Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **10th day of December, 2021** are as follows:

PER CURIAM:

2020-K-01233 ***STATE OF LOUISIANA VS. ELIZABETH TRAHAN A/K/A ELIZEBETH TRAHAN (PARISH OF VERMILION)***

REVERSED. SEE PER CURIAM.

Crichton, J., dissents.

SUPREME COURT OF LOUISIANA

No. 2020-K-01233

STATE OF LOUISIANA

VS.

ELIZABETH TRAHAN A/K/A ELIZEBETH TRAHAN

On Writ of Certiorari to the Court of Appeal, Third Circuit, Parish of Vermilion

PER CURIAM:

In 2015, applicant was involved in a tragic automobile accident, which resulted in a fatality. Applicant and her boyfriend Victor Guilamo were in a Dodge Charger, which was traveling north at 72 mph in the left lane on Highway 167 between Maurice and Abbeville. Motorcyclist Carl Johnson passed them on the right, switched into the left lane in front of them, and then braked, apparently intending to turn left across the highway median. Skid marks showed that the driver of the Charger attempted to stop. The Charger collided with the motorcycle and Mr. Johnson was killed.

Applicant was charged with vehicular homicide, La. R.S. 14:32.1.[1] A Vermilion Parish jury found her guilty as charged. The trial court sentenced her to serve 15 years imprisonment at hard labor, with all but six years of the sentence suspended, and with three years of active supervised probation.[2] At present, applicant has been released from custody and is under parole supervision.

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[1] Defendant was also charged with reckless operation of a vehicle, La. R.S. 14:99; obstruction of justice, La. R.S. 14:130.1; injuring public records, La. R.S. 14:132; and failure to give notice of her change of address, La. R.S. 32:406. She was acquitted of the charge of obstruction of justice. The State dismissed the remaining charges.

[2] Applicant faced a sentencing range of not less than five years nor more than thirty years, with or without hard labor, and with at least three years of the sentence to be imposed without benefit of probation, parole, or suspension of sentence. La. R.S. 14:32.1(B).

The court of appeal affirmed. *State v. Trahan*, 2019-873 (La. App. 3 Cir. 9/23/20), 304 So.3d 966. The court of appeal found that the evidence was sufficient to prove that applicant (rather than Mr. Guilamo) was the driver, and that defendant was impaired by drugs she had consumed and her impairment was a contributing factor to the accident. Applicant no longer contends that the State presented insufficient evidence that she was the driver, and therefore we do not describe that evidence or address that portion of the court of appeal's opinion.

Regarding whether the State proved that applicant's impairment was a contributing factor, the court of appeal acknowledged that metabolites detected in applicant's blood and urine, standing alone, did "not allow the jury to assume the defendant was impaired or that the presence of those substances was a contributing factor in the accident." *Trahan*, 2019-873, p. 24, 304 So.3d at 978. However, the court of appeal found that the jury could consider additional circumstances, such as the fact that applicant exceeded the speed limit and was unable to stop in time to avoid the accident, to conclude that drugs impaired her driving and thus contributed to the accident. *Id.*, 2019-873, pp. 24–25, 304 So.3d at 978.

Judge Saunders dissented. *Trahan*, 2019-873, pp. 1–4, 304 So.3d at 979–981 (Saunders, J., dissenting). The dissent observed that expert testimony in conjunction with evidence of behavioral manifestations of intoxication is ordinarily used to establish that a driver is impaired, and no such evidence was offered by the State in the present case:

> In cases where intoxication or drug induced impairment are a required element, expert testimony is generally used to establish the amount of a substance the defendant has in his or her system and how that amount would influence the defendant. This expert testimony is then corroborated by evidence of failed sobriety tests, slurred speech, or other visible signs of intoxication. *See State v. Dock*, 49,784 (La. App. 2 Cir. 6/3/15), 167 So. 3d 1097, 1101; *State v. Kestle*, 2007-1573 (La. 12/2/08), 996 So. 2d 275, 281.
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> The Louisiana Supreme Court has explained that "[i]n some instances, the state likely would have to introduce expert testimony concerning

> the probable physiological effects of the intoxicant ingested by the defendant, especially in a case involving a prohibited substance other than alcohol." *State v. Leger*, 2017-2084 (La. 6/26/19), 284 So. 3d 609, 616. Here, we have the type of case singled out by the Court in *Leger* ("a case involving a prohibited substance other than alcohol"). As such, I feel that the state need have introduced expert testimony on the effects of the substances in Defendant's system. This was not done. Rather, the state's expert could only testify that Defendant had detectible amounts of four types of drugs, including at least a threshold amount of THC. Further, the state's expert testified that she was unable to tell whether Defendant was under the influence of any the substances found in the test nor could she testify with certainty as to when Defendant had ingested the substances. This testimony does not carry the state's burden.
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> Moreover, Trooper Prejean never testifies that Defendant was impaired. Trooper Prejean did testify that Ms. Trahan's eyes were dilated when he saw her at the hospital. However, he did not testify that this suggested impairment nor did the state attempt to qualify Trooper Prejean as an expert. Finally, the state did not establish that Trooper Prejean had requisite knowledge, training, or experience to give a lay opinion on whether Ms. Trahan was impaired based on his observations. *State v. Friday*, 10-2309 (La.App. 1 Cir. 6/17/11), 73 So. 3d 913, *writ denied*, 11-1456 (La. 4/20/12), 85 So. 3d 1258; *State v. Stewart*, 357 So. 2d 1111 (La.1978).

Trahan, 2019-873, pp. 1–2, 304 So.3d at 979–980 (Saunders, J., dissenting). Based on lack of evidence introduced by the State, the dissent "would reverse Defendant's conviction because the state failed to carry its burden to prove that Defendant was impaired at the time of the accident and failed to prove that Defendant's impairment was a contributing factor to the victim's death." *Id.*, 2019-873, p. 4, 304 So.3d at 981 (Saunders, J., dissenting).

We agree with the dissent that a jury could not reasonably conclude from the evidence presented at trial that applicant was impaired or that her impairment was a contributing factor to the fatal accident, and therefore the conviction cannot survive appellate review under the due process standard of *Jackson v. Virginia*. "In reviewing the sufficiency of the evidence to support a conviction, an appellate court in Louisiana is controlled by the standard enunciated by the United States Supreme Court in *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)… [T]he appellate court must determine that the evidence, viewed in the light most

favorable to the prosecution, was sufficient to convince a rational trier of fact that all of the elements of the crime had been proved beyond a reasonable doubt." *State v. Captville*, 448 So.2d 676, 678 (La. 1984).

In addition, the *Jackson* standard of review does not allow a jury to speculate on the probabilities of guilt where rational jurors would necessarily entertain a reasonable doubt. *State v. Mussall*, 523 So.2d 1305, 1311 (La. 1988) (citing 2 C. Wright, *Federal Practice & Procedure, Criminal 2d*, § 467). The requirement that jurors reasonably reject the hypothesis of innocence advanced by the defendant in a case of circumstantial evidence presupposes that a rational rejection of that hypothesis is based on the evidence presented, not mere speculation. *See State v. Schwander*, 345 So.2d 1173, 1175 (La. 1978). Nonetheless, the *Jackson* standard "leaves juries broad discretion in deciding what inferences to draw from the evidence presented at trial, requiring only that jurors 'draw reasonable inferences from basic facts to ultimate facts.'" *Coleman v. Johnson*, 566 U.S. 650, 655, 132 S.Ct. 2060, 2064, 182 L.Ed.2d 978 (2012).

Applicant was charged with, and found guilty of, a violation of La. R.S. 14:32.1(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 exist and such condition was a contributing factor to the killing:
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> . . .
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> (7) The operator's blood has any detectable amount of any controlled dangerous substance listed in Schedule I, II, III, or IV as set forth in R.S. 40:964, or a metabolite of such controlled dangerous substance, that has not been medically ordered or prescribed for the individual.

While there are six other conditions under which the crime may be committed, applicant was charged under Part (A)(7) and the State's theory of the case relied on

that section alone. Thus, the State was required to establish a causal link between the metabolites of controlled dangerous substances in the applicant's system and the killing. Specifically, the State was required to present evidence that applicant's ingestion of controlled dangerous substances (as evidenced by their metabolites) was a contributing factor to the fatal accident.

This court recently addressed the "contributing factor" element of vehicular homicide in *State v. Leger*, 2017-2084 (La. 6/26/19), 284 So.3d 609. In *Leger*, the defendant became embroiled in a high-speed road rage altercation with another driver on the I-10. Over several miles, the two cars weaved between traffic while defendant attempted to pass the other driver. Ultimately, the defendant struck the other vehicle as defendant attempted to pass on the right, causing the defendant to lose control of his car. He spun out into the oncoming lane of traffic, and five people were killed in the resulting collision. A blood sample drawn about two hours after the crash showed defendant's BAC was over the legal limit at 0.1 percent.

In evaluating whether the State proved that the defendant's intoxication contributed to the fatal accident, this court emphasized that the State must prove "every element of vehicular homicide beyond a reasonable doubt," including the link between the defendant's intoxication and the victim's death:

> [T]he exact nature of the proof the state is required to submit will vary on a case-by-case basis. In some instances, the state likely would have to introduce expert testimony concerning the probable physiological effects of the intoxicant ingested by the defendant, especially in a case involving a prohibited substance other than alcohol. In other situations—perhaps where a defendant has an exorbitant BAC, loses consciousness while driving, and causes an accident as a result—proof of the BAC and associated acts would almost certainly prove sufficient.

Leger, 2017-2084, p. 11, 284 So.3d at 616.

This court ultimately concluded that the evidence was sufficient to support the vehicular homicide conviction in *Leger* because the evidence showed that the defendant had a BAC of .1 percent, proving he was intoxicated, and the fatal accident

resulted directly from the intoxicated defendant's aggressive driving behavior. Under the circumstances presented in *Leger*, it was reasonable for the jury to infer that the defendant's intoxication was a contributing factor in the fatal accident, given the common knowledge that alcohol impairs judgment and tends to increase aggressive behavior. *Leger*, 2017-2084, pp. 14–15, 284 So.3d at 618.

In the present case, chemical testing revealed the presence of amphetamine and a metabolite of marijuana in applicant's blood. It also revealed a metabolite of marijuana, a metabolite of clonazepam, and amphetamine in applicant's urine. However, the toxicologist testified that the tests only revealed the presence of these substances and not their quantities, and that it was impossible to determine how much of the substances applicant had ingested, when she had ingested them, or whether she was impaired at the time of the accident based on the chemical tests. According to applicant, she took clonazepam, which she is prescribed, the evening before the accident, she smoked marijuana at around 5 a.m. on the morning of the accident, and she had taken Mr. Guilamo's Adderall at an unspecified time earlier that day. The accident occurred at around 2:30 p.m. There was no expert testimony concerning the probable physiological effects of the substances ingested by applicant. In contrast with *Leger*, there is also no indication applicant was driving erratically or aggressively before the accident, or that she exhibited any behavioral manifestations of impairment after the accident.

The State contends that the following is compelling evidence that applicant's drug ingestion caused her to become impaired and that her impairment was a contributing factor. Specifically, applicant exceeded the posted speed limit by 7 mph and her pupils were dilated. However, as noted above, there was no testimony that applicant exhibited any behavioral signs of intoxication. Noteworthy is that the state trooper investigating the accident did not perform a field sobriety test on the defendant at the time of the accident or at any time thereafter. Furthermore, the State

presented no evidence from which impaired driving could reasonably be inferred from dilated pupils, and the manner in which applicant was driving was not unusual. Therefore, we agree with Judge Saunders that the State failed to carry its burden to prove that applicant was impaired at the time of the accident and failed to prove that applicant's impairment was a contributing factor to the victim's death.

Based on the evidence presented by the State at this trial, the jury could only speculate—from metabolites detected in applicant's blood and urine—that she was impaired or that her ingestion of controlled dangerous substances was a contributing factor in the tragic accident. Therefore, due process requires reversal of this vehicular homicide conviction. *See Jackson v. Virginia*, 443 U.S. at 314, 99 S.Ct. at 2786 ("a conviction based upon a record wholly devoid of any relevant evidence of a crucial element of the offense charged is constitutionally infirm"). Because a rational trier of fact could not reasonably conclude, without speculating, that applicant's ingestion of controlled dangerous substances was a contributing factor to the fatal accident, applicant is entitled to an acquittal under *Hudson v. Louisiana*, 450 U.S. 40, 101 S.Ct. 970, 67 L.Ed.2d 30 (1981). Accordingly, we reverse the ruling of the court of appeal, vacate applicant's conviction and sentence for vehicular homicide, and enter a judgment of acquittal.

REVERSED