In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-16-00228-CR
NO. 09-16-00229-CR

JAMES BARRY JONES, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 75th District Court
Liberty County, Texas
Trial Cause Nos. CR32299, CR32300

MEMORANDUM OPINION

James Barry Jones pleaded guilty to two charges of aggravated assault with a deadly weapon, *i.e.*, his vehicle.[1] The jury found Jones guilty in both cases, and Jones proceeded to trial solely as to punishment.[2] The jury assessed Jones's punishment in

[1]Jones was also charged with intoxication assault in one case and intoxication manslaughter in the other, but the State dropped those charges.

[2]The cases were consolidated for trial.

each case at twenty years of imprisonment and a fine of $10,000. In two appellate issues, Jones argues that (1) the trial court abused its discretion by denying his motion for new trial because ineffective assistance of counsel rendered his guilty pleas involuntary, and (2) he was denied effective assistance of counsel during the punishment phase of the trial. We affirm the trial court's judgments.

PUNISHMENT TRIAL

Zachary Ray testified that on August 2, 2015, he was driving through Liberty County on Highway 105, and he saw a pickup truck pass him and noticed that the truck was swerving. Ray explained the truck "swerved over and went into the oncoming traffic and just stayed over there for a couple of miles and just rode." Ray testified that he flashed his lights at the truck, and the truck eventually moved over and proceeded up a hill. Ray explained that when he reached the stop sign at the intersection of highway 105 and 146, he saw the pickup and a car on the same side of the road, and he surmised that a crash had occurred. Ray testified that he pulled over to check on the occupants of the car, and although the driver eventually became responsive, the female passenger, whose side of the vehicle bore the brunt of the crash, was non-responsive.

Kevin Smith testified that on the date in question, he saw an accident that occurred when a white van, which had been sitting at the stop sign, pulled onto the

road, and a red truck came up the hill and struck the van "right in the side right door." Smith explained that when the impact occurred, "[i]t sounded like something exploded[.]" Smith testified that the truck spun around three or four times, before coming to rest, and Smith jumped out of his truck, went to the white van, and called 911. Smith testified that he saw a man on the driver's side of the van, and the man squeezed Smith's hand and asked what happened. According to Smith, as he was checking the woman on the passenger side, she coughed and then died.

Christopher Cash[3] of the Department of Public Safety testified that he was dispatched to the accident scene. Cash explained that his vehicle was equipped with a camera, which is angled toward the front of the vehicle. The video recorded by the camera on the night of the crash was admitted into evidence and played for the jury. Cash testified that he smelled "a strong odor of an alcoholic beverage" on Jones's breath, Jones's eyes were bloodshot, and Jones was evasive when Cash questioned him. Cash explained that he believed Jones was exhibiting signs of intoxication. Thirteen 6.3-ounce bottles of wine were found in the cab of Jones's vehicle. Jones declined to voluntarily provide a specimen of his breath or blood. Cash testified that

[3]Cash testified that he was currently a narcotics investigator for the Department of Public Safety, but he explained that he had previously worked as a highway patrol trooper.

he took Jones to the hospital and obtained a search warrant to have Jones's blood drawn, and he mailed the sample of Jones's blood to the DPS crime lab for analysis.

After Cash booked Jones into the Liberty County jail, he went back to the crash scene to continue investigating. Cash testified that he later returned to the crash scene to take aerial photographs using the DPS aircraft, and numerous aerial photographs were admitted into evidence. Cash explained that after investigating officers photographed the initial crash scene, including the vehicles in their resting positions, they then painted evidence on the scene using marking paint. Several photographs taken at the scene of the accident were admitted into evidence. According to Cash, "We will mark where the tires ended up. We will mark where evidence came off of vehicles. You heard me refer to an AOI. That's an area of impact. That's the area we determined two vehicles made impact." When asked how officers determine the area of impact, Cash explained that officers examine gouge marks left on the ground by metal as it hit the ground.

Cash explained that broken glass, metal, and plastic laying on the ground can also indicate where the crash occurred, as can skids and yaws.[4] According to Cash, a skid is a straight line left by a tire, which indicates heavy braking. Cash testified

[4]Webster defines "yaw" as "to deviate erratically from a course[.]" Webster's Third New International Dictionary 2647 (2002).

that there were skid marks at the scene, but they were after the area of impact, which indicates that brakes were not applied before the crash occurred. Cash explained that he also observed yaw marks after the area of impact, and that the marks came from the victim's vehicle. Cash testified that he relied upon these factors, the things Jones had told him, and evidence collected at the scene, in determining the route of travel of Jones's vehicle. According to Cash, the black box data from Jones's vehicle shows he was traveling at a speed of 67.1 miles per hour when the crash occurred, and Jones's brake was applied less than half a second before the crash. Cash explained that according to black box data, the victim's vehicle was traveling at a speed of fourteen miles per hour half a second before the crash.

Yen Jun Ho, a forensic scientist with the Texas Department of Public Safety in Houston, testified that he analyzed the blood sample taken from Jones. Ho explained that he found that Jones had 0.166 grams of alcohol in his blood, and the legal limit is 0.08. Dr. John Ralston, chief forensic pathologist for Forensic Medical, testified that he performed an autopsy on the body of the female victim. Ralston testified that the victim "died of multiple injuries due to a motor vehicle collision."

Brenda Fairchild, director for pretrial services in Liberty County, testified that she monitors interlock devices, which are attached to cars and will not allow the car to start until the defendant blows into the device and the alcohol content of his breath

is analyzed. Fairchild testified that she monitored Jones, who had an interlock device installed in his vehicle. According to Fairchild, Jones's interlock registered one violation. During cross-examination, Fairchild testified that the device was installed in September, and that as of the date of trial, Jones had only failed the interlock once. Stuart Sendelbach, area manager for Smart Start, Incorporated, which installs alcohol monitoring devices in vehicles, testified that "somebody blew a fail into [Jones's] device at .133 at 2:52 p.m. [on] December 25th, 2015."

Christian Singler, assistant fire chief for Beaumont Fire Rescue, testified that Jones was a fellow firefighter. Singler explained that Beaumont Fire Rescue's discipline review board reviewed allegations that Jones violated the rules by driving while intoxicated, and that someone died as a result. Singler testified that the board determined that Jones should be suspended for ninety days, but Jones did not lose his job. According to Singler, Jones accepted full responsibility and was sad and remorseful.

William Kelley testified that he was thirty-nine years old and worked as an elevator technician at the time of the accident. Kelley explained that he was driving his company van when the accident occurred, and the female passenger was his wife. Kelley explained that he does not remember the truck striking his van, nor does he recall seeing the truck's headlights prior to the accident. Kelley testified regarding

the extensive injuries he sustained in the accident, and he explained that he might never be able to work as an elevator technician again. According to Kelley, his children are in counseling and they "are broken." Kelley explained that he misses his wife every day, and he and the children visit the cemetery and take care of a memorial at the accident scene. Kelley testified that his wife was a wonderful wife and mother, and Jones "changed those kids' life and mine forever because he wanted to get drunk."

The jury also heard victim impact testimony from the female victim's close friends, grandmother, younger sister, stepfather who adopted her, and mother. The State rested at the conclusion of the female victim's mother's testimony. Defense counsel presented several witnesses, including Jones's former co-workers, mother, and daughter, to testify regarding Jones's character.

Jones[5] testified that he is retired after working as a fire fighter for almost twenty-four years. Jones explained that on the day of the accident, he had left Fort Worth after spending approximately a week there helping his mother, who has health problems. Jones testified that he became very depressed as he was leaving, and he

[5]At the beginning of the guilt-innocence phase, Jones's stipulations of evidence, in which he pleaded guilty in each case, were read to the jury.

met a friend and had a couple of glasses of wine. According to Jones, he then picked up more wine, including two four-packs.

Jones explained that he fell asleep, and he testified, "I just remember waking up, and there was an officer in my door. Somehow I knew what happened. I was dazed. The air bag had deployed. The officer said that I was in a wreck." Jones testified that he could see the van in front of him, and he asked the officer if everyone was okay. Jones testified that he believes he fell asleep due to a combination of exhaustion and being "very drunk."

Jones testified that he failed the test on his interlock device when he needed to move his car so his girlfriend could get her car out, and that he did not intend to leave the property. Jones stated that if the jury gave him probation, he could follow all of the terms and conditions. During cross-examination, Jones admitted that he lied to Trooper Cash when he told him how much alcohol he had consumed.

The jury assessed Jones's punishment in each case at twenty years of imprisonment and a fine of $10,000, and the trial court ordered that the sentences would run concurrently. Jones filed a motion for new trial, in which he asserted that his pleas of guilty were involuntary and that he received ineffective assistance of counsel during the punishment phase of his trial. In the motion, Jones argues that trial counsel advised him "to plead guilty prior to doing any independent

investigation into the facts of the case." Jones asserted that he was unaware that he had the option to file a motion to suppress the blood test results, and that if he had known that he could do so, "he would have insisted on hiring his own experts to evaluate the evidence and would not have relied upon the State's experts."

According to Jones, his trial counsel "failed to conduct an independent investigation of the facts, instead relying solely on information contained within the State's file[;]" failed to interview any of the state's witnesses; failed to file a motion to suppress the blood test results; failed to use experts, such as an accident reconstruction expert, blood-testing experts or black box data expert; and failed to prepare for and object to inadmissible evidence and testimony. Jones contended that if defense counsel had interviewed the surviving complainant and one of the eyewitnesses, Jones could have developed a defense of "alternate causation[.]" Jones further asserts that counsel was ineffective for failing to object to the testimony of Fairchild and Sendelbach regarding the interlock device. According to Jones, trial counsel should have objected to Singler's testimony regarding the fire department's administrative review of Jones.

Jones attached twenty-five exhibits to his motion for new trial, including his own affidavit, and requested an evidentiary hearing. In his affidavit, Jones averred that he based his decision to plead guilty upon counsel's assertions that counsel had

obtained all of the available evidence and that Jones had no legal defenses. Jones stated, "[h]ad I understood that there was information we were missing, that my lawyer could have conducted an independent investigation and that we could have consulted our own experts about the validity of the state's case, I would not have plead[ed] guilty." Jones further averred that he did not realize that "the only information my lawyer had obtained was from the [S]tate[,]" and he asserted that if he had known he could have obtained records, and retained his own experts to evaluate the blood test results and to reconstruct and evaluate the accident, he would have done so. Jones also stated that trial counsel did not inform him that he had not interviewed the witnesses, and he averred that "[a]fter learning about all of the information I did not have prior to making my decision to plead guilty, I believe that I was uninformed. I depended on my lawyer to gather all available information so that I could make an informed decision about whether or not to plead guilty." Finally, Jones averred that he did not understand that it was the State's burden to prove its case.

The trial court conducted an evidentiary hearing on Jones's motion for new trial. Jones's trial counsel testified that he met with Jones two or three days after the incident, ascertained that the case would include evidence from a blood draw, and questioned Jones about whether he had been drinking, how many drinks he

consumed, what he remembered, and the type of evidence that was recovered. According to trial counsel, everything Jones said "actually comported with what was in the [S]tate's file." Trial counsel explained that his office gathered and examined the State's evidence by downloading it online, and counsel also went to the district attorney's office to review evidence that would not be transmitted online, such as the contents of Jones's truck. Counsel testified that he believed he had everything from the district attorney's office, such as accident reports, witness statements, accident reconstruction reports, and black box reports. Counsel also testified that he went to the location of the accident three times, and he drove Highway 105 eastbound because there is a hilly area before you reach the light, and he "wanted to make sure that it didn't sneak up on you and the same thing for 105." Counsel explained:

> I drove the 105 route headed eastbound. I wanted to make sure that once you reached that little dip in the road before you hit the intersection headed east that you had a clear view of those lights. . . . Now, the way I measured it up there is well over half a mile of visibility before you hit those lights. That was troublesome to me because of obviously my conversation with [Jones,] but then I also went out there at night and I determined that you could see those lights from 8/10 of a mile out coming from both directions, headed east on 105 and headed south on 146.

Counsel testified that he did not speak with any accident reconstruction witnesses in Jones's case because an accident reconstructionist "is not going to help

you when you have two eyewitnesses see actual impact where Mr. Jones'[s] truck did not slow down one bit." Counsel explained that based upon his common sense and his legal experience, he did not believe an accident reconstructionist would have discovered new evidence. Counsel also testified that he did not provide the accident reconstruction report or black box data to any potential expert witnesses. Counsel testified that he obtained information about Kelley's injuries, and he also obtained laboratory readings of Kelley from Jones's insurance company. According to counsel, the lab report indicated that Kelley's blood contained "a slight amount of ethanol . . . but not anywhere near enough to be intoxicated." Counsel testified that Kelley's blood alcohol level was not relevant to potential causation because he read the accident report and the witness statements, and he spoke to Jones extensively. Counsel explained, "I was less impressed with the [S]tate's file than I was with the words coming out of my client's mouth."

Counsel testified that he made decisions about whether to advise Jones to plead to aggravated assault based upon his assessment of the intoxication manslaughter and intoxication assault charges, as well as the potential sentencing exposure. Counsel testified that Jones's maximum punishment for aggravated assault was twenty years, while his maximum punishment exposure for the intoxication manslaughter was thirty years. Counsel explained, "I wanted to

immediately mitigate that and get it down to the possibility of probation and I knew I could do that under an aggravated assault charge . . . and if the jury came in with 10 or less I had a shot at probation[.]"

According to counsel, he discussed with Jones the possibility of requesting documentation concerning the blood alcohol testing, but he "saw absolutely no reason to request them, and [Jones] agreed." Counsel explained that even if Jones's blood test was inadmissible, it would not change Jones's case from a legal standpoint. With respect to the affidavit for a search warrant to obtain a sample of Jones's blood, counsel testified that "the judge has every right to make rational, reasonable inferences of what is in that affidavit and then sign off on a warrant[,] and it was my legal opinion that there was enough there . . . to justify a blood draw."

Counsel explained that although he knew findings of an administrative court are not admissible, he wanted to put that information before the jury "because these were the same people who are the most supportive of [Jones]." Counsel also testified that he wanted the jury to know that Jones was remorseful about the female victim's death and was truthful with the disciplinary panel, and he explained, "It was a risk but one which [Jones] agreed to."

According to counsel, nothing in his conversation with Jones yielded any information that could have been useful in impeaching the witnesses. Counsel

testified, "There was no way that [Jones] could give me any kind of alternative reasons why these people would testify or give a statement that they did because he was asleep. He was unconscious as he rolled through that intersection." Counsel explained that after reviewing the State's evidence, he felt that "the evidence was so overwhelming . . . that I didn't have a shot at raising reasonable doubt at guilt-innocence." According to counsel, Jones always wanted to plead guilty, and counsel testified that the State agreed to proceed only on the charges of aggravated assault with a deadly weapon in exchange for Jones's pleas of guilty, which lowered Jones's punishment exposure. Counsel explained that the presence of thirteen wine bottles in Jones's truck "st[u]ck out to me, and that was part of our decision-making process of not hiring a blood analyst or an accident reconstructionist or a black box expert. There is nothing that I could do to make 13 empty bottles disappear[.]"

Attorney Mark Thiessen, a criminal attorney who frequently handles driving while intoxicated cases, testified that he reviewed information pertaining to Jones's case, including the motion for new trial, and he provided an affidavit that was attached to the motion as an exhibit. Thiessen testified that the blood analysis report from the lab "doesn't tell you anything" and "it's malpractice not to get the standard discovery motion." Thiessen explained that he obtains evidence regarding chain of custody, the curriculum vitae of everyone who has touched the sample, refrigeration

lots, the standards that they are using, and how the gas chromatograph was actually working.

According to Thiessen, the mere fact that someone is over the legal blood alcohol limit two and a half hours later does not indicate the person's blood alcohol level when he was driving. Thiessen also explained that an attorney should insure that the person drawing the blood is qualified because if the person cleans the area with ethanol, an ethanol molecule could enter the needle. Thiessen testified that the details of how the blood was drawn are significant, as is how the machine is calibrated. According to Thiessen, "There are a million ways to screw these things up. You have got to look at all of that and send it to an expert." Thiessen opined that trial counsel's failure to do so in this case is below the standard of professional conduct. Thiessen also testified that having an accident reconstructionist evaluate a scene is necessary. Thiessen opined that trial counsel should have objected to the testimony regarding the interlock device. Thiessen testified that he usually has an investigator or expert interview every witness and does not rely solely upon the contents of the State's file.

Accident reconstructionist and forensic engineer Thomas Grubbs testified that although he has not done a full accident reconstruction in Jones's case, he has reviewed materials used in the trial, including witnesses' testimony and the black

box records. Grubbs testified that the roadway is unusual because the approach to the intersection is about forty feet below the elevation of the intersection, which makes it difficult to see the lights, the stop sign, the cross traffic, and the road itself. Grubbs explained that "the stop sign disappears back behind the hill."

Grubbs testified that when Kelley's van was roughly ten feet from the stop bar, it was traveling three miles per hour, and black box data shows that Kelley did not stop as he approached the stop bar. According to Grubbs, Kelley was traveling at least three miles per hour through the stop bar. Grubbs opined that if Kelley's vehicle had completely stopped at the intersection, the accident would not have occurred. Grubbs admitted that the red blinking light is visible from half a mile away, and that the speed Jones was traveling was not reasonable and prudent for the time of night and the road conditions. In addition, Grubbs testified that Jones "ran the stop sign. No question." Grubbs opined that Kelley had a duty to yield to Jones's vehicle.

The State called attorney Whitney Kubik, a solo practitioner who frequently works from trial counsel's office. Kubik testified that she assisted trial counsel during Jones's trial, sat second chair, and was present during jury selection. Kubik explained that she was also present for some of the discussion between Jones and trial counsel regarding the consultation of accident reconstruction experts and blood

testing experts. Kubik testified that Jones did not want to hire experts, but instead "just wanted to move forward." In addition, Kubik testified that Jones was not interested in hiring an expert for purposes of filing a motion to suppress the blood testing evidence. Kubik also testified that Jones never expressed a desire to plead not guilty. At the conclusion of the hearing, the trial judge denied Jones's motion for new trial.

ISSUE ONE

In his first issue, Jones argues that the trial court abused its discretion by denying his motion for new trial because his pleas of guilty were involuntary due to ineffective assistance of counsel. We review a trial court's ruling on a motion for new trial for an abuse of discretion, "reversing only if the trial judge's opinion was clearly erroneous and arbitrary." *Riley v. State*, 378 S.W.3d 453, 457 (Tex. Crim. App. 2012). We view the evidence in the light most favorable to the trial court's ruling, must not substitute our judgment for that of the trial court, and must uphold the ruling if it was within the zone of reasonable disagreement. *Id*.; *Wead v. State*, 129 S.W.3d 126, 129 (Tex. Crim. App. 2004). A trial court abuses its discretion in denying a motion for new trial if no reasonable view of the record could support its ruling. *Riley*, 378 S.W.3d at 457; *Webb v. State*, 232 S.W.3d 109, 112 (Tex. Crim. App. 2007). "The trial court, as factfinder, is the sole judge of witness credibility at

a hearing on a motion for new trial with respect to both live testimony and affidavits." *Okonkwo v. State*, 398 S.W.3d 689, 694 (Tex. Crim. App. 2013).

When "a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel's advice 'was within the range of competence demanded of attorneys in criminal cases.'" *Hill v. Lockhart*, 474 U.S. 52, 56 (1985) (quoting *McMann v. Richardson*, 397 U.S. 759, 771 (1970)); *see Ex parte Pool*, 738 S.W.2d 285, 286 (Tex. Crim. App. 1987). "[T]he two-part *Strickland v. Washington* test applies to challenges to guilty pleas based on ineffective assistance[.]" *Hill,* 474 U.S. at 58. To establish ineffective assistance of counsel, a defendant must satisfy the following test:

> First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

Strickland v. Washington, 466 U.S. 668, 687 (1984); *see Perez v. State*, 310 S.W.3d 890, 892-93 (Tex. Crim. App. 2010).

An allegation of ineffective assistance must be firmly founded in the record, and the record must affirmatively demonstrate the alleged ineffectiveness.

Thompson v. State, 9 S.W.3d 808, 813 (Tex. Crim. App. 1999). "Appellate review of defense counsel's representation is highly deferential and presumes that counsel's actions fell within the wide range of reasonable and professional assistance." *Bone v. State*, 77 S.W.3d 828, 833 (Tex. Crim. App. 2002). An appellant must demonstrate a reasonable probability that, but for his counsel's errors, the outcome would have been different. *Id*. In addition, an appellant must demonstrate that there was no plausible professional reason for his counsel's specific acts or omissions. *Id*. at 836. "The mere fact that another attorney might have pursued a different tactic at trial does not suffice to prove a claim of ineffective assistance of counsel." *Ex parte Jimenez*, 364 S.W.3d 866, 883 (Tex. Crim. App. 2012) (footnote omitted). Courts apply the *Strickland* test by examining the totality of the representation, not counsel's isolated acts or omissions, and must apply the test from the attorney's viewpoint when he acted rather than through the prism of 20/20 hindsight. *Id*. (footnote omitted).

The record reflects that after the charging instruments were read to the jury at the beginning of the punishment trial, Jones pleaded guilty to both charges, and Jones stated on the record that he was making his plea freely and voluntarily, and that he was pleading guilty because he was in fact guilty as charged. The record also reflects that Jones agreed that he and his trial counsel had discussed the case in depth

many times. Defense counsel testified that he reviewed all of the State's evidence, personally investigated the accident site, and counsel was troubled by how visible the stop lights were from more than half a mile away, and that he based his decision about whether to advise Jones to plead guilty based upon privileged information Jones had told him, as well as the intoxication manslaughter and intoxication assault charges Jones was facing and Jones's range of potential punishment. Counsel further explained that his focus was on decreasing Jones's punishment exposure. Counsel also testified that he believed the State's evidence was so overwhelming that he would not be able to create reasonable doubt during a guilt-innocence trial, and he stated that Jones always wanted to plead guilty. Counsel explained that the plea bargain agreement, pursuant to which the State agreed to proceed only on the charges of aggravated assault with a deadly weapon in exchange for Jones's pleas of guilty, lowered Jones's punishment exposure.

Counsel articulated a sound basis for his strategy in advising Jones to plead guilty. Viewing the record in its entirety, including Jones's affidavit, the testimony of trial counsel, and the other witnesses who testified at the motion for new trial hearing, we cannot conclude that counsel's representation of Jones with regard to the decision to plead guilty fell below an objective standard of reasonableness. *See Hill*, 47 U.S. at 56; *Strickland*, 466 U.S. at 687; *Ex parte Jimenez*, 364 S.W.3d at

883; *Bone*, 77 S.W.3d at 833. Therefore, the trial court did not abuse its discretion by denying Jones's motion for new trial as to the issue of the voluntariness of Jones's pleas. *See Riley*, 378 S.W.3d at 457. Accordingly, we overrule issue one as to both cases.

ISSUE TWO

In his second issue, Jones argues that he received ineffective assistance of counsel during the punishment phase of his trial. Specifically, Jones complains of trial counsel's failure to object to the interlock evidence, allowing the State to introduce records from Jones's administrative disciplinary hearing, and trial counsel's purported "lack of investigation[,]" including failure to (1) interview any of the State's witnesses, (2) pursue reconstruction of the accident, (3) investigate the admissibility of Jones's blood test or obtain information about blood testing procedures, and (4) independently investigate Jones's guilt. Jones also complains that an accident reconstruction expert would have learned that his visibility was more limited than the victims', notes that Kelley had alcohol in his system, and concludes that "the cause of the collision becomes more difficult for an attorney to understand without the help of an expert." According to Jones, the fact that he received the maximum sentence demonstrates he was harmed by counsel's allegedly deficient performance.

As discussed above, trial counsel testified that he reviewed all of the State's evidence, interviewed Jones, and concluded that what Jones told him comported with the State's evidence. When Jones testified at trial, he admitted that he had been drinking, and he fell asleep at the wheel due to exhaustion and being "very drunk." Jones admitted that he lied to Cash about how much alcohol he had consumed. The jury heard testimony that Jones was swerving and went into oncoming traffic before the accident, Jones struck Kelley's van as it pulled onto the road, Jones displayed what Cash believed were signs of intoxication, and thirteen bottles of wine were found in the cab of Jones's vehicle. In addition, the jury heard testimony that Jones did not apply his brakes before the accident, and black box data from Jones's vehicle indicated that Jones's vehicle was traveling at 67.1 miles per hour when the crash occurred. In addition, the jury heard that the female victim died as a result of multiple injuries she sustained in the crash, and that Kelley's injuries were extensive. Furthermore, the jury heard victim impact testimony from numerous witnesses.

Assuming without deciding that counsel's performance was deficient, given the compelling evidence of Jones's conduct and its consequences, including the loss of life and injuries that occurred as a result, we conclude that Jones has failed to establish that, but for counsel's alleged errors and omissions, the outcome would have been different. *See Bone*, 77 S.W.3d at 833. Even if counsel had interviewed

the State's witnesses before trial, objected to the blood alcohol evidence or filed a motion to suppress it, obtained information about the blood testing procedures used on Jones, retained a blood expert and an accident reconstruction expert, objected to the admissibility of the evidence regarding the administrative hearing, introduced evidence that some alcohol was detected in Kelley's blood, and objected to testimony regarding the interlock evidence, the evidence was legally sufficient for the jury to have concluded that Jones should receive the maximum sentence. Jones has failed to show that, but for counsel's alleged ineffectiveness, the outcome of his punishment trial would have been different. *See Strickland*, 466 U.S. at 687; *Bone*, 77 S.W.3d at 833. We therefore overrule issue two and affirm the trial court's judgments as to both cases.

AFFIRMED.

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STEVE McKEITHEN
Chief Justice

Submitted on August 9, 2017
Opinion Delivered September 20, 2017
Do Not Publish

Before McKeithen, C.J., Kreger and Horton, JJ.