Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-19-00673-CR

Kassey Allan **WILLIAMS**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 175th Judicial District Court, Bexar County, Texas
Trial Court No. 2018CR8544
Honorable Catherine Torres-Stahl, Judge Presiding

Opinion by: Liza A. Rodriguez, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Patricia O. Alvarez, Justice
Liza A. Rodriguez, Justice

Delivered and Filed: November 12, 2020

AFFIRMED

After a jury trial, Kassey Allan Williams was found guilty of aggravated assault with a deadly weapon (repeater) and was sentenced to thirty-five years of imprisonment and a fine of $2,000. On appeal, he argues the evidence was legally insufficient to support his conviction because there was no evidence that he acted recklessly. We affirm.

BACKGROUND

This case arises from a car crashing into a telephone pole in the early morning hours of June 1, 2017, which resulted in the passenger sustaining severe injuries. The State alleged in the indictment that Williams was the driver of the car.

At trial, motorist Kristopher Hyatt testified that on June 1, 2017, he was on his way to work at around 5:00 a.m. and was traveling within the forty-mile-per-hour speed limit on the two-way feeder street to Interstate 10, which was under construction. He saw a car on the side of the road that had crashed into a telephone pole. The car was resting "almost perpendicular" to the telephone pole, with the pole crushing the passenger side of the car. Hyatt stopped his vehicle on the side of the road and heard a woman "crying out for help." From her cries, Hyatt believed the woman to be in "agonizing pain." Hyatt dialed 911 and approached the car. Hyatt saw Williams in the driver's seat and a woman in the passenger's seat. The woman told Hyatt that she could not breathe. Hyatt tried to open the car doors, but they were jammed as a result of the crash. He began communicating with the driver, Williams, through a broken back window. Hyatt testified that as soon as he was close to Williams, he could smell alcohol emanating from him. Williams asked Hyatt if he "could help [Williams] get rid of a bottle of alcohol." Williams reached over the driver's seat and handed Hyatt a "clear handled jug of alcohol." Hyatt testified he placed the bottle on the back floorboard behind the driver. Hyatt helped Williams get out of the car through a broken window. According to Hyatt, Williams did not appear to be injured. Hyatt testified Williams then began walking around, trying to compose himself. When asked if Williams appeared to be confused, Hyatt agreed. Hyatt and another passerby obtained a knife and tried, along with Williams, to cut the woman's seatbelt, but they were unable to reach it.

Terrence Huff, a paramedic, testified that when he arrived at the scene, he saw two individuals (Hyatt and the passerby) standing on the side of the road. A fire crew was trying to

open the jammed driver's door. Williams's feet were sticking out the rear window. Williams was reaching through to the front. Huff saw that a woman was "pinned between the passenger side and the center console" as a result of the car crashing into the telephone pole. The woman "had scratches, cuts to her face," and an injury to her lower leg that "looked like an obvious fracture." According to Huff, Williams's demeanor was "[e]xcited, just almost antsy." Williams claimed that he had been a passenger in the back seat of the car and that a man named "James" had been the driver. Huff testified that he performed an assessment on Williams and checked his vitals. According to Huff, Williams did not want to be transported, so he signed a refusal of medical treatment. Huff testified he gave Williams oral glucose because his blood sugar was 50, which was lower than the threshold of 60 to 100. Williams blood sugar increased, and then he walked out of the back of the ambulance.

When Officer Dylan Myers of the San Antonio Police Department arrived at the scene, he "heard a woman screaming" in pain. He saw "skid marks" "leading directly from the eastbound lane all the way across the westbound lane," into the grass, "and then straight to where the car had crashed into the telephone pole." Officer Myers heard Williams tell the paramedics that he had not been the driver and had been sitting in the back seat on the passenger's side; he also heard Williams claim that "James" had been the driver. Officer Meyers went to the look at the car, saw how the pole had crushed into the passenger's side of the car, and concluded Williams could not have been sitting where he claimed to have been because anyone who had been sitting in the back passenger's side "would have had serious damage to their legs."

Officer Meyers testified he could smell a strong odor of alcohol on Williams's breath and noticed that his eyes were "bloodshot" and "glassy." Like Hyatt, Officer Meyers thought Williams "seemed a little confused." Williams told Officer Myers that he had had "a few beers" and "shots of liquor," and had been awake for over twenty-four hours. After Williams refused medical

treatment, Officer Meyers asked Williams if he was able to take field sobriety tests. He asked Williams if he had suffered a head injury, wore glass or contacts, or had any other injuries that would interfere. Williams said he did not. Officer Myers conducted the horizontal gaze nystagmus test and determined that Williams had nystagmus, indicating possible intoxication. Officer Myers then demonstrated to Williams how to perform the walk-and-turn test. In watching Williams perform that test, Officer Meyers found several clues of intoxication. When Officer Myers demonstrated the one-leg stand test, Williams said he could not perform that test. Officer Myers testified that based on the totality of circumstances, he then arrested Williams on suspicion of driving while intoxicated.

A search incident to his arrest revealed that Williams had a small plastic bag of a powdered substance in his right pocket. Evidence later introduced at trial showed that this substance was methamphetamine. After Williams was booked, he consented to a blood draw. The blood draw was not taken until three hours after Officer Myers arrived at the scene. The result of the blood draw showed that Williams had a blood-alcohol concentration of .02. Dr. Veronica Hargrove, Chief Toxicologist for the Bexar County Medical Examiner's Office, testified that, on average, the human body eliminates alcohol at a rate of .02 grams per deciliter every hour, with a range between .01 to .03. She testified the effects of alcohol include confusion, disorientation, blurred vision, slurred speech, and unsteadiness, which in turn, can affect a person's ability to drive.

In addition to alcohol, Williams also had methamphetamine and cocaine in his blood. Dr. Hargove testified that regardless of the concentration, methamphetamine "can cause an effect" on the human body, including an inability to "focus on your speed, on the lane [of traffic], [or] on somebody crossing in front of you." She also testified that because methamphetamine and cocaine are both stimulants, the effects of mixing them "might be more significant than they would [be]

on their own." Dr. Hargove testified further that mixing stimulants with alcohol, a depressant, can cause someone to decrease their inhibitions while increasing their risky behavior.

Detective Lori Herries with the San Antonio Police Department testified that based on her investigation of the crash, the car was traveling in excess of the posted speed limit when it left its lane of travel, crossed over the roadway, and hit the telephone pole. She testified that in reviewing the tire marks and other evidence at the scene, there was no evidence the driver had used his brakes. Detective Herries further testified that a car can be a deadly weapon.

Randall Bissessar, an assistant medical examiner, reviewed the complainant's medical records, which were admitted in evidence. He testified that as a result of the accident, the complainant suffered injuries to her spleen, her femur, and her pelvis. She underwent surgery to remove her spleen and to repair the fractures to her femur and pelvis. In addition to Bissessar, the complainant's mother testified that after the accident, the complainant had been admitted to a rehabilitation facility for several months. The complainant still walked with a limp and suffered from pain in her back. Further, after the accident, the complainant began having migraines and seizures. She also suffered from short-term memory loss. When the complainant testified, she said that she could not remember the accident and complained that her head hurt. When asked by counsel if she remembered meeting him earlier that morning, she replied that she did not remember.

STANDARD OF REVIEW

"Evidence is sufficient to support a conviction if a rational jury could find each essential element of the offense beyond a reasonable doubt." *Metcalf v. State*, 597 S.W.3d 847, 855 (Tex. Crim. App. 2020). "When reviewing the sufficiency of the evidence, we consider all the admitted evidence in the light most favorable to the verdict." *Id*. (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). Because the "jury is the sole judge of the credibility of a witness's testimony and

the weight to assign to that testimony," it "can believe all, some, or none of a witness's testimony." *Id*. "Juries can draw reasonable inferences from the evidence so long as each inference is supported by the evidence produced at trial." *Id*.

We measure the sufficiency of the evidence "by comparing the evidence produced at trial to 'the essential elements of the offense as defined by the hypothetically correct jury charge.'" *Id*. (quoting *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997)). A hypothetically correct jury charge "accurately sets out the law, is authorized by the indictment, does not unnecessarily increase the State's burden of proof or unnecessarily restrict the State's theories of liability, and adequately describes the particular offense for which the defendant was tried." *Id*. (quoting *Malik*, 953 S.W.2d at 240). "The law 'authorized by the indictment' consists of the statutory elements of the offense as modified by the indictment allegations." *Id*.

DISCUSSION

Under the law as authorized by the indictment in this case, a person commits aggravated assault if he commits an assault that causes serious bodily injury to another, or uses a deadly weapon during the commission of the assault. *See* TEX. PENAL CODE § 22.02(a). "A person commits [assault] if the person . . . recklessly causes bodily injury to another . . . ." *See id*. § 22.01(a)(1). The Texas Penal Code defines the culpable mental state of recklessness as follows:

> A person acts recklessly, or is reckless, with respect . . . to the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that 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 circumstances as viewed from the actor's standpoint.

Id. § 6.03(c).

"[A]t the heart of reckless conduct is [the] conscious disregard of the risk created by the actor's conduct." *Williams v. State*, 235 S.W.3d 742, 751 (Tex. Crim. App. 2007) (citation

omitted). "[M]ere lack of foresight, stupidity, irresponsibility, thoughtlessness, ordinary carelessness" "do not suffice to constitute criminal recklessness." *Id*. (citation omitted). Rather, "[r]ecklessness requires the defendant to actually foresee the risk involved and to consciously decide to ignore it." *Id*. "Such a 'devil may care' or 'not giving a damn' attitude toward the risk distinguishes the culpable mental state of criminal recklessness from that of criminal negligence, which assesses blame for the failure to foresee the risk that an objectively reasonable person would have foreseen." *Id*. at 751-52. "Those who are subjectively aware of a significant danger to life and choose, without justification, to engage in actions (or in some cases inactions) that threaten to bring about that danger have made a calculated decision to gamble with other people's lives." *Id*. (citation omitted). "This combination of an awareness of the magnitude of the risk and the conscious disregard for consequences is crucial." *Id*. at 752-53. "[D]etermining whether an act or omission involves a substantial and unjustifiable risk requires an examination of the events and circumstances from the viewpoint of the defendant at the time the events occurred, without viewing the matter in hindsight." *Id*. at 753 (citation omitted).

Recklessness can be inferred by the trier of fact from the acts, words, and conduct of the accused. *See Dues v. State*, 634 S.W.2d 304, 306 (Tex. Crim. App. 1982); *Griffith v. State*, 315 S.W.3d 648, 651-52 (Tex. App.–Eastland 2010, pet. ref'd). "Whether the actor is aware of the requisite risk is a conclusion to be reached by the trier of fact from all the evidence and the inferences drawn therefrom." *Griffith*, 315 S.W.3d at 652.

"Distracted driving, driving at a dangerously high rate of speed, and driving while under the influence of alcohol are all factors from which a jury can infer a reckless mental state." *State v. Marek*, No. 13-15-00381-CR, 2016 WL 4578928, at *5-6 (Tex. App.—Corpus Christi-Edinburg Sept. 2, 2016, pet. ref'd) (mem. op., not designated for publication); *see Turner v. State*, 435 S.W.3d 280, 285 (Tex. App.—Waco 2014, pet. ref'd) (holding evidence was sufficient for a

reasonable juror to infer the defendant was aware of but consciously disregarded a substantial and unjustifiable risk by driving at an excessive rate of speed); *Zorn v. State*, 315 S.W.3d 616, 621-22 (Tex. App.—Tyler 2010, no pet.) (holding evidence sufficient for a rational jury to infer "based either on the speed at which Appellant drove her vehicle or on her level of intoxication that Appellant was aware of, but consciously disregarded, a substantial and unjustifiable risk that a pedestrian would be struck by her vehicle"); *Rubio v. State*, 203 S.W.3d 448, 452 (Tex. App.—El Paso 2006, pet. ref'd) (explaining that driving under the influence of alcohol can be used to show conscious disregard of a substantial risk); *Galvan v. State*, No. 13-14-00059-CR, 2016 WL 1393507, at *5 (Tex. App.—Corpus Christi-Edinburg Apr. 7, 2016, pet. ref'd) (mem. op., not designated for publication) (explaining evidence sufficient to show recklessness includes distracted driving, intoxication, and failure to break).

Williams argues the evidence is insufficient to support that he acted with recklessness and merely shows the occurrence of an accident.[1] Williams argues that because he was given glucose at the scene, which he argues is evidence of diabetes, the jury could not find he was reckless. At trial, the paramedic testified Williams appeared to be unhurt but did have a low glucose level and was given glucose. However, there was no evidence presented that Williams was suffering from diabetes or that his low glucose level was the cause of the accident.

Instead, there was evidence that Williams smelled of alcohol and was confused and "antsy." There was evidence that Office Myers concluded Williams was intoxicated based on the

[1]Williams was charged in Count 1 with intoxication assault and in Count 2 with aggravated assault. The jury was unable to reach a unanimous verdict on Count 1, which resulted in the trial court declaring a mistrial. On appeal, Williams claims that "[b]ecause the jury rejected the intoxication by methamphetamine or alcohol in Count 1, there is insufficient evidence to support" aggravated assault as alleged in Count 2. However, as noted, we review sufficiency of the evidence by the hypothetically correct jury charge. Any inconsistency in a jury's verdict has no bearing on the sufficiency of the evidence. *See United States v. Powell*, 469 U.S. 57, 64-67 (1984); *Guthrie-Nail v. State*, 506 S.W.3d 1, 6 (Tex. Crim. App. 2015); *Ramirez v. State*, No. 04-19-00074-CR, 2020 WL 214776, at *2 (Tex. App.—San Antonio Jan. 15, 2020, no pet.) (mem. op., not designated for publication).

smell of alcohol on Williams's breath, Williams's "glassy" and "bloodshot eyes," the nystagmus found during the horizontal nystagmus test, and the clues shown by Williams during the walk-and-turn field-sobriety test. Additionally, lab results confirmed the presence of alcohol, methamphetamine, and cocaine in Williams's blood. Although Williams emphasizes that his blood-alcohol level was .02, the evidence showed that Williams's blood was drawn three hours after the officers arrived at the scene. Dr. Hargrove testified that the body eliminates alcohol at an average rate of .02 grams per deciliter every hour, with a range between .01 to .03. Thus, the lab results support an inference by the jury that Williams was intoxicated by alcohol at the time of the crash. Further, Dr. Hargrove testified that any amount of methamphetamine and cocaine can affect a person's driving and that mixing stimulants like methamphetamine and cocaine with a depressant like alcohol can affect a person's driving by decreasing a person's inhibitions while increasing a person's risky behavior. Further, there was evidence that Williams asked a motorist to dispose of a bottle of alcohol and lied about not being the driver of the car. Such conduct by Williams demonstrated consciousness of guilt and supports an inference by the jury that he knew his conduct was reckless. *See Bigby v. State*, 892 S.W.2d 864, 883 (Tex. Crim. App. 1994).

Finally, there was evidence about the "skid marks" on the roadway, which showed the car swerved across the road, into the grass, and directly into the telephone pole. Detective Herries testified that based on the markings on the road and the resulting damage to the car, Williams was driving at a higher rate of speed than was prudent under the circumstances and failed to apply his brakes before hitting the telephone pole.

From all this evidence, a reasonable juror could have inferred that Williams was aware of, but consciously disregarded, the risk that his actions would result in a collision causing serious bodily injury. *See* TEX. PENAL CODE § 6.03(c); *Williams*, 235 S.W.3d at 751. As the evidence is

legally sufficient to support that Williams acted recklessly, we affirm the judgment of the trial court.

Liza A. Rodriguez, Justice

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