



IN THE
TENTH COURT OF APPEALS

No. 10-14-00289-CR

SONNY TYRONE THOMPSON,

Appellant

v.

THE STATE OF TEXAS,

Appellee

From the 40th District Court
Ellis County, Texas
Trial Court No. 38339CR

MEMORANDUM OPINION

Asserting two issues, Appellant Sonny Thompson appeals his conviction for aggravated assault with a deadly weapon (motor vehicle) and eight-year prison sentence. We will affirm.

Background: Thompson does not challenge the sufficiency of the evidence, but because of his first issue, we will summarize the evidence. Jana Gillispie testified that she and her husband were driving from Rockett to Ferris on FM 983 on July 4, 2013 when someone tried to pass them on a curve. They saw a car with a truck chasing it at a high

rate of speed, and the car appeared to be running from the truck. After the car passed them, the truck did as well but stayed in the lane of oncoming traffic. It appeared to Gillispie that the truck was trying to push the car off the road. Gillispie felt that she and her husband were in peril, as well as the person in the car, and she tried to call 9-1-1. As they got closer to Ferris, she saw that the car had been in a wreck: "It appeared that the car had been flipped possibly more than once because it was torn up on all sides." They stopped to render aid and saw a woman who had been pulled from the car. They saw a truck parked on the opposite side of the road that appeared to be the same truck.

Deanna Rodriguez testified that she was at home in Ferris with her family on July 4 when they saw a car flipping and rolling into a neighbor's yard. They ran to the vehicle to help the woman inside. The woman kept saying, "It was my husband, it was my husband." Rodriguez saw a couple who had stopped and a truck. The truck was two-tone, and the driver, who was black, spoke to her husband and left.

Richard Rodriguez testified that he was outside popping fireworks with his family when he heard a screech and saw a vehicle come over his neighbor's ditch and start rolling. He thought someone was going to be dead inside. He also saw a truck pull into a driveway and then start backing out. The truck turned around real slow and stopped, and the driver got out. The truck was a two-tone Chevy, and the driver was a black gentleman whom Rodriguez could not identify. The driver said to Rodriguez, "Oh, I can't see this," and then he got back in his truck and drove away toward Waxahachie. Rodriguez thought the person in the truck was another witness until he heard a couple say that the truck had been trying to push the woman's car off the road.

Leonardo Figueroa testified that his wife woke him up after there was an accident in their yard. He saw a vehicle that had been flipped several times and neighbors who were helping the woman out. The woman complained that her knee and right leg were hurting, and she asked them to call her daughter. Figueroa also heard her say that her husband was trying to kill her.

Dorothy Wright, the victim, had been married to Thompson for a year and three months, but they had had an on-and-off relationship for fifteen years. After several weeks of problems, Wright left, and on the occasion in question, she went to their residence to get some of her things. She got in her car to leave and, despite Thompson trying to stop her, she was able to drive off. Thompson, who was angry, got in his truck and started to follow Wright on the highway. He pushed her car with his truck, and she went into a ditch. When she tried to get back on the road, he again ran into her car, which flipped and rolled several times. Her car was destroyed, and she was taken by ambulance to a hospital.

Ellis County Sheriff's Deputy Jeremy Osteen responded to the incident and was in charge of the investigation. Wright was already being transported from the scene when Osteen arrived, so he began his investigation by walking the roadway with a trooper to determine exactly where the vehicle had left the roadway and what may have caused that to happen. Osteen found that location and started marking evidence with paint. He marked tire marks, yaw marks, and gouges. Using an aerial photograph, Osteen described where Wright had left the road, where she had tried to get back on the road, and where her vehicle had been hit again. He explained that a second set of tracks was

in the ditch and that both sets of tracks had returned to the road, where the victim's vehicle started to slide sideways out of control and over a driveway gouging the pavement. The vehicle hit the edge of a culvert and rolled twice, landing on its side and front. He determined that the tire tracks of the suspect vehicle showed that vehicle would have been on the wrong side of the road.

Osteen and Ellis County Sheriff's Corporal Alitano went to Thompson's residence and took photographs of the damage to Thompson's vehicle. The photographs showed paint transfer and molding from one vehicle transferred to the other. Osteen described the physical findings and concluded that Wright's car had been forced off the road.

Investigator Joe Fitzgerald of the Ellis County Sheriff's Office was assigned to the case. He took daytime photographs of the crash area and photographs of Thompson's truck. He also interviewed Wright and videotaped injuries to her legs and head. After his investigation, he determined that the case was an intentional act of aggravated assault with a deadly weapon, namely the vehicle.

Thompson testified and denied causing Wright to crash. He said that he had no knowledge of whether someone chased her that night or rammed her car or forced her into the ditch. Thompson stated that his wife had a drug problem and was acting "crazy" in the days leading up to the crash. After they argued that night, she drove out of the yard and hit his truck in the driveway before she left. He started to follow her but returned home and went to bed until the police knocked on his door. On another occasion she had hit his truck at a storage facility.

In rebuttal, the State recalled Osteen, who testified that the patrol vehicles are

equipped with audio/video recording devices. He authenticated a recording from his patrol unit and a recording from the patrol unit of Corporal Atilano, who was not present at trial because he was attending a funeral. Osteen was present at the events captured on both videos and testified that he could identify all of the voices on the video and that he heard what Thompson had said at the time that it was being recorded. When the exhibit was offered, defense counsel objected on confrontation grounds because Atilano's comments were on the video and Atilano was not present for cross-examination. The trial court overruled the objection and admitted the video.

Thompson can be heard being questioned on the video, but it is not clear which officer is talking at times. In addition to some admissions by Thompson about following his wife, the officers can be heard discussing damage that they were observing on Thompson's pickup truck and damage that they had previously observed on Wright's car. The officers relate that they can see paint transfer on Thompson's truck from Wright's car. They also discuss some of the statements that they had heard from other witnesses, including their descriptions of the suspect vehicle. The audio on the video is partially inaudible because the patrol car's radio is playing music and there is background noise and police radio chatter.

Osteen then testified that he and Atilano went to Thompson's residence and made contact with him by knocking on the door. Osteen was present while Atilano and Thompson were speaking. Defense counsel then objected to hearsay regarding what Thompson said, and that objection was overruled. Plainly, Thompson's statements were not hearsay. *See* TEX. R. EVID. 801(e)(2).

Osteen then testified that Atilano had asked Thompson if he knew what had happened to his wife and that Thompson had “basically made the statement that he and her had been in an argument over her driving too fast and driving without a driver’s license.” Osteen said that Thompson acknowledged going after Wright:

He said that she left the residence in her vehicle and he followed her at a high rate of speed, so she was driving faster than him. He was trying to keep up with her. He was trying to get her to slow down and to go back home because she was driving without a driver’s license.

Confrontation: In his first issue, Thompson asserts that the trial court abused its discretion by admitting Atilano’s recording over his confrontation objection. We will assume without deciding that the trial court erred in admitting Atilano’s statements on the video and proceed to a harm analysis.

Confrontation Clause error is subject to a constitutional-harm analysis: We must reverse a judgment of conviction or punishment unless we determine beyond a reasonable doubt that the error did not contribute to the conviction or punishment. TEX. R. APP. P. 44.2(a); *Langham v. State*, 305 S.W.3d 568, 582 & n.42 (Tex. Crim. App. 2010).

In determining specifically whether constitutional error under *Crawford* may be declared harmless beyond a reasonable doubt ... the following factors are relevant: 1) how important was the out-of-court statement to the State’s case; 2) whether the out-of-court statement was cumulative of other evidence; 3) the presence or absence of evidence corroborating or contradicting the out-of-court statement on material points; and 4) the overall strength of the prosecution’s case. ... [T]he emphasis of a harm analysis pursuant to Rule 44.2(a) should not be on “the propriety of the outcome of the trial.” That is to say, the question for the reviewing court is not whether the jury verdict was supported by the evidence. Instead, the question is the likelihood that the constitutional error was actually a contributing factor in the jury’s deliberations in arriving at that verdict—whether, in other words, the error adversely affected the integrity of the process leading to the conviction. In reaching that decision,

the reviewing court may also consider, in addition to the factors listed above, *inter alia*, the source and nature of the error, to what extent, if any, it was emphasized by the State, and how weighty the jury may have found the erroneously admitted evidence to be compared to the balance of the evidence with respect to the element or defensive issue to which it is relevant. With these considerations in mind, the reviewing court must ask itself whether there is a reasonable possibility that the *Crawford* error moved the jury from a state of non-persuasion to one of persuasion on a particular issue. Ultimately, after considering these various factors, the reviewing court must be able to declare itself satisfied, to a level of confidence beyond a reasonable doubt, that the error did not contribute to the conviction before it can affirm it.

Langham, 305 S.W.3d at 582 (quoting *Scott v. State*, 227 S.W.3d 670, 690-91 (Tex. Crim. App. 2007)).

Although the audio portion on the video is of poor quality, Thompson can be heard being questioned, but it is not clear which officer is talking at times. In addition to some admissions by Thompson about following his wife, the officers can be heard discussing damage they were observing on Thompson's vehicle and damage they had observed on Wright's vehicle. They relate that they can see paint transfer on Thompson's vehicle from Wright's vehicle. They also discuss some of the statements that they heard from the witnesses, including their description of the suspect vehicle. All of the statements heard on the video, such as paint transfer between the vehicles, tire marks on the road, and witnesses who saw the car run off the road, involved evidence that had already been admitted at trial through the testimony of Osteen and of eyewitnesses who testified and were subject to cross-examination.

Because Osteen testified about the same evidence that he and Atilano discussed on the video, and because Osteen was subject to cross-examination at trial, the almost

inaudible videotape could not have been a contributing factor in the jury's deliberation beyond a reasonable doubt. The officers' statements were not important to the State's case because they were merely cumulative of other evidence already presented at trial, and the overall strength of the State's case was the same with or without the officers' statements on the video. Further, the State did not mention the videotape during closing argument, even to impeach Thompson. Instead, the State emphasized the testimony of Osteen, Gillispie, and Wright as proving beyond a reasonable doubt that Thompson was guilty.

We thus conclude that any error in the admission of the statements on the video did not contribute to Thompson's conviction beyond a reasonable doubt, and we overrule issue one.

Judgment: In his second issue, Thompson asserts that the judgment should be modified to correctly reflect the attorneys for the State at trial. The judgment identifies the attorney for the State as Patrick Wilson, the elected Ellis County District and County Attorney.

Thompson cites no authority to support his contention that the judgment should list the name of an assistant County and District Attorney rather than the elected prosecutor for the county, and we have recently rejected this contention. *See McKinley v. State*, No. 10-14-00202-CR, 2015 WL 4064719, at *1 (Tex. App.—Waco July 2, 2015, pet. ref'd) (mem. op., not designated for publication) ("The elected county and district attorney for Ellis County is the attorney for the State in this case."). We overrule issue two.

Having overruled both issues, we affirm the trial court's judgment.

REX D. DAVIS
Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins

Affirmed

Opinion delivered and filed January 7, 2016

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