

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-16-00395-CR

JUSTIN ALLEN LAWSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 252nd District Court
Jefferson County, Texas
Trial Cause No. 13-17978

MEMORANDUM OPINION

Appellant Justin Allen Lawson appeals his conviction of criminally negligent homicide. In one issue on appeal, Lawson complains that the trial court erred by admitting evidence of his alcohol use because the State did not allege in the indictment that the use of alcohol was part of Lawson's alleged recklessness. According to Lawson, he was harmed by the admission of the evidence because the State relied on evidence of his use of alcohol as the primary basis for his conviction. We affirm the trial court's judgment.

BACKGROUND

A grand jury indicted Lawson for manslaughter, a second-degree felony. The indictment alleged that Lawson recklessly caused the death of Mitchell Glenn Downs “by operating a motor vehicle on a public road while failing to maintain a proper lookout and by failing to remain within the marked lane of travel of the said public road, thereby causing the said motor vehicle to strike [Downs.]” On the first day of trial, Lawson filed a motion to exclude evidence of his alcohol usage, in which he argued that evidence of his alcohol consumption should be excluded as irrelevant because the State did not plead alcohol consumption as one of the acts of recklessness that he allegedly committed.

In his motion, Lawson stated that he anticipated that the State may attempt to offer evidence, in the form of receipts and eyewitness testimony, showing that he purchased and drank alcohol on the day the offense occurred. Lawson maintained that the indictment generally met the requirements of article 21.15 of the Texas Code of Criminal Procedure by alleging the specific conduct that the State believed was reckless, but the State did not allege alcohol consumption as part of Lawson’s alleged recklessness. According to Lawson, the State is required by statute to plead reckless acts with specificity, and because the State failed to plead alcohol consumption, the State cannot introduce evidence of his alcohol consumption.

Lawson further argued that the evidence should be excluded as being unfairly prejudicial.

Prior to trial, the trial court considered Lawson's motion without hearing witness testimony. The State explained that it intended to present testimony from three witnesses who were drinking with Lawson before the accident. The State represented that it also expected that Lawson's statement, in which Lawson admitted to drinking alcohol prior to the accident, would come into evidence, as well as text messages that Lawson sent to one of the witnesses. Lawson's counsel objected to the admission of evidence of Lawson's use of alcohol because the State is required by statute to specify the nature of the recklessness, and the State failed to specifically plead alcohol as a factor. According to Lawson's counsel, evidence of Lawson's alcohol use was not relevant and could not be "linked up" because the State did not plan to offer expert testimony concerning the impact or the effects of Lawson's alcohol use. Lawson's counsel further argued that the evidence was unfairly prejudicial.

The State maintained that it had alleged failure to keep a proper lookout and failure to maintain a single lane, and that the jury could reasonably infer that consuming alcohol would contribute to that reckless behavior. According to the State, it was not going to present any evidence concerning Lawson's level of

intoxication; rather, it was presenting evidence concerning Lawson's alcohol consumption prior to the accident, including Lawson's admission of drinking alcohol and leaving the scene because he was scared, and that such evidence would help the jury decide whether Lawson's actions were reckless.

The trial court denied Lawson's motion to exclude evidence, finding that evidence of Lawson's alcohol consumption was a relevant fact issue and that its prejudicial effect did not outweigh its probative value, and the case proceeded to trial. During trial, Michael Hicks and Dallas Austin testified that on the day the accident occurred they drank margaritas with Lawson after work. According to Austin, they all drank as many fifty cent margaritas as the restaurant would sell them, which was four. Austin explained that the margaritas were "pretty weak" and he did not think that he or Lawson was impaired after drinking them. Austin testified that when Lawson picked him up for work the next morning, he noticed that the front passenger side door of Lawson's truck was jammed shut, and Lawson told Austin that he "hit a deer or dog or something." Austin testified that Lawson later admitted to hitting the victim and that Lawson explained that he did not see anybody and that he was either picking up his cell phone from the passenger seat or texting when the accident occurred. Austin testified that Lawson told him that he felt and heard that

his truck had hit something, but that he did not stop because he was scared because he had been drinking.

Callie Dover testified that on December 5, 2012, she saw Lawson at a restaurant, and that Lawson contacted her the next day and stated that he had told the police that he had hit a deer and had been with Dover. According to Dover, Lawson asked her to tell the police that he was with her at her apartment on the night of December 5. Dover testified that she had only seen Lawson casually at the restaurant and she figured “something kind of odd was up” for him to tell the police that he had been with her. Dover explained that she showed the police the text messages that Lawson had sent her, in which he told her that he had hit a deer and responded “yeah[,]” when Dover asked if he had drunk too much.

Sergeant Eric Wilson testified that on December 6, 2012, he was called out to a pedestrian fatality on Highway 69 North. Wilson explained that security cameras from a local business located on the feeder road had captured the incident, and after reviewing the video, the police established that a dark colored truck struck the victim. After putting out a Crime Stoppers Report asking the community to assist in the investigation, the police received information pointing to Lawson. Wilson testified that Lawson initially reported that he struck a deer, but Lawson later admitted to striking Downs. Wilson testified that Lawson gave a statement in which

he admitted to drinking with friends prior to the incident and to reaching for his phone to respond to a text message immediately prior to the crash. Wilson explained that Lawson reported that when he turned his head to look for his phone, his truck drifted to the right shoulder of the roadway, and Lawson stated that he heard a thump and thought he had hit the bridge railing. Wilson testified that Lawson stated that he did not stop or call the police because he thought he had hit the bridge railing and because he had been drinking and was scared that he would get in trouble.

According to Wilson, Lawson caused the collision that resulted in Downs's death because Lawson failed to maintain a proper lookout and left his marked lane of travel. Wilson testified that it was reckless and a gross deviation from safe driving for Lawson to have consumed alcohol for several hours prior to driving and to have looked away and checked his phone while driving, and that those actions led to Lawson leaving his lane and failing to keep a proper lookout.

A jury found Lawson not guilty of manslaughter, but found Lawson guilty of the lesser-included offense of negligent homicide. The jury assessed Lawson's punishment at two years in state jail and a \$10,000 fine.

ANALYSIS

In one issue on appeal, Lawson complains that the trial court erred by admitting evidence of his alcohol use prior to the alleged offense because the State

failed to plead the use of alcohol in the indictment. According to Lawson, he was harmed by the admission of the evidence because the State relied on the evidence of his use of alcohol as the primary basis for his conviction. Lawson contends that the trial court, in violation of article 21.15 of the Texas Code of Criminal Procedure, allowed the State to prove criminal negligence by using evidence of his alcohol use as the specific fact to support his conviction. *See* Tex. Code Crim. Proc. Ann. art. 21.15 (West 2009). He also contends that this violated his right to adequate notice under the Texas Constitution. *See* Tex. Const. art. I, § 10.

The State argues that evidence of Lawson's alcohol use is admissible despite the State not having alleged alcohol use in the indictment. The State argues that it properly alleged two specific acts of recklessness to establish the requisite mental state and it is not required to allege every fact that could have contributed to Lawson's mental state. According to the State, article 21.15 does not require the State to allege every factor that could potentially have contributed to a defendant's reckless or criminally negligent conduct. The State maintains that the trial court properly admitted evidence of Lawson's consumption of alcohol as being a relevant factor the jury could consider.

We review a trial court's decision to admit evidence, as well as its decision as to whether the probative value of the evidence was substantially outweighed by the

danger of unfair prejudice, under an abuse of discretion standard. *Martinez v. State*, 327 S.W.3d 727, 736 (Tex. Crim. App. 2010). We must give the trial court wide latitude to exclude or admit evidence under Rule 403. *Montgomery v. State*, 810 S.W.2d 372, 390 (Tex. Crim. App. 1991) (op. on reh'g); *see also* Tex. R. Evid. 403. A trial court abuses its discretion when its decision on the admissibility of evidence falls outside the zone of reasonable disagreement. *Johnson v. State*, 490 S.W.3d 895, 908 (Tex. Crim. App. 2016).

Relevant evidence includes evidence having any tendency to make a fact more or less probable than it would be without the evidence. Tex. R. Evid. 401(a). Evidence that is not relevant is inadmissible. Tex. R. Evid. 402. Relevancy is decided by asking whether a reasonable person with some experience in the world would believe that the particular piece of evidence is helpful in determining the truth or falsity of any fact that is of consequence in the action. *Montgomery*, 810 S.W.2d at 376; *see* Tex. R. Evid. 401(b). The evidence does not have to prove or disprove a particular fact to be relevant; rather, “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). Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Tex. R. Evid. 403.

Rule 403 favors the admission of relevant evidence and presumes that relevant evidence will be more probative than prejudicial. *Shuffield v. State*, 189 S.W.3d 782, 787 (Tex. Crim. App. 2006). Rule 403 balancing factors include, but are not limited to, the following: (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. *Hernandez v. State*, 390 S.W.3d 310, 324 (Tex. Crim. App. 2012). Once a party objects and the trial court rules on a Rule 403 objection, we presume the trial court engaged in the required balancing test unless the record indicates otherwise. *Williams v. State*, 958 S.W.2d 186, 195-96 (Tex. Crim. App. 1997). The opponent of the evidence has the burden to show that the negative attributes of the evidence substantially outweigh any probative value. *Montgomery*, 810 S.W.2d at 377.

Article 21.15 provides:

Whenever recklessness or criminal negligence enters into or is a part or element of any offense, or it is charged that the accused acted recklessly or with criminal negligence in the commission of an offense, the ... indictment in order to be sufficient in any such case must allege, with reasonable certainty, the act or acts relied upon to constitute recklessness or criminal negligence, and in no event shall it be sufficient to allege merely that the accused, in committing the offense, acted recklessly or with criminal negligence.

Tex. Code Crim. Proc. Ann. art. 21.15. The indictment charged Lawson with causing Downs's death by striking him with a motor vehicle and alleged that this

was done in a reckless manner due to Lawson failing to maintain a proper lookout and failing to remain within the marked lane of travel of a public road. The indictment alleged with reasonable certainty the acts relied upon to constitute recklessness, and thus provided Lawson with sufficient notice of the nature of his alleged recklessness. *See Goodrich v. State*, 156 S.W.3d 141, 145 (Tex. App.—Dallas 2005, pet. ref'd); *Stewart v. State*, 70 S.W.3d 309, 314 (Tex. App.—Waco 2002, pet. ref'd); *see also* Tex. Const. art. I, § 10.

A person acts recklessly 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. Tex. Penal Code. Ann. § 6.03(c) (West 2011). “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.” *Id.* Generally, proof of a culpable mental state relies on circumstantial evidence, and in determining recklessness, a trier of fact’s conclusion can be drawn through inferences from all of the circumstances. *Lopez v. State*, 630 S.W.2d 936, 942 (Tex. Crim. App. 1982). A culpable mental state may be inferred from the defendant’s acts, words, and conduct. *See Gant v. State*, 278 S.W.3d 836, 839 (Tex. App.—Houston [14th Dist.] 2009, no pet.).

The gross deviation from the standard of care argued by the State in this case was not Lawson's alcohol consumption, but rather that Lawson failed to maintain a proper lookout and failed to remain within the marked lane of travel of the public road. In his statement, Lawson admitted that he consumed alcohol prior to the accident, was searching for his cell phone when the accident occurred, and did not stop because he had been drinking. Even though not alleged in the indictment, evidence of Lawson's alcohol consumption may be considered as a factor in determining whether Lawson grossly deviated from the standard of care. *Montgomery v. State*, 369 S.W.3d 188, 194-95 (Tex. Crim. App. 2012) (stating that although cell phone use had not been alleged in the indictment for criminally negligent homicide, the jury could consider the defendant's cell phone use as a factor in determining whether the defendant grossly deviated from the standard of care). Thus, the jury could consider whether Lawson's alcohol use interfered with his ability to maintain a proper lookout and to remain within the marked lane of travel of the public road. *See id.*

Because the evidence of Lawson's alcohol use was a relevant factor the jury could consider, we conclude that the trial court did not abuse its discretion by admitting the evidence. *See Martinez*, 327 S.W.3d at 736; *see also* Tex. R. Evid. 401(a). We further conclude that Lawson has failed to demonstrate that the danger

of unfair prejudice substantially outweighed the probative value of the evidence. *See Montgomery*, 810 S.W.2d at 377; *see also* Tex. R. Evid. 403. We overrule Lawson's sole issue and affirm the trial court's judgment.

AFFIRMED.

STEVE McKEITHEN
Chief Justice

Submitted on August 21, 2017
Opinion Delivered October 4, 2017
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Before McKeithen, C.J., Horton and Johnson, JJ.