Opinion issued August 11, 2011

In The

Court of Appeals

For The

First District of Texas

NOS. 01-10-00251-CR, 01-10-00252-CR

RONALD ANTHONY LEBLANC, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 239th District Court
Brazoria County, Texas
Trial Court Case No. 58,935, Counts 1 & 2

MEMORANDUM OPINION

A jury found appellant, Ronald Anthony Leblanc, guilty of the offense of manslaughter[1] and assessed his punishment at confinement for seven years. In the

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[1] *See* TEX. PENAL CODE ANN. § 19.04 (Vernon 2011); Trial court cause no. 58,935, count 1; Appellate cause no. 01-10-00251-CR.

same proceeding, the jury also found appellant guilty of the offense of aggravated assault,[2] assessed his punishment at confinement for ten years, and recommended that the sentence be suspended and appellant be placed on community supervision. In four points of error, appellant contends that the evidence is legally insufficient to support his convictions and, in regard to his manslaughter conviction, the trial court erred in admitting evidence concerning the presence of cocaine metabolites and marijuana in his blood, the effects of cocaine "withdrawal," and the presence of marijuana in his truck.

We affirm.

Background

Texas Department of Public Safety ("DPS") Trooper J. Strawn testified that on September 3, 2008, he was dispatched to a "major crash" on FM 523. Upon arrival at the scene, he saw that an eighteen-wheeler truck, a pickup truck, a passenger car, and a green Honda sedan had been involved in a collision. Strawn noted that Michael Jarmin, a police officer, was "pinned underneath" the "cab of the eighteen-wheeler" and Paul Delcambre, the driver of the pickup truck, was dead. Strawn explained that the area surrounding the collision was flat and "pretty open" and the road had an "improved shoulder," wide enough for a passenger car,

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[2] *See id*. § 22.02 (Vernon 2011); Trial court cause no. 58,935, count 2; Appellate cause no.01-10-00252-CR.

but not for an eighteen-wheeler. As part of Strawn's investigation, he performed a search of the cab of the eighteen-wheeler, which appellant had been driving, where he found a small amount of marijuana inside a "Skoal can."

Chrissie Toner testified that on September 3, 2008, she saw the collision when she was stopped at "road construction" on FM 523. She explained that there were cars stopped on both sides of the road when she saw the eighteen-wheeler "coming down" the road from the opposite direction, "veer[] over a little bit [from its lane] and then veer[] back [into its lane]." She explained that after the eighteen-wheeler had crossed approximately "halfway" into the north lane of traffic, it went back into its lane and then turned over onto its side, hit the car in front of it, and turned over. Toner noted that two police officers had been directing traffic and she had seen warning signs as she approached the construction area.

Larry Lee Nunn, II, testified that while he was driving down FM 523, he came upon the construction zone, which had been marked with orange triangle signs, and he saw a police officer with a stop sign. Approximately one minute after Nunn came to a complete stop, a pickup truck pulled up behind him and came to a complete stop. Shortly thereafter, he saw the police officer, who had a "surprised look" on his face, run to his left towards a ditch, when Nunn felt an impact. The impact caused his car to spin around, and, when he came to a stop, Nunn saw a pickup truck in a ditch and the eighteen-wheeler on its side.

DPS Trooper R. Peck testified that on September 3, 2008, he went to the hospital to which appellant had been taken after the collision to speak with him. Appellant agreed to provide Peck with a voluntary blood specimen and a statement concerning the collision. In his statement, appellant explained that while driving his truck down FM 523, he bent over to pick up a drink and, when he looked up, he saw brake lights and swerved to miss the car in front of him.

Joseph Hinton, an accident reconstruction expert, testified that he collected forensic data from the scene of the collision including measurements, the location of the cars involved, the coefficient friction of the roadway, warning signs, tire marks, and the point of impact. From such data, Hinton can determine if a driver that caused a collision was "afforded a distance in which to be able to prevent an accident, i.e., known as [the] zone of preventability." Based on the data and conditions of the collision scene, Hinton opined that appellant needed 380.6 feet to perceive, react, and stop his eighteen-wheeler in order to prevent the collision by braking, and he noted that there was no indication of braking prior to impact. Hinton opined that appellant could have also prevented the collision by "steering and evading," by swerving to avoid "clipping" the cars in front of him. Hinton explained that this could have been done at 155.25 feet, or in 1.76 seconds. Hinton further opined that appellant had failed to properly steer, brake, and control his speed.

Alvaris Jackson, Jr., a Texas Department of Transportation ("TxDOT") construction inspector, testified that as part of his duties, he inspects construction and roadwork zones for proper placement of warning signs. In doing so, he performs a "ride through" where he drives from one end of the constriction zone to the other to "make sure all the signs are out and in position." On September 3, 2008, he arrived at the construction site on FM 523 and performed a "ride through." Jackson noted that there were at least six signs at the job site, three on each end, consisting of a "roadwork sign," a "flagman ahead sign," and a "picture sign." After ensuring that the signs were properly set out, he spoke with the foreman about the job, equipment, and materials. Jackson explained that he remained on the site for the entire day and he performed a "ride through" approximately every twenty minutes to check the signs. While sitting "off to the side" of the site, he saw a cloud of dust and an eighteen-wheeler on its side. Jackson contacted emergency assistance, and, after "checking out" the scene of the collision, he performed another "ride through," where he found all of the signs in place.

David Cubine, a TxDOT contract maintenance inspector, testified that on September 3, 2008, he went to the job site on FM 523 after learning that a collision had occurred. Cubine explained that because the speed limit on FM 523 is sixty miles per hour, the minimum distance between the roadwork signs is 500 feet.

When Cubine arrived at the job site, he measured the distance between the signs and found they were spaced over 500 feet apart and there were four roadwork signs on each side of the construction zone.

Mike Manes, the laboratory director for the Brazoria County Sheriff's Office, testified that after he received a specimen of appellant's blood, which had been taken from appellant at the hospital following the collision, he initially tested it for the presence of alcohol, amphetamines, cocaine, benzodiazepine, opiates, and marijuana. The testing revealed the presence of benzoylecgonine, the primary metabolite of cocaine. According to testing protocol, Manes performed a second test that confirmed that appellant's blood specimen did indeed contain benzoylecgonine in approximately 1.28 milligrams per liter. Manes noted that this is a "moderate amount" and "shows a recent history of consuming cocaine."

Manes explained that when an individual ingests cocaine, the body metabolizes the cocaine into benzoylecgonine before eliminating it. Benzoylecgonine has an approximate half-life of four and one-half hours to five hours, but the time can "vary quite a bit individual to individual." Cocaine, the parent drug of benzoylecgonine, has a half-life from anywhere to "as little as a half hour or less" to two or three hours; however, like benzoylecgonine, it "varies widely [from] individual to individual." Manes noted that the term "half-life" is a measure of time in which a certain amount of a narcotic starting in an individual's

body is half eliminated. Although he could determine the "quantification" of the cocaine metabolite in appellant's blood specimen, Manes could not determine the exact time that appellant had consumed cocaine. He could state only that "generally speaking," based on the half-life, appellant had consumed cocaine within three days prior to the collision. Manes opined that based on the blood specimen, cocaine was not present in appellant's system when the blood sample was obtained because the parent drug, cocaine, was not detected. He noted that if a person ingests cocaine, there would not be any "active drug" in their system three days later, and, "in that case, there would be no physiological or pharmacological effect on the individual at that point in time." Manes stated that it is "fair to say" that appellant was not under any pharmacological influence as a result of cocaine usage at the time of his blood draw because Manes did not detect cocaine in appellant's blood specimen.

Manes further explained that cocaine is a stimulant that has a "profound psychological withdrawal" effect. "When the concentration of the parent drug starts going down in the body, then the craving desire for the drug starts." Withdrawal can cause "cravings," "physical fatigue to become more pronounced," and "other changes in mood, behavior," including depression, agitation, and aggressiveness. However, Manes explained that all he could testify to in this specific case "is the concentration of the drug metabolite in the blood"; he could

not "associate a generalized statement of behavior" to appellant based on his analytical data. Manes also did not have any evidence to opine as to whether or not appellant's ingestion of cocaine "had any effect at all upon his driving."

Paul Van Dorn, a chemist/crime lab director at the Brazoria County Sheriff's Office, testified that appellant's blood contained cocaine metabolite and "THC," a "pharmacologically active compound in marijuana." Van Dorn noted that THC can remain in one's blood from one to three days, but there is no definite time that THC remains in the blood. Van Dorn explained that he had no way to determine the pharmacological effect of "this small amount of THC" on one's body. His screening only showed the presence of THC, it did "not show intoxication as a result of the ingestion of marijuana." Van Dorn also inspected the substance found in appellant's eighteen-wheeler and confirmed it was marijuana in the amount of 0.8059 grams.

Sufficiency of the Evidence

In his first point of error, appellant argues that the evidence is legally insufficient to support his manslaughter and aggravated assault convictions because the State failed to prove that he was aware of and consciously disregarded the risk created by his conduct, which ultimately caused the collision. He asserts that he was not "consciously aware of any risk until he struck the vehicles in front

of him." He further asserts that he "did not perceive the risk until the accident occurred and it was too late to prevent it."

We review the legal sufficiency of the evidence "by considering all of the evidence in the light most favorable to the prosecution" to determine whether any "rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 318–19, 99 S. Ct. 2781, 2788–89 (1979). Evidence is legally insufficient when the "only proper verdict" is acquittal. *Tibbs v. Florida*, 457 U.S. 31, 41–42, 102 S. Ct. 2211, 2218 (1982). Our role is that of a due process safeguard, ensuring only the rationality of the trier of fact's finding of the essential elements of the offense beyond a reasonable doubt. *See Moreno v. State*, 755 S.W.2d 866, 867 (Tex. Crim. App. 1988). We give deference to the responsibility of the fact finder to fairly resolve conflicts in testimony, to weigh evidence, and to draw reasonable inferences from the facts. *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007). However, our duty requires us to "ensure that the evidence presented actually supports a conclusion that the defendant committed" the criminal offense of which he is accused. *Id.*

Here, appellant stood accused by indictment of committing the offense of manslaughter by "recklessly" causing the death of Paul Delcambre by causing his truck to collide with the car driven by Delcambre by failing to heed warning signs

indicating that he be prepared to stop and not stopping his truck, driving his truck while he had cocaine and marijuana in his body, failing to maintain a proper lookout, failing to control the speed of his truck, failing to properly steer his truck, and failing to properly apply his brakes. *See* TEX. PENAL CODE ANN. § 19.04 (Vernon 2011). Appellant also stood accused of committing the offense of aggravated assault by "recklessly" causing serious bodily injury to Officer Jarmin by driving a motor vehicle and failing to maintain a proper lookout and failing to heed warning signs to be prepared to stop. *See id.* § 22.02 (Vernon 2011). In regard to the culpable mental state of recklessness, the trial court instructed the jury that:

> 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.

See id. § 6.03(c) (Vernon 2011).

When recklessness is an element of an offense, the indictment must allege, with reasonable certainty, the act or acts relied upon to constitute recklessness. TEX. CODE CRIM. PROC. ANN. art. 21.15 (Vernon 2010). When a charge to a jury contains several disjunctive means of recklessness, the jury's verdict will not be reversed for insufficiency of the evidence if the evidence is sufficient to establish

at least one of the alternative means. *Hooper v. State*, 214 S.W.3d 9, 14 (Tex. Crim. App. 2007); *see Brooks v. State*, 990 S.W.2d 278, 283 (Tex. Crim. App. 1999); *Hathorn v. State*, 848 S.W.2d 101, 108 (Tex. Crim. App. 1992).

Here, appellant asserts that there is "no evidence which substantiates a finding that [he] was aware of the risk [of his conduct] or that he consciously disregarded it." He further asserts that his "recognition of what was in front of him occurred too late for either braking or swerving." He argues that because he should have been aware of the risk, but was not actually aware of the risk, the evidence in this case supports only a finding of criminal negligence, of which he was not accused.

Mental culpability is of such a nature that it generally can only be inferred from the circumstances under which a prohibited act occurred. *Dillon v. State*, 574 S.W.2d 92, 94 (Tex. Crim. App. 1978). Circumstantial evidence is as probative as direct evidence in establishing the guilt of an actor. *Guevara v. State*, 152 S.W.3d 45, 49 (Tex. Crim. App. 2004). Furthermore, an actor need not be aware of a specific risk of another's death in order to commit manslaughter. *Trepanier v. State*, 940 S.W.2d 827, 829 (Tex. App.—Austin 1997, pet. ref'd). The trier of fact makes its determination of a culpable mental state from all of the circumstances in a case and may make reasonable inferences from the acts, words, and conduct of an accused. *See Manning v. State*, 84 S.W.3d 15, 20 (Tex. App.—Texarkana,

2002), *rev'd on other grounds*, 114 S.W.3d 922 (Tex. Crim. App. 2003) (sufficient evidence of recklessness where driver of eighteen-wheeler truck failed to brake or slow down where warning signs of construction posted up to 3,000 feet before area where traffic stopped); *Arellano v. State*, 54 S.W.3d 391, 393 (Tex. App.—Waco 2001, pet. ref'd) (sufficient evidence of recklessness where there were multiple visible signs warning of need to reduce speed posted before dangerous curve and skid marks showed excessive speed); *Porter v. State*, 969 S.W.2d 60, 64 (Tex. App.—Austin 1998, pet. ref'd) (sufficient evidence of recklessness where testimony revealed that defendant was on wrong side of road moments before collision, defendant stated he was "very much fatigued" on an answering machine, and there was evidence of controlled substances in defendant's system); *Trepanier*, 940 S.W.2d at 830 (sufficient evidence of recklessness where driver moved onto shoulder to pass on the right and struck a bicyclist); *Rodriguez v. State*, 834 S.W.2d 488, 490 (Tex. App.—Corpus Christi 1992, no pet.) (sufficient evidence of recklessness where defendant told officer she took sharp turn too fast indicating she was aware of the risk); *Lopez v. State*, 731 S.W.2d 682, 684 (Tex. App.—Houston [1st Dist.] 1987), *rev'd on other grounds*, 779 S.W.2d 411 (Tex. Crim. App. 1989) (sufficient evidence of recklessness where driver failed to maintain single marked lane and struck pedestrian and parked truck on shoulder of road).

Viewing the evidence in the light most favorable to the prosecution, appellant, before colliding his truck into the complainant's, did not apply the brakes of his truck, slow down, or attempt to avoid the collision within the "zone of preventability." Hinton opined that appellant should have been able to avoid the collision by stopping his truck by braking within 380.6 feet of the collision or swerving within 155.25 feet of the collision. Instead, appellant veered one-half of the way into the lane of opposing traffic, veered it back, and then caused his truck to strike the stopped car in front of him. The evidence reveals that the two cars in front of appellant had come to a complete stop and there were four construction zone warning-signs posted up to 3,500 feet before the area in which traffic was stopped. As appellant approached the construction zone, he drove his truck past a visible construction warning sign posted at 3,500 feet before the collision area. As he continued his approach, appellant drove past three additional signs, which had been placed at least 500 feet apart, warning of the construction zone and flagger ahead. Despite the multiple warning signs, appellant failed to slow his truck or attempt to brake. Furthermore, by his own statement, appellant bent down in his seat to pick up a drink when the construction signs clearly indicated that a construction zone with a flagman was ahead. When appellant saw the cars stopped in front of him, he did attempt to swerve to miss the cars; however, there were multiple warning signs posted that appellant did not heed. From this evidence, a

rational trier of fact could have found beyond a reasonable doubt that appellant was aware of and consciously disregarded the substantial and unjustifiable risk he took by failing to heed the signs warning that he be prepared to stop and not stopping his truck, failing to maintain a proper lookout, failing to control the speed of his truck, failing to properly steer his truck, and failing to properly apply his brakes. Accordingly, we hold that the evidence is legally sufficient to support appellant's convictions.

We overrule appellant's first point of error.

Admission of Evidence

In his second, third, and fourth points of error, appellant, in regard to his conviction for the offense of manslaughter, argues that the trial court erred in admitting evidence concerning the presence of the cocaine metabolite and marijuana in his blood on the day of the collision, the effects of cocaine withdrawal, and the presence of marijuana in his truck because the evidence was irrelevant, more prejudicial than probative, speculative, and constituted inadmissible character evidence.

A trial court's admission of evidence is reviewed under an abuse of discretion standard. *Torres v. State*, 71 S.W.3d 758, 760 (Tex. Crim. App. 2002). A trial court abuses its discretion if it acts arbitrarily or unreasonably, without reference to any guiding rules or principles. *Montgomery v. State*, 810 S.W.2d

372, 380 (Tex. Crim. App. 1990). When considering a trial court's decision to admit or exclude evidence, we will not reverse a trial court's ruling unless it falls outside the "zone of reasonable disagreement." *Green v. State*, 934 S.W.2d 92, 102 (Tex. Crim. App. 1996).

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. TEX. R. EVID. 401. Evidence that is not relevant is inadmissible. TEX. R. EVID. 402. Relevancy is determined by whether "a reasonable person, with some experience in the real world, believes that the particular piece of evidence is helpful in determining the truth or falsity" of any fact of consequence. *Montgomery*, 810 S.W.2d at 376. The evidence does not have to prove or disprove a particular fact; it is sufficient if the evidence provides "a small nudge toward proving or disproving some fact of consequence." *Stewart v. State*, 129 S.W.3d 93, 96 (Tex. Crim. App. 2004). Nonetheless, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." TEX. R. EVID. 403. The opponent of the evidence must demonstrate that the negative attributes of the evidence substantially outweigh any probative value. *Montgomery*, 810 S.W.2d at 377. Moreover, evidence of other crimes, wrongs, or acts is generally not

admissible to prove the character of a person in order to show action in conformity therewith. TEX. R. EVID. 404(b).

Narcotics in Blood

Appellant first asserts that the evidence that his blood contained the primary metabolite of cocaine and "THC," an active compound in marijuana, was not relevant and any probative value it had was substantially outweighed by unfair prejudice.

Although the indictment alleged in pertinent part that appellant recklessly caused the death of Paul Delcambre, among other things, by "driving a motor vehicle with cocaine and marihuana in [his] body," appellant asserts that the State did not show that the presence of cocaine or marijuana in his body contributed to his failure to maintain a proper lookout or avoid colliding with a motor vehicle. Appellant points to Manes's testimony that he, based only on the presence of the cocaine metabolite, could not determine how much cocaine appellant had ingested, when he ingested it, or the effect it had. Appellant argues that absent evidence of dosage or time of ingestion, there is no evidence as to the effect the narcotics had on him at the time of the collision. He argues that the presence of the cocaine metabolite "did not make it any more or less likely that he was acting in a reckless manner prior to the accident or that the presence of the metabolite in any way contributed to [the complainant's] death." In regard to the presence of THC in his

blood, appellant argues that because Van Dorn could not testify as to an exact date or time that appellant had ingested marijuana, there is no evidence that he was intoxicated as a result of the ingestion of marijuana.

However, as noted above, evidence need not prove or disprove a particular fact by itself to be relevant; it need only provide "a small nudge toward proving or disproving" a fact of consequence. *Stewart*, 129 S.W.3d at 96. Here, the indictment alleged that appellant's recklessness was caused, in part, by "driving a motor vehicle with cocaine and marijuana in his body." The presence of the cocaine metabolite and THC in appellant's blood was evidence probative of this allegation. *See Dunn v. State*, 176 S.W.3d 880, 883 (Tex. App.—Fort Worth 2005, no pet.) (presence of substance was element of charged offense of criminally negligent homicide and consequently test results were relevant).

Nevertheless, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." TEX. R. EVID. 403. The opponent of the evidence must demonstrate that the negative attributes of the evidence substantially outweigh any probative value. *Montgomery*, 810 S.W.2d at 377. The relevant criteria in a rule 403 analysis include, but are not limited to (1) the probative value of the evidence; (2) the potential to impress the jury in some irrational yet indelible way; (3) the time needed to develop the evidence; and (4)

the proponent's need for the evidence. *State v. Mechler*, 153 S.W.3d 435, 440 (Tex. Crim. App. 2005); *Manning*, 114 S.W.3d at 927.

The first rule 403 factor asks how compellingly the evidence serves to make a fact of consequence more or less probable. *Manning*, 114 S.W.3d at 927. Here, the fact of consequence is whether cocaine or marijuana was in appellant's body. In *Manning*, a case very similar to the instant case, the defendant who was driving his eighteen-wheeler truck did not stop his truck or slow down as he approached a construction site where a line of cars had stopped. *Id.* at 924. The State offered evidence that a cocaine metabolite known as benzoylecgonine had been found in the defendant's blood in the amount of .15 milligrams per liter, and the testimony revealed that its presence showed only that at some point earlier in time, appellant had ingested cocaine. *Id.* Although the State did not present extrapolation evidence, the Texas Court of Criminal Appeals concluded that the presence of the cocaine metabolite served to make a fact of consequence more probable. *Id.* at 927. As in *Manning*, the evidence of the cocaine metabolite and marijuana in appellant's blood served to make a fact of consequence more probable. *See id.* "The fact that this evidence may not have been sufficient, by itself, to prove that [appellant's] actions were the result of his ingestion of cocaine does not detract from the fact that the evidence of the metabolite was strong evidence that [appellant] had consumed cocaine." *Id.*

The second rule 403 factor is concerned only with the danger of "unfair" prejudice. *Id.* Although the evidence presented here was obviously prejudicial to appellant, it was not "unfairly" prejudicial because it pertained to an allegation in the charging instrument. *See id.* at 928. Accordingly, the risk of unfair prejudice did not substantially outweigh the probative value of the evidence. *See id.*

In regard to the third rule 403 factor, the State spent a significant amount of time on the evidence of the cocaine metabolite in appellant's blood. Several witnesses were called and recalled in order to elicit testimony concerning the presence of the metabolite in appellant's blood. However, as the court of criminal appeals has concluded, "Regardless of the length of time spent presenting this evidence, the evidence of the cocaine metabolite could not possibly have distracted the jury from the indicted offense because it was proof of the indicted offense." *Manning*, 114 S.W.3d at 928.

The fourth rule 403 factor encompasses the issues of whether the proponent has other evidence establishing the pertinent fact and whether the fact is related to a disputed issue. *Mechler*, 153 S.W.3d at 441. Here, the evidence of the presence of the cocaine metabolite and THC was related to a disputed issue: whether appellant recklessly caused the complainant's death by driving with cocaine and marijuana in his body. And the State had no other evidence to establish this fact of consequence. Because the issue was disputed and there was no other evidence

presented to prove the fact, the State's need for the evidence was great and weighed in favor of admitting the evidence. *See Manning*, 114 S.W.3d at 928.

In evaluating all of the rule 403 factors, we, under the reasoning of *Manning*, conclude that the sum of the factors weighed in favor of admissibility. Accordingly, we hold that the trial court did not err in admitting evidence that appellant's blood contained a cocaine metabolite and marijuana.

We overrule appellant's second point of error.

Cocaine Withdrawal

Appellant next argues that because the indictment did not allege that he was withdrawing from the effects of cocaine or that any such withdrawal contributed to his failure to maintain a proper lookout or to avoid the collision, the evidence about cocaine withdrawal was not relevant, was speculative, and any probative value it had was outweighed by its prejudicial effect.

In *Bannister v. State*, a DPS chemist testified that the presence of benzoylecgonine was present in the defendant's body, the chemical is produced when the body metabolizes cocaine, it has no effect on the body but indicates that cocaine had been present, and its presence does not indicate how or when the cocaine was ingested. No. 07-04-0479-CR, 2006 WL 2795250, at *5 (Tex. App.—Amarillo Nov. 6, 2006, pet. ref'd) (mem. op.). The chemist noted that "cocaine is a potent stimulant which can lead to a 'crash phase' or 'crash effect' during

withdrawal where the user can experience fatigue and sleepiness and a general lack of energy." *Id.* The Amarillo Court of Appeals, in concluding that the evidence was relevant, noted that the State's theory was not that appellant was under the influence of cocaine at the time of the collision, but that he was fatigued and sleepy because he was suffering from cocaine withdrawal. *Id.* at *6. The court noted that this theory fell within the indictment allegation that the defendant operated a motor vehicle "without sufficient sleep, as a result of the introduction of cocaine into his body." *Id.* The court concluded that the testimony was relevant "because it established scientific acceptance of the effects of cocaine withdrawal" and it showed that the defendant had consumed cocaine in the recent past. *Id.*

Here, Manes explained that cocaine is a stimulant and it has a "profound psychological withdrawal" effect, which can cause "cravings," "physical fatigue to become more pronounced," and "other changes in mood [and] behavior," including depression, agitation, and aggressiveness. Manes noted that "hypothetically" an individual, when the drug concentration is decreasing or no longer present, could be more focused on drug-seeking behavior than paying attention to his driving. Manes emphasized that all he could testify to in this specific case, however, was "the concentration of the drug metabolite in the blood" and he could not "associate a generalized statement of behavior" to appellant based on the analytical data. Manes also did not have any evidence to opine as to whether or not appellant's

ingestion of cocaine "had any effect at all upon his driving." Manes's testimony regarding cocaine withdrawal was not specific to appellant and related only to the general effects of cocaine withdrawal.

Here, again, the indictment alleged in pertinent part that appellant recklessly caused the death of Paul Delcambre "by driving a motor vehicle with cocaine and marihuana in his body." The State argued that cocaine withdrawal could cause an individual to become distracted and that this caused appellant to fail to maintain a proper lookout. As noted by the court of criminal appeals, evidence need not, by itself, prove or disprove a particular fact to be relevant. *Manning*, 114 S.W.3d at 927. The fact that the testimony regarding cocaine withdrawal did not conclusively establish that appellant experienced cocaine withdrawal at the time of the collision did not make it inadmissible. *See id* at 927; *see also Bannister*, 2010 WL 2795250, at *6. Under the reasoning of *Manning*, the trial court could have concluded that the evidence of the effects of cocaine withdrawal were relevant to appellant's operation of his truck and it was not unfairly prejudicial in establishing an element of the charged offense. 114 S.W.3d at 927. Accordingly, we hold that the trial court did not err in admitting evidence regarding the effects of cocaine withdrawal.

We overrule appellant's third point of error.

Marijuana

Finally, appellant asserts that the State "failed to show that the presence of the marijuana [in the cab of his truck] made it any more or less likely that he was acting in a reckless manner prior to the accident" and any probative value of the evidence was outweighed by the danger of unfair prejudice. *See* TEX. R. EVID. 402, 403. Although appellant refers us to rule 404, which prohibits the introduction into evidence of certain character evidence, he makes no substantive argument concerning rule 404 and has waived any error regarding the issue. *See* TEX. R. APP. P. 33.1.

In *Porter v. State*, the defendant was charged with intoxication manslaughter and manslaughter, but the jury convicted him only of manslaughter. 969 S.W.2d 60, 67 (Tex. App.—Austin 1998, pet. ref'd). Although the trial court admitted evidence that emergency services personnel found a spoon and syringe in the defendant's sock, the Austin Court of Appeals concluded that the evidence was relevant and not unduly prejudicial because it was directly related to the charged offense. *Id.* Here, likewise, the evidence of marijuana found in the cab of appellant's truck was directly related to the charged offense, and its potential to irrationally impress the jury to find guilt on grounds apart from the offense charge was minimal. *See id.*; *Mechler*, 153 S.W.3d at 440. Although the State did spend

some time introducing the evidence of marijuana, it did not spend such an amount of time as to distract the jury from consideration of the charged offense. *Mechler*, 153 S.W.3d at 441. Accordingly, we hold that the trial court did not err in admitting evidence that appellant had marijuana in the cab of his truck at the time of the collision.

We overrule appellant's fourth point of error.

Conclusion

We affirm the judgments of the trial court.

Terry Jennings
Justice

Panel consists of Justices Jennings, Bland, and Massengale.

Do not publish. TEX. R. APP. P. 47.2(b).