

AFFIRMED; Opinion Filed November 30, 2017.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-16-01244-CR

**CONNIE SUE CASON, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the 416th Judicial District Court
Collin County, Texas
Trial Court Cause No. 416-81707-2016**

MEMORANDUM OPINION

Before Justices Lang, Brown, and Whitehill
Opinion by Justice Lang

Following a plea of not guilty, appellant Connie Sue Cason was convicted by a jury of two counts of manslaughter. Punishment was assessed by the jury at fifteen years' imprisonment for each count.

In her sole issue on appeal, appellant contends the evidence is insufficient to support the requisite mental state element of recklessness. We decide against appellant on her issue. The trial court's judgment is affirmed.

I. FACTUAL AND PROCEDURAL CONTEXT

The indictment in this case alleged in part that on August 25, 2013, appellant recklessly caused the deaths of two individuals, Dale and Laura Thomas, by striking a motor vehicle operated by Dale Thomas and occupied by Laura Thomas. Specifically, the indictment stated appellant acted by (1) "operating a motor vehicle and by failing to maintain a single lane," (2)

“operating a motor vehicle and by failing to control the motor vehicle,” (3) “operating a motor vehicle and by failing to timely apply brakes,” (4) “operating a motor vehicle and failing to stay awake while operating the motor vehicle,” (5) “operating a motor vehicle and by failing to keep a proper lookout for another motor vehicle,” (6) “operating a motor vehicle after introduction of a controlled substance into the body, namely: amphetamine and methamphetamine,” and (7) “operating a motor vehicle after introduction of a drug into the body, namely: Divalproex, and Quetiapine, and Acetaminophen, and Hydrocodone, and Clonazepam, and Cyclobenzaprine, and Cymbalta.”

At trial, Sam Tullock testified that on the morning of August 25, 2013, he was driving to church with his wife, Kathy. As they drove across the bridge over Lake Lavon, they rounded a curve and saw “the last part of the impact” of a collision involving a pickup truck and a large SUV. Tullock stated the pickup truck was in the “appropriate” lane and “pretty near the railing on the bridge” and the SUV was “in the wrong lane of traffic.” The two vehicles were “still in motion” and it appeared to him the SUV was “pushing” the truck toward the railing. There was “smoke or vapor coming up from the vehicles.” Tullock stopped his vehicle and he and Kathy called 9-1-1, then “went up to the truck to see if we could be of any help to the folks that were injured.” Tullock stated the driver of the truck was still conscious, but did not speak and was clearly “in a great deal of pain.” The Tullocks stayed on the scene until paramedics arrived.

Michelle Reynolds testified that on the morning in question, she was driving to the grocery store. As she crossed the bridge over Lake Lavon, she was traveling behind a red SUV that was being driven by appellant. Reynolds’s vehicle and the SUV were both traveling at approximately sixty miles per hour, which is the posted speed limit for that road. While on the bridge, the SUV “started to veer towards the center line, going into the oncoming traffic.” Reynolds stated that when the SUV did not “come back,” she “started to get really concerned,

seeing the oncoming traffic, the truck coming up.” According to Reynolds, after the SUV “got fully into that lane,” the SUV and the oncoming truck both began moving “over towards the guardrail,” then collided. She stated the truck was unable to avoid the collision because if it had veered “the other way,” it would have run into oncoming traffic, i.e., her vehicle. She stated the SUV did not slow down or attempt to swerve back into the proper lane. Further, Reynolds testified she saw nothing in the roadway that “would have been the cause for veering to the left” and did not hear any sound indicating a tire blow-out. Reynolds stopped her vehicle and called 9-1-1, then remained at the scene until the drivers of the vehicles had been transported by paramedics.

On cross-examination, Reynolds testified she had been driving behind the SUV for approximately eight miles before the collision occurred and appellant’s driving was “normal” during that time. Further, Reynolds stated that before reaching the bridge, she saw the SUV properly navigate a turn and did not notice any “weaving within the lane or anything.”

David Fischer testified that on the date of the incident in question, he was a paramedic with the Branch Volunteer Fire Department. He arrived at the scene described above at approximately 9:20 a.m. He observed that a “major accident” had occurred involving two vehicles, “an SUV sideways in the road and a pickup against the guardrail.” There was a woman lying on the ground next to the SUV with one leg “propped up inside the driver’s door.” A bystander stood near the door of the pickup. Fischer approached the SUV first because it was closest to him. He spoke with the woman on the ground, who was conscious and coherent. He “did a quick assessment of her leg” and did not see any “apparent life-threatening injuries” as to that woman. Then, he went to the pickup. Fischer testified he helped extricate a man from the pickup and get him into an ambulance. The man was “alert to pain” and “moaning and groaning,” but could not speak. Fischer stated there was also a female passenger in the pickup,

who was assessed as having no pulse or breathing. Numerous photographs of the scene were admitted into evidence and published to the jury. Further, several other paramedics testified respecting (1) the treatment of the parties' injuries at the scene and (2) the transporting of Dale Thomas and appellant from the scene by helicopter.

Alvin Shields testified that at the time of the incident in question, he worked as a paramedic for Patrolling Helicopters Incorporated. He arrived by helicopter at the scene described above and was directed to an ambulance containing appellant. Shields testified he completed a written form document at that time based on statements by appellant. As to "how the crash could have occurred," Shields wrote on that document that appellant told him she had fallen asleep.

Shannon Thomas testified he is a senior corporal trooper with the Texas Department of Public Safety. On the date of the incident in question, he was dispatched to the scene and arrived at approximately 9:54 a.m. Two medical helicopters were in the process of landing. After Dale Thomas and appellant were loaded onto the helicopters, Trooper Thomas examined and photographed the scene. He stated the tires on appellant's vehicle were "operative and intact," appellant's vehicle was on "the wrong side of the road," and there was no evidence appellant had applied the brakes prior to the collision. Trooper Thomas testified it was clear to him the SUV was "at fault."

During his investigation of the scene, Trooper Thomas received a telephone call from Medical Center of Plano ("MCP"), the facility to which Dale Thomas and appellant had been airlifted. After receiving that call, Trooper Thomas immediately proceeded to MCP. When he arrived, emergency room personnel told him Dale Thomas had died. Trooper Thomas located appellant, who was being treated in the emergency room. He stated he attempted to ask appellant how the crash had occurred and give her an opportunity to make a statement, but she was not

able to respond due to her medical state. While at MCP, Trooper Thomas spoke with appellant's mother, Carolyn Hartsfield. Hartsfield gave him prescription bottles containing medications prescribed to appellant, which Trooper Thomas photographed. Copies of those photographs were admitted into evidence and published to the jury.

Collin County Medical Examiner William Rohr testified he has specialized knowledge in controlled substances such as methamphetamine, a "central nervous system stimulant." According to Rohr, (1) at high enough concentrations, methamphetamine can "sort of stimulate somebody and keep them awake," and (2) at any level, it can make the user more prone to "poor judgments" and "risk-taking behavior." Further, Rohr stated methamphetamine can produce insomnia, followed by "extreme fatigue" as the drug wears off. Additionally, Rohr testified that several of the drugs described above for which appellant had prescriptions "have a clinical effect of sedation."

Hartsfield testified that at the time of the incident in question, appellant was living with her. She stated appellant had "some medical issues," including "a hard time sleeping," and was taking multiple medications prescribed by a family doctor and a psychiatrist. Further, Hartsfield testified in part,

Q. At the time all this happened, you were concerned about your daughter's methamphetamine use, correct?

A. I was afraid that if she was around the people that did it, she would start doing it.

Q. And she had, correct?

A. Twice.

Q. Twice. That she admitted to you, correct?

A. Correct.

Q. You had seen the signs, correct?

A. I noticed that she was exhausted when she would come home and go straight to bed.

Additionally, Hartsfield testified that on each of the two nights preceding the collision in question, appellant had stayed out all night.

Valerie Rahn testified she was working as an emergency room nurse at MCP on the date in question. When appellant arrived at the emergency room, Rahn gathered basic information from appellant and completed a written form document. Rahn testified the form completed by her stated in part as follows: “50-year-old female that says the driver fell asleep, altered level of consciousness, positive loss of consciousness.” Further, as to medications appellant was on, Rahn wrote “unknown,” followed by the phrase “whole bunch,” which phrase was enclosed in quotation marks. Additionally, Rahn stated appellant’s blood sugar level was tested because “low blood sugar could cause an altered level of consciousness.” Rahn testified the results of that test did not show a low blood sugar level.

Robert Hardin, an emergency room nurse at MCP, testified he provided treatment to appellant when she arrived at MCP on the date in question. In connection with that treatment, he completed various written forms at that time. He testified an entry made by him on one of the forms stated as follows: “Patient stated that she had taken crystal methamphetamine earlier that morning.”

Paul Clair testified he is a physician assistant in the MCP emergency room. He stated that when appellant arrived at MCP on the date in question, she had dilated pupils, which can result from head trauma or “suggest ingestion of some kind of stimulant.” A CT scan was performed on appellant and the results showed “[n]o bad head injury.”

Texas Department of Public Safety trooper John Hamilton testified he is certified as a drug recognition expert. He stated he reviewed appellant’s medical records in this case and they “indicate stimulant use.” According to Hamilton, the introduction of methamphetamine into a

person's body, even if it "does not rise to the level of intoxication," can affect their ability to safely operate a motor vehicle. Further, he stated the same is true for several of appellant's prescribed medications. Additionally, Hamilton stated that the use of a depressant, stimulant, or narcotic prior to operating a motor vehicle could be reckless, even if it does not rise to the level of intoxication.

Dr. John Saad testified he treated appellant at the MCP emergency room on the date in question. With respect to appellant's dilated pupils, Saad stated that because the CT scan was negative and none of appellant's listed medications would cause such dilation, "that left the likelihood of some sort of stimulant use." Also, he stated appellant's medical records showed no history of seizures or diabetes. Numerous medical records of appellant were admitted into evidence. On cross-examination, Saad testified certain disorders that appellant has been diagnosed with, including lupus and depression, can cause fatigue.

Diane McClurg testified she is MCP's lab director. She stated a urine test conducted at MCP on the date in question showed appellant's urine tested positive for amphetamine. Further, McClurg stated (1) the metabolizing of methamphetamine produces amphetamine and (2) the testing instrument "does not distinguish between amphetamine and methamphetamine."

Dr. Howard Smith testified he is a psychiatrist and has been treating appellant for more than a decade. At the time of the incident in question, he had prescribed appellant multiple medications, including Depakote, Seroquel, Klonopin and Cymbalta, several of which can have "sedating side effects." He stated he had not advised appellant not to drive, but usually advises patients "to evaluate how they're responding to medications before operating a motor vehicle." Smith testified appellant had told him she suffered from insomnia. According to Smith, a person with insomnia can have "daytime somnolence," which means they can be tired during the day because they did not get a good night's sleep. Further, he stated that if a person suffering from

insomnia used methamphetamine to keep them up all night, it is “a likely outcome” that they “would be crashing and more tired the next morning.” Additionally, Smith testified that at appellant’s appointment on September 30, 2013, she told him as follows respecting the incident in question: (1) “she had fallen asleep at the wheel, or she had pulled over prior to that”; (2) “[s]he was feeling tired, wasn’t able to sleep, decided to drive anyway, and hit a truck head on”; and (3) “she had smoked methamphetamine earlier that evening.”

On cross-examination, Smith testified appellant’s diagnoses include “bipolar disorder, with a history of psychotic features, as well as fibromyalgia, lupus, [and] migraine headaches.” He stated that during her “times of psychotic episodes or manic episodes,” he would not consider her a “reliable historian.”

After the State rested its case, appellant presented the testimony of Dr. Jimmie Valentine. Valentine stated his area of expertise is clinical pharmacology and toxicology. He testified that the positive result for amphetamine in the urine test described above does not necessarily show use of methamphetamine. Also, he stated other substances can cause “false positives” for amphetamine. Further, Valentine testified studies of methamphetamine have shown it can increase focus and attention and those effects can last eight to twelve hours.

Following closing argument and deliberations, the jury found appellant guilty as to both counts of manslaughter and assessed punishment as described above. Appellant filed a timely motion for new trial, which was overruled by operation of law. This appeal timely followed.

II. SUFFICIENCY OF THE EVIDENCE

A. Standard of Review

In reviewing the sufficiency of the evidence, we consider all evidence in the light most favorable to the jury’s verdict and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S.

307, 319 (1979); *Acosta v. State*, 429 S.W.3d 621, 624–25 (Tex. Crim. App. 2014); *Brooks v. State*, 323 S.W.3d 893, 895 (Tex. Crim. App. 2010). We are required to defer to the factfinder’s credibility and weight determinations because the factfinder is the sole judge of the witnesses’ credibility and the weight to be given their testimony. *Ramseur v. State*, No. 05-16-01303-CR, 2017 WL 4930379, at *2 (Tex. App.—Dallas Oct. 31, 2017, no pet.) (mem. op., not designated for publication) (citing *Jackson*, 443 U.S. at 326). “When the record supports conflicting inferences, we presume the factfinder resolved the conflicts in favor of the verdict and therefore defer to that determination.” *Holloway v. State*, Nos. 05-16-00069-CR & 05-16-00095-CR, 2017 WL 3097628, at *2 (Tex. App.—Dallas Jul. 21, 2017, no pet.) (mem. op., not designated for publication) (citing *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007)). The standard of review is the same for direct and circumstantial evidence cases. *See, e.g., Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010). Further, circumstantial evidence is as probative as direct evidence in establishing the guilt of an actor. *Id.*; *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007).

B. Applicable Law

A person commits manslaughter if he recklessly causes the death of an individual. TEX. PENAL CODE ANN. § 19.04 (West 2011); *Ashorali v. State*, Nos. 05-06-01476-CR, 05-06-01477-CR, & 05-06-01478-CR, 2008 WL 726202, at *7 (Tex. App.—Dallas Mar. 19, 2008, pet. ref’d) (not designated for publication). Manslaughter is a “result of conduct crime” in which recklessness must go to the conduct causing the death. *Ashorali*, 2008 WL 726202, at *7; *see Britain v. State*, 412 S.W.3d 518, 520 (Tex. Crim. App. 2013); *Schroeder v. State*, 123 S.W.3d 398, 400–01 (Tex. Crim. App. 2003). “Recklessly” is defined as follows:

A person acts recklessly, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard

constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

PENAL CODE § 6.03(c). The jury's determination of a culpable mental state is usually grounded upon inferences drawn from the attendant circumstances and may be inferred from the acts, words, and conduct of the accused. *Ashorali*, 2008 WL 726202, at *7; see *Robledo v. State*, 126 S.W.3d 150, 155 (Tex. App.—Houston [1st Dist.] 2003, no pet.).

C. Application of Law to Facts

Appellant contends the evidence is insufficient to support the reckless mental state element of manslaughter because “[t]here is no evidence to support that [appellant] was aware of but consciously disregarded a substantial and unjustifiable risk that the circumstances existed for her to lose control of her vehicle or the result of losing control of her vehicle and hitting another would occur.” Specifically, appellant argues in part (1) she “fell asleep or dozed at the wheel”; (2) “there is nothing to show that [she] knew that she was going to fall asleep and cross into the oncoming lane of traffic”; (3) “it is very unclear what happened with the appellant when her SUV veered into the oncoming truck”; and (4) “if the evidence failed to show what actually caused the accident, it certainly doesn’t show that she was aware that there was a risk and consciously disregarded it.”

The State responds in part (1) it “did not have to prove that appellant knew she would fall asleep and cross into oncoming traffic,” but “only had to prove that appellant knew there was a risk she would do so,” and (2) the jury “could have rationally concluded beyond a reasonable doubt that appellant was aware of and consciously disregarded the substantial and unjustifiable risk that she would kill someone by operating a motor vehicle after ingesting drugs and a controlled substance and failing to stay awake.”

The record shows (1) when questioned by a paramedic at the scene as to the cause of the collision in question, appellant told the paramedic she had fallen asleep; (2) the form completed

by Rahn in the emergency room stated in part, “50-year-old female that says the driver fell asleep”; (3) approximately one month after the collision, appellant told Smith “she had fallen asleep at the wheel, or she had pulled over prior to that”; “[s]he was feeling tired, wasn’t able to sleep, decided to drive anyway, and hit a truck head on”; and “she had smoked methamphetamine earlier that evening”; (4) Rohr stated methamphetamine can produce insomnia, followed by “extreme fatigue” as the drug wears off; (5) Hartsfield testified appellant had admitted to methamphetamine use on two prior occasions and had stayed out all night on each of the two nights preceding the collision; and (6) when Hartsfield was asked whether she had “seen the signs” that appellant was using methamphetamine, she answered, “I noticed that she was exhausted when she would come home and go straight to bed.” On this record, we conclude the evidence is sufficient to support a finding beyond a reasonable doubt that appellant, as alleged in the indictment, recklessly caused the deaths of two individuals by “operating a motor vehicle and failing to stay awake while operating the motor vehicle.” See PENAL CODE §§ 19.04, 6.03(c); *Ashorali*, 2008 WL 726202, at *7 (jury’s determination of culpable mental state may be inferred from acts, words, and conduct of accused); see also *Porter v. State*, 969 S.W.2d 60, 63–64 (Tex. App.—Austin 1998, pet. ref’d) (concluding evidence was sufficient to support conviction for manslaughter where defendant who drove into oncoming traffic during early morning hours had used methamphetamine during preceding night and had acknowledged prior to collision that he was “very much fatigued” and should not be driving).

We decide appellant’s issue against her.

III. CONCLUSION

We decide against appellant on her sole issue. The trial court's judgment is affirmed.

/Douglas S. Lang/
DOUGLAS S. LANG
JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

CONNIE SUE CASON, Appellant

No. 05-16-01244-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 416th Judicial District
Court, Collin County, Texas

Trial Court Cause No. 416-81707-2016.

Opinion delivered by Justice Lang, Justices
Brown and Whitehill participating.

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

Judgment entered this 30th day of November, 2017.