motorcycle driven by Russell Neis.

Neis was the rear rider of a group from the Christian Motorcyclists Association. The group was on a charity run that morning to deliver toys for needy children. Neis was an accomplished rider but had no time to react and was thrown from his motorcycle into a ditch. He died at the scene of multiple blunt force injuries. His friend, Rito Gomez, was in a car immediately behind him, witnessed the crash, and hit the motorcycle after Neis had been thrown. When asked if the accident could have been avoided if the Blazer could have gone onto the shoulder, Gomez said no. Gomez also believed if appellant had stayed in her lane, controlled her speed, timely applied her brakes, and kept a proper lookout, the accident would not have happened.

Motorists along the highway stopped at the accident scene and offered help. Two had witnessed appellant speeding on the highway and passing vehicles before the fatal crash. Rachel Nolen said the Blazer was going faster than the 65 mph speed limit when it passed a car behind her before quickly approaching the rear of her vehicle. Nolen said the Blazer's speed was "significant," and Nolen "kind of sped up" because she thought she might be rear-ended.

Appellant passed her, and she passed at least one more vehicle. Shortly after, Nolen "saw a large cloud of smoke and came upon the accident scene.

Kellye Winegarner said she pulled onto Highway 78 that morning with "no cars in sight" and the "next thing" she knew, the Blazer was "coming right up on the rear end" of her truck. Winegarner looked at her speedometer to make sure she was not "putt-putting along" and she was going 70 mph, indicating appellant was going faster when she "kind of [blew] by her." About fifteen minutes later, Winegarner saw a "puff of smoke" and came upon the crash site.

Immediately after the crash, Chrisenberry checked on appellant. He said she was "hysterical" and asked why he stopped "so abruptly" in the middle of the road. Nolen saw appellant walking around repeating that she "didn't mean to do it." Neis's wife heard her screaming, "Did I just kill him? Did I really just kill him?"

When emergency medical professionals arrived on the scene, appellant initially denied being involved in the accident and refused treatment. Later, she sought out the paramedics and complained of hip and back pain. Jay Lynch, a critical care paramedic, treated her. When Lynch assessed her, appellant was "extremely uncooperative . . . almost to the point of resisting or violent." He said she was jittery and could not focus. Appellant told Lynch she was coming from Rowlett on her way to Rockwall, which Lynch said made no sense because "you would not normally drive through [the] Blue Ridge/Farmersville area to get from Rowlett to Rockwall." According to Lynch, appellant did not know how or why she was in Collin County and denied taking any medications, alcohol, or illegal substances.

Lynch believed appellant's behavior was not normal and, at first, thought it could be shock or a possible head injury from the collision. But his opinion changed based on her behavior and vital signs. He said appellant's heart rate was high, her blood pressure was

extremely high, and her respirations were fast. As he began ruling out medical or traumatic causes, "impairment was what was left."

Appellant was transported to the hospital. On the way, she had to be sedated because she was so combative. Lynch administered Versed, a benzodiazepine, in an amount generally sufficient to render a full-sized man completely unconscious. The dosage, however, had only a minimal effect on appellant, and appellant was given an additional dosage.

Brenda Cannedy, a registered nurse, treated appellant at the hospital. Appellant complained of neck and back pain but had no "gaping wounds." Cannedy said appellant was "erratic and emotional"—screaming and crying one minute, then calm and laughing the next. Appellant told Cannedy that when the accident happened, she was on her way to a child's sporting event and "running late." She denied having any alcohol or using illegal substances and said she had been "clean for a long time." About four hours after the crash, the hospital performed a urine toxicology screen, which showed the presence of amphetamines, marijuana, and benzodiazepines in appellant's system. She was discharged from the hospital that day. According to Cannedy, there were no medical causes for the crash, such as a head injury or seizure.

The Department of Public Safety investigated the crash. Although the speed limit on that stretch of highway was 65 mph, the Blazer's "black box" showed it was traveling at a speed of 89 mph five seconds before it struck Chrisenberry's truck; the brakes were activated between zero and one second before the first collision. Two seconds later, appellant struck the motorcycle.

Trooper Mykel Golden obtained appellant's statement while she was in the emergency room. In her statement, appellant said she was traveling at about 70 mph about 100 yards behind Chrisenberry's truck when he "quickly applied his brakes." Appellant said she hit her brakes

hard and they locked up, causing her Blazer to slide into the oncoming traffic lane. After impact, she said her vehicle rolled twice before straightening up. She said the accident was unavoidable.

While talking to appellant, Golden, a certified drug recognition expert, saw signs of drug use. Specifically, he said appellant was "real talkative" and seemed to be anxious. These were indicators she had used a stimulant, which he said included amphetamines. Also, she had "conjunctiva" and a green-coated tongue, which he said are indicators of marijuana use. Golden explained that conjunctiva is redness under her eyelids different from the red eyes of someone who has been crying. Golden was unable to perform field sobriety tests because appellant had been injured. He asked appellant for a blood sample, but she refused. Golden agreed it was reasonable for someone to be anxious after being involved in a fatal accident.

Sergeant Hunter Lewis was the supervising officer at the scene. Based on what he saw and what witnesses said, he believed appellant's Blazer approached Chrisenberry's truck as it was slowing to make a turn; appellant applied the brakes "heavily" to avoid a collision; and appellant's Blazer "glanced" off the back of the truck, sending her vehicle into a side skid into oncoming traffic where it collided with the motorcycle driven by Neis. Lewis testified the crash would not have happened if appellant had stayed in her lane, controlled her speed, kept proper lookout, and timely applied her brakes. Trooper Gina Stone, the investigating officer, drew the same conclusion after considering the witnesses' statements and the physical evidence at the scene, and talking to the drivers. She concluded that appellant was traveling at an unsafe speed, failed to maintain a single lane, failed to maintain a proper lookout, and failed to timely apply her brakes. She believed appellant acted recklessly.

Corporal Justin Schumann forensically mapped the crash scene. He agreed it was consistent with appellant traveling at an excessive speed and, because she did not timely apply her brakes and keep a proper lookout, veering into the oncoming traffic lane and hitting Neis.

In her first issue, appellant argues the evidence is insufficient to support her conviction because it did not establish that she acted recklessly.

In reviewing the sufficiency of the evidence, we examine the evidence in the light most favorable to the verdict to determine whether any rational trier of fact could have found the essential elements beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). This standard accounts for the factfinder's duty to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic to ultimate facts. *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). Therefore, when analyzing the sufficiency of the evidence, we "determine whether the necessary inferences are reasonable based upon the combined and cumulative force of all the evidence when viewed in the light most favorable to the verdict." *Id*. Direct and circumstantial evidence are treated equally. *Id*.

A person commits manslaughter if she recklessly causes the death of an individual. TEX. PENAL CODE ANN. § 19.04(a) (West 2011). Reckless conduct in the manslaughter context means the person "is aware of but consciously disregards a substantial and unjustifiable risk that . . . the result will occur." *Id.* § 6.03(c); *see Britain v. State*, 412 S.W.3d 518, 520 (Tex. Crim. App. 2013) ("Manslaughter is a result-oriented offense: the mental state must relate to the results of the defendant's actions."). The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint. TEX. PENAL CODE ANN. § 6.03(c). "At the heart of reckless conduct is conscious disregard of the risk created by the actor's conduct." *Trepanier v. State,* 940 S.W.2d 827, 829 (Tex. App.—Austin 1997, pet. ref'd) (quoting *Lewis v. State,* 529 S.W.2d 550, 553 (Tex. Crim. App. 1975)). Proof of a culpable mental state almost invariably depends on circumstantial evidence and may be inferred from any

facts tending to prove its existence, including the acts, words, and the conduct of the accused. *Stepherson v. State*, 523 S.W.3d 759, 763 (Tex. App.—Houston [1st Dist.] 2017, no pet.).

The charge, presented disjunctively, permitted the jury to convict appellant of manslaughter if it found she acted recklessly by (1) failing to keep a proper lookout, (2) failing to timely apply brakes, (3) failing to maintain a single lane, (4) failing to control speed, or (5) operating a motor vehicle under the influence of amphetamine and marijuana. Because alternative means for committing manslaughter were submitted to the jury, proof of any one alternative means is sufficient for conviction. *See Williams v. State*, 473 S.W.3d 319, 324 (Tex. App.—Houston [14th Dist.] 2014, pet. ref'd) (citing *Guevara v. State*, 152 S.W.3d 45, 49 (Tex. Crim. App. 2004)); *Williams v. State*, No. 14-16-00458-CR, 2017 WL 4400198, at *5 (Tex. App.—Houston [14th Dist.] Oct. 3, 2017, no pet. h.). Our role on appeal is simply to ensure the evidence reasonably supports the jury's verdict. *Williams*, 473 S.W.3d at 324.

Appellant contends she did not create an unjustified risk of danger; rather, the accident occurred by "[n]othing more than mere chance." Specifically, she argues that Chrisenberry stopped abruptly on the highway, causing her to veer to the right at the exact moment Chrisenberry veered right, and neither driver could know what the other was going to do. She contends it took the actions of both herself and Chrisenberry to "set in motion" the first and second collisions.

Appellant's argument, however, ignores the evidence that Chrisenberry was reacting to appellant's reckless actions to avoid being hit from behind. Appellant was traveling 89 mph—more than twenty miles over the speed limit—on a two-lane rural highway with only a narrow shoulder and a line of motorcycles in the oncoming traffic lane. When the first collision occurred, appellant was barreling down on Chrisenberry's vehicle, which had begun slowing down well in advance of his son's driveway. Chrisenberry's left blinker was on, signaling to any

ordinary driver that the vehicle was slowing down to make a turn. But appellant was not paying sufficient attention and could not slow down in equal measure or stop. Instead, she tried to take evasive action and slammed on her brakes one second before clipping the back of Chrisenberry's truck, which sent her skidding into the oncoming traffic lane where she struck Neis. Before the crash, witnesses saw appellant speeding down the highway, "blowing" past drivers as she passed them. And, contrary to appellant's suggestion that Chrisenberry was somehow to blame because he stopped abruptly, Chrisenberry and his wife both testified Chrisenberry did not come to a full stop until after the accident occurred. Although appellant suggests the evasive actions she and Chrisenberry took that day somehow render the evidence of her recklessness insufficient, we disagree. The investigating officers and witnesses at the scene all agreed appellant's actions caused the collision and the lead investigator testified her actions were reckless.

Finally, the jury could infer consciousness of guilt from appellant's post-crash statements (1) initially denying to paramedics that she was involved in the crash, (2) telling the trooper and the insurance company she was going about 70 mph, which is nineteen miles slower than her actual speed, and (3) telling the insurance company the road was slick and wet, which caused her to hydroplane into oncoming traffic, when other witnesses at the scene said the weather was clear and the roads were dry. From these statements, the jury could infer appellant knew she was at fault and was attempting to avoid responsibility.

Viewing the evidence in the light most favorable to the jury's verdict, we conclude the evidence was sufficient for a rational trier of fact to find beyond a reasonable doubt that appellant was aware of and consciously disregarded the substantial and unjustifiable risk of death by (1) failing to keep a proper lookout, or (2) failing to timely apply brakes, or (3) failing to maintain a single traffic lane, or (4) failing to control speed. *See Turner v. State*, 435 S.W.3d 280, 285 (Tex. App.—Waco 2014, pet. ref'd) (concluding was reasonable for jury to infer from

circumstances that defendant was aware of but consciously disregarded substantial and unjustifiable risk that his dangerously high speed could likely result in collision). We overrule the first issue.

In her second issue, appellant contends the trial court erred by failing to provide a definition of "under the influence" of amphetamines and marijuana in the jury charge.

The trial court must give the jury a written charge that includes the law applicable to the case. TEX. CODE CRIM. PROC. ANN. art. 36.14. As a general matter, definitions for terms that are not statutorily defined are not considered to be the "applicable law" under article 36.14, and it is thus generally impermissible for the trial court to define those terms in the jury instructions. *Green v. State*, 476 S.W.3d 440, 445 (Tex. Crim. App. 2015); *Kirsch v. State*, 357 S.W.3d 645, 651 (Tex. Crim. App. 2012). Consistent with the terms of article 36.14, jurors should be permitted to "freely read [undefined] statutory language to have any meaning which is acceptable in common parlance." *Green*, 476 S.W.3d at 445; *Kirsch*, 357 S.W.3d at 650. However, a trial court may define a statutorily undefined term that has an established legal definition or has acquired a technical meaning that deviates from its meaning in common parlance. *Celis v. State*, 416 S.W.3d 419, 433 (Tex. Crim. App. 2013).

Here, the term "under the influence" is not defined in the penal code. It is not part of the manslaughter statute nor is it included in the terms defined in the "Definitions" section of the penal code. *See* TEX. PENAL CODE ANN. §§ 1.07, 19.04. Thus, the trial court was correct in not providing a definition unless the term has an established legal definition or has acquired a technical meaning. *See Celis*, 416 S.W.3d at 433. Appellant has not directed us to any case which provides the phrase with a legal or technical definition that deviates from its meaning in common usage, nor have we found any. Accordingly, we conclude the trial court did not err in failing to define the term. *See Green*, 476 S.W.3d at 445 (concluding undefined statutory terms

"penetration" and "female sexual organ" are common terms that had not acquired technical meaning and should be interpreted by jury according to common usage); *Kirsch*, 357 S.W.3d at 650 (reaching same conclusion with respect to term "operate" as used in DWI statute). We overrule the second issue.

In his third and fourth issues, appellant complains the trial court abused its discretion by admitting evidence of the toxicology results that showed the presence of amphetamines and marijuana in her system. She contends the ruling violated Texas Rules of Evidence 401, 402, 403, and 702. We need not determine whether the trial court erred by admitting the evidence because even if it did, any error was harmless.

We disregard any nonconstitutional error that does not affect the substantial rights of an accused. TEX. R. APP. P. 44.2(b). A substantial right is affected when an error has a substantial, injurious effect or influence in determining the jury's verdict. *King v. State*, 953 S.W.2d 266, 271 (Tex. Crim. App. 1997). Therefore, a criminal conviction will not be overturned on nonconstitutional error if the appellate court, after examining the record as a whole, has fair assurance that the error did not influence the jury or influenced the jury only slightly. *Schutz v. State*, 63 S.W.3d 442, 444 (Tex. Crim. App. 2001).

Here, appellant was convicted of manslaughter, and jurors were given four other alternative theories under which they could find she acted recklessly. Most of the evidence at trial was related to appellant's failures to control speed, timely brake, keep a proper lookout, and stay in a single traffic lane, and as set out above, this evidence was overwhelming. We are assured that if the drug evidence influenced the jury at all, it did so only slightly. Consequently, we conclude any error in admitting the evidence was harmless. *See Delarue v. State*, 102 S.W.3d 388, 402 (Tex. App.—Houston [14th Dist.] 2003, pet. ref'd) (concluding, in intoxication manslaughter case, that any error in admitting marijuana evidence was harmless when evidence

"strongly" supported finding of intoxication, with or without marijuana evidence); *Manning v. State*, 114 S.W.3d 922, 929 (Tex. Crim. App. 2003) (Price, J., concurring) (concluding defendant in manslaughter case not harmed by admission of drug evidence because overwhelming evidence existed to support other means charged in indictment). We overrule the third and fourth issues.

In her fifth issue, appellant asserts that if this Court determines the trial court committed more than one error at trial but also found each error to be harmless in isolation, the cumulative effect of the error "may and ought to be found harmful." This is the full extent of appellant's issue, except for a cite to *Chamberlain v. State*, 998 S.W.2d 230, 238 (Tex. Crim. App. 1999). Because appellant has offered no analysis, we conclude this issue is inadequately briefed. *See* TEX. R. APP. P. 38.1(i). We overrule the fifth issue.

We affirm the trial court's judgment.

/Molly Francis/
MOLLY FRANCIS
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

LACIE DEE PARDUN, Appellant	On Appeal from the 366th Judicial District Court, Collin County, Texas
No. 05-16-00792-CR V.	Trial Court Cause No. 366-83652-2015.
THE STATE OF TEXAS, Appellee	Opinion delivered by Justice Francis; Justices Myers and Whitehill participating.

Based on the Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered November 29, 2017.