

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2008-KA-0636**
VERSUS * **COURT OF APPEAL**
JUSTIN A. YOUNG * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 467-068, SECTION "G"
Honorable Julian A. Parker, Judge

Charles R. Jones
Judge

(Court composed of Judge Charles R. Jones, Judge Dennis R. Bagneris, Sr., and Judge Roland L. Belsome)

Leon A. Cannizzaro, Jr., District Attorney
Alyson Graugnard, Assistant District Attorney
619 South White Street
New Orleans, LA 70119

COUNSEL FOR STATE OF LOUISIANA

Marion B. Farmer
404 East Gibson Street
P. O. Box 3985
Covington, LA 70434

COUNSEL FOR DEFENDANT/APPELLANT

**AFFIRMED;
REMANDED IN PART
WITH INSTRUCTIONS**

The appellant, Justin Young, appeals his twenty-five year conviction and sentence for vehicular homicide. We affirm both the conviction and sentence, and remand with instructions.

The State charged Young with vehicular homicide in the death of Daniel Evans. Young pled not guilty at arraignment, and the district court denied his motion to suppress the evidence. After a trial by jury, Young was found guilty as charged. The State filed a multiple offender bill of information alleging that Young was a second felony offender having previously been convicted of simple robbery. The district court denied his motions for new trial and judgment of acquittal in arrest of judgment. A sentencing hearing was held in which the State and defense presented testimony. Young waived all delays, and the district court sentenced him to twenty-five years imprisonment at hard labor without benefit of parole.

Subsequently, Young pled guilty to the multiple bill. The district court vacated the previous sentence and re-sentenced Young to twenty-five years at hard labor. The district court then granted Young's motion for appeal.

Stanley Wilson operates a tractor trailer for a living. He testified at trial that he awoke at approximately 2:30 a.m., after a full night's rest, and he picked up a load in Gramercy, Louisiana to transport to Gulfport, Mississippi. After traveling for approximately two hours, Mr. Wilson was on I-10 East approaching New Orleans when he observed a grey Ford Ranger pickup truck (being operated by Young) traveling in front of him. Mr. Wilson noticed the vehicle was changing lanes frequently and without any apparent purpose.

Troubled by how erratically the vehicle was being driven, Mr. Wilson slowed his vehicle and maintained a position behind the truck for some fifteen minutes until he was able to safely pass the truck.

Shortly thereafter, Mr. Wilson felt his vehicle being pushed, looked in his side view mirror, and saw that the grey truck was hung up in the fender of the tractor. Sparks were flying from the truck. The truck then became disengaged and traveled across the median. At that point, Mr. Wilson was able to regain control of the rig and bring it to a stop.

Laura Wicks testified that on the day in question she was traveling on I-10 East en route to Atlanta, Georgia. It was approximately 5:00 a.m., or a little after, and quite dark out, when her attention was momentarily drawn to a vehicle swerving around behind her. She did not pay much attention to the vehicle, a small gray pickup truck, until it came flying by her. The truck was swerving from one lane into the other, and she could tell it was destined to become involved in a collision. Just as she reached that conclusion, the pickup truck swerved into the left lane and then made an almost ninety degree turn into the side of an eighteen wheeler.

Ms. Wicks applied her brakes as she saw sparks flying from under the eighteen wheeler. Then the pickup truck disengaged from the undercarriage of the eighteen wheeler and proceeded across the highway and into the median. Ms. Wicks testified that the median was elevated in the center at this location, and the last thing she saw was the truck going over the top of the median.

Frank Bullero testified that he was traveling on I-10 West at approximately 5:00 or 5:30 a.m. The road was dry, and it was a dark morning. Mr. Bullero was talking on his cellphone with a co-worker, who was just ahead of him on the highway. During their conversation, the co-worker exclaimed that something had just crossed the interstate in front of him. Believing that an accident might have occurred, Mr. Bullero began to slow down and decided to pull his vehicle over to see if he could be of assistance. He passed a silver pickup truck on the shoulder of the road, and then observed a small white car in the middle lane of the highway. Mr. Bullero exited his car after he pulled over on the shoulder of the road, and began walking back towards the disabled vehicles. When he reached the white car, Mr. Bullero was trying to decide if he wanted to risk crossing the traffic lane to see if the occupant of the vehicle was alright, when the window rolled down, and the driver motioned briefly with his hand and stated that he was all right.

Mr. Bullero continued on to the pickup truck which was some 100 to 150 feet away. The occupants of the truck had exited. They appeared dazed and confused. Mr. Bullero got the impression that they did not know how they had come to be on that side of the interstate. At this point, Mr. Bullero heard a horrendous noise; looking back in an easterly direction, all he could see were things flying in the air. All three men ran in that direction. Mr. Bullero observed that the white car was now on the side of the road, and there was another pickup

truck on the shoulder of the road to the left of the white car. The white car had moved a considerable distance from where it had been. Although he could see that the driver was slumped over the steering wheel, it was too dark to see if he was bleeding or if he was conscious or unconscious.

Mr. Bullero and another subject who came upon the scene attempted to pry the driver's door open to the car, but they were unsuccessful. Mr. Bullero believed that approximately two to three minutes passed between when he exited his vehicle and when the second collision occurred, but he could not be sure. He estimated that perhaps one minute passed from when the initial collision occurred and when he stopped his vehicle. Mr. Bullero believed that it took approximately twenty minutes for any emergency vehicles to arrive.

Walter Radosta testified that he was traveling from Slidell on I-10 East on the morning of the incident in his red Ford Ranger pickup truck. It was a Saturday, and he was driving into work. Mr. Radosta stated that it was "pretty dark" and that his headlights were illuminated. He recalled that it seemed just like any other day driving into work.

Mr. Radosta stated that he first noticed the white vehicle when it was only five or ten feet in front of him and that as soon as he saw it, it was too late. He did not have even a second to hit the brakes. The car did not have its lights on and he just saw something white before the collision.

Mr. Radosta testified that he had slept eight hours the night before and that he had not had any alcohol to drink, which he only consumed on rare occasions. Mr. Radosta believed that he was traveling at sixty miles per hour at the time of the collision.

Detective Michael Baldassaro, a traffic fatality investigator with the New Orleans Police Department, was qualified in the field of accident reconstruction. He testified that on the morning in question, he was called out to an accident involving a vehicle on I-10 West near Bayou Sauvage. When Det. Baldassaro arrived, it was still dark. The roadway was dry and free of any defects. Detective Baldassaro assessed the accident scene and photographed the area. Through his investigation, Det. Baldassaro was able to determine that the accident began in the eastbound travel lanes of I-10 and ended up on the opposite side of the highway. From his examination of the eighteen wheeler and Young's Ford Ranger, Det. Baldassaro concluded that the two vehicles collided at an angle and that as the vehicles proceeded forward, the Ford Ranger disengaged, caught the rear tires of the eighteen wheeler, and was then shot across the median and into the west bound travel lanes of the highway where the second of the three collisions occurred. The front passenger door of the Ford Ranger actually collided with the front end of Mr. Evans' white Saturn, which rendered Mr. Evans' car inoperable. Detective Baldassaro described the damage to Mr. Evans' vehicle from this collision as moderate to heavy.

At this point, Mr. Evans' vehicle was struck by Mr. Radosta's pickup truck, which caused Mr. Evans' vehicle to travel some 300 feet before coming to rest on the side of the road. Detective Baldassaro's assessment was that Mr. Radosta was traveling at approximately sixty-five miles per hour when he collided with Mr. Evans' vehicle. There were no skid marks, indicating that Mr. Radosta did not brake before the collision.

Detective Ross Bourgeois testified that he is highly trained in being able to recognize the signs of alcohol impairment. He assisted Detective Baldassaro in

his investigation by interviewing Mr. Radosta. Detective Bourgeois testified that upon meeting Mr. Radosta, he appeared nervous but calm. Initially, he did not detect any of the signs of alcohol impairment. He then administered the horizontal gaze nystagmus and saw no signs of impairment in Mr. Radosta.

Pete Savage is a Brake Inspector for the New Orleans Police Department, ASB Fleet Services Department, and is responsible for determining whether a brake failure or other system failure is responsible for or contributes to an accident. Mr. Savage evaluated all four vehicles involved in the accident, and he did not detect any mechanical problems with any of the vehicles.

Stephanie Brisco is a senior police dispatcher for the NOPD. She testified that the first call concerning the incident was received at 5:32 a.m. on the date of the incident. A brief portion of the 911 call made by Daniel Evans was played to jury. Mr. Evans' wife, Terri Evans, identified her husband's voice on the 911 audiotape.

Officer Mike Wahl is part of the NOPD traffic fatality unit. He was qualified as an expert in the field of DWI testing and in the use of the Intoxilizer Alcohol Analyzer Model 5000.

Officer Wahl testified that when he arrived on the scene, Young was seated in the back of one of a district officer's cars. He spoke briefly with Young and smelled the odor of alcohol. He noticed that Young's eyes were glossed over and bloodshot. Officer Wahl noted that Young had that general "I've been drinking appearance."

Officer Wahl transported Young to the Crescent City Connection Police station to complete his investigation and advised Young of his rights. Young signed a form indicating he understood his rights. Also, Young indicated that he

wished to voluntarily submit to a chemical test and signed his name indicating such.

Officer Wahl began his investigation by administering the horizontal gaze nystagmus test. Young performed poorly, showing six out of six clues on the test. Next, Officer Wahl administered the walk and turn test, which Young performed well. Officer Wahl also administered the one leg stand test, which Young performed very well, showing zero clues. Officer Wahl's overall impression from the field sobriety tests was that Young was borderline intoxicated or right at the legal limit for intoxication.

Next, Wahl Officer utilized a breathalyzer to obtain Young's blood alcohol level. Young provided a breath sample, and the Intoxilizer 5000 showed a blood alcohol level of 0.0999 which is over the legal limit of 0.0800. Knowing the rate at which alcohol dissipates in the body, Detective Wahl calculated that at time of the accident, approximately two hours earlier, Young's blood alcohol level would have been 0.123.

Dr. Samantha Huber was qualified as an expert in forensic pathology. Dr. Huber performed the autopsy of Daniel Evans. Externally, Mr. Evans had numerous abrasions, scrapes, and lacerations. Additionally, Mr. Evans sustained a fracture to his upper right arm, a broken back, and a depressed fracture to his skull, which caused some internal bleeding.

Mr. Evans also sustained extensive lacerations to his liver. Because the tears were to the back side of the liver, Dr. Huber believed they were caused by the rear end collision. However, the most severe injury Mr. Evans received was a completely transected aorta. This injury was fatal. Dr. Huber could not say from

which collision the injury most likely resulted; however, she believed that a person could not function more than ten to fifteen seconds with such an injury.

A review of the record reveals one patent error. When imposing the sentence, the district court failed to impose a fine. La. R.S. 14:32.1 provides that whoever commits the crime of vehicular homicide shall be fined not less than \$1,200 nor more than \$15,000. In sentencing Young, the district court did not impose a fine as mandated by La. R.S. 14:32.1. This Court has determined that the failure to impose a mandatory fine requires that the matter be remanded for the imposition of that fine. State v. Williams, 2003-0302 (La. App. 4 Cir. 10/6/03), 859 So.2d 751, *following* State v. Legett, 2002-0153 (La. App. 4 Cir. 5/22/02), 819 So.2d 1104 and State v. Hall, 2002-1098, pp. 5-6 (La. App. 4 Cir. 3/19/03), 843 So.2d 488.

In his lone assignment of error on appeal, Young contends that the evidence was insufficient to support the conviction of vehicular manslaughter. The standard for reviewing a claim of insufficient evidence is whether, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the offense proven beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). Under that standard, the reviewing court must determine whether the evidence viewed in the light most favorable to the prosecution was sufficient to convince a rational trier of fact that all the elements of the crime were proved beyond a reasonable doubt. Id., 443 U.S. at 318-319. If rational triers of fact could disagree as to the interpretation of the evidence, the rational decision to convict should be upheld. State v. Mussall, 523 So.2d 1305, 1311 (La.1988). This standard thus “preserves the role of the jury as the factfinder in the case but it does not allow jurors ‘to

speculate if the evidence is such that reasonable jurors must have a reasonable doubt.’ ” State v. Pierre, 93-0893, p. 5 (La.2/3/94), 631 So.2d 427, 429.

Under Jackson, the totality of the evidence, both direct and circumstantial, must be sufficient to satisfy a rational juror that the defendant is guilty beyond a reasonable doubt. *See* State v. Jacobs, 504 So.2d 817, 820 (La. 1987). When circumstantial evidence forms the basis for the conviction, the totality of the evidence must exclude every reasonable hypothesis of innocence. La. R.S. 15:438. However, “[h]ypotheses of innocence are merely methods for the trier of fact to determine the existence of a reasonable doubt arising from the evidence or lack of evidence.” State v. Shapiro, 431 So.2d 372, 389 (La.1982) (*on reh'g*) (Lemmon, J., concurring). The court does not determine whether another possible hypothesis suggested by the defendant could afford an exculpatory explanation of events; rather, when evaluating the evidence in the light most favorable to the prosecution, the court determines whether the possible alternative hypothesis is sufficiently reasonable that a rational juror could not have found proof of guilt beyond a reasonable doubt under Jackson. State v. Davis, 92-1623 (La. 5/23/94), 637 So.2d 1012.

This circumstantial evidence rule is not a separate test from Jackson; rather, La. R.S. 15:438 merely “provides an evidentiary guideline for the jury when considering circumstantial evidence and facilitates appellate review of whether a rational juror could have found defendant guilty beyond a reasonable doubt.” State v. Wright, 445 So.2d 1198, 1201 (La. 1984); *See also* State v. Addison, 94-2431 (La. App. 4 Cir. 11/30/95), 665 So.2d 1224. Although the circumstantial evidence rule is not a more stringent standard than the general reasonable juror's reasonable doubt formula, “it emphasizes the need for careful observance of the usual

standard, and provides a helpful methodology for its implementation in cases which hinge on the evaluation of circumstantial evidence.” State v. Chism, 436 So.2d 464, 470 (La. 1983).

The crime of vehicular homicide is defined by La. R.S. 14:32.1, which provides 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, vessel, or other means of conveyance whether or not the offender had the intent to cause death or great bodily harm whenever any one of the following conditions exists:

- (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) 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.

The Louisiana Supreme Court has held that “under the vehicular homicide statute, the state, in order to convict, 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.” State v. Archer, 619 So.2d 1071, 1074 (La. App. 1 Cir. 1993).

Generally, with respect to causation, in State v. Kalathakis, 563 So.2d 228, 231 (La. 1990), the Louisiana Supreme Court noted:

A causal relation between the defendant's conduct and the harm for which the prosecutor seeks to impose criminal sanctions is an essential element of every crime. Causation is a question of fact which has to be considered in the light of the totality of circumstances surrounding the ultimate harm and its relation to the actor's conduct. M. Bassiouni, *Substantive Criminal Law*, §§ 5, 5.2 (1978). A defendant should not be held responsible for remote and indirect consequences which a reasonable person could not have foreseen as likely to have flowed from his conduct or from those consequences which would have occurred regardless of his conduct. *Id.*

Young contends the evidence was insufficient to establish that his conduct was the proximate cause of Mr. Evans' death. Specifically, Young suggests that Mr. Evans' decision to remain in his vehicle following the accident was an intervening cause which broke the chain of causation leading back to his conduct.

Young's argument lacks merit. It was entirely foreseeable that after being struck by the Young's vehicle, Mr. Evans' vehicle would be involved in an ensuing collision with oncoming traffic on I-10 West. Several factors contributed to the foreseeability of a secondary collision. Firstly, Mr. Evans' vehicle remained in the middle lane of I-10 East and did not come to rest on the shoulder as Young's vehicle did. Secondly, because it was still dark out and because Mr. Evans' vehicle was disabled and without lights, oncoming traffic would have difficulty seeing the vehicle, as was the case.

Furthermore, it was entirely foreseeable that a person having been involved in a front end collision at highway speeds would be disoriented and would require a few minutes or more to regain his composure and determine the most prudent course of action. Also, it is not clear that immediately exiting the vehicle would present itself as the best course of action to someone in Mr. Evans' position. Remaining in the vehicle or attempting to reach the shoulder each posed risks.

Indeed, Mr. Bullero thought twice about crossing the travel lane to check on Mr. Evans' condition.

Finally, prior to attempting to exit the vehicle, Mr. Evans would have had to determine whether the door was operable and whether he was physically capable of exiting the vehicle, which would require some time. It was also not unreasonable or unusual for Mr. Evans to have decided to phone 911 as he did. Accordingly, it was entirely foreseeable that Mr. Evans would remain in the vehicle for at least three to four minutes after the accident, and it would not have been unusual if Mr. Evans had remained in the vehicle until emergency personnel arrived.

Thus, it was not unreasonable for the jury to conclude that the State had established causation beyond a reasonable doubt. Young's claim, that because Mr. Evans decided to remain in the vehicle for a short time after the collision rather than exit his vehicle, his subsequent injuries and death were not causally related to his drunk driving, lacks merit.

DECREE

For the foregoing reasons, we remand in part, solely for the district court to impose the mandatory fine. In all other respects, the conviction and sentence of Justin Young is affirmed.

**AFFIRMED;
REMANDED IN PART
WITH INSTRUCTIONS**