

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Plaintiff and Appellee,)		
)	Case No. 20061068-CA	
v.)		
)	F I L E D	
Andrew E. Hooper,)	(April 3, 2008)	
)		
Defendant and Appellant.)	<table border="1"><tr><td>2008 UT App 117</td></tr></table>	2008 UT App 117
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Third District, Salt Lake Department, 051907365
The Honorable Leslie A. Lewis

Attorneys: John Pace, Michael D. Misner, and Lori Seppi, Salt
Lake City, for Appellant
Mark L. Shurtleff and Karen A. Klucznik, Salt Lake
City, for Appellee

Before Judges Thorne, Bench, and Billings.

THORNE, Associate Presiding Judge:

Andrew E. Hooper pleaded guilty to one count of automobile homicide, a second degree felony, see Utah Code Ann. § 76-5-207(3) (Supp. 2007), and one count of driving while under the influence and causing serious bodily injury, a third degree felony, see id. § 41-6a-502 (2005) (outlawing driving under the influence); id. § 41-6a-503(2)(a) (Supp. 2007) (setting penalty for driving under the influence resulting in serious bodily injury). Hooper appeals the district court's sentencing order imposing consecutive terms of imprisonment for the two offenses and the court's refusal to strike certain information from Hooper's presentence investigation report (PSI report). We affirm.

"In determining whether state offenses are to run concurrently or consecutively, the court shall consider the gravity and circumstances of the offenses, the number of victims, and the history, character, and rehabilitative needs of the defendant." Utah Code Ann. § 76-3-401(2) (2003). Trial court judges are granted broad discretion in making sentencing determinations, see State v. Sotolongo, 2003 UT App 214, ¶ 3, 73 P.3d 991, and are "at liberty to acquire information upon which to sentence a defendant from broad and wide sources," State v. Lipsky, 639 P.2d 174, 176 (Utah 1981). However, "[d]ue process 'requires that a sentencing judge act on reasonably reliable and relevant information in exercising discretion in fixing a

sentence.'" State v. Thorkelson, 2004 UT App 9, ¶ 11, 84 P.3d 854 (quoting State v. Howell, 707 P.2d 115, 118 (Utah 1985)).

Hooper's convictions arise from an automobile collision that occurred after an intoxicated Hooper entered I-80 driving west in the eastbound lanes and struck an eastbound vehicle head-on (the primary collision). As a direct result of the primary collision, two people died, and two more were injured. The wreckage also caused traffic to back up on I-80, and approximately half an hour later a semi-truck crashed into the line of stopped traffic (the secondary collision). The secondary collision occurred about a mile and a half from the primary collision and killed three more people. Hooper was not charged with any crimes arising from the secondary collision; the semi-truck driver was convicted on three counts of negligent homicide.

Hooper argues that the secondary collision was irrelevant to his sentencing because the semi-truck driver's unforeseeable negligence serves as a superseding cause that cuts off Hooper's potential criminal liability. In support of this argument, Hooper cites to several cases addressing foreseeability as it relates to criminal and civil liability. See State v. Hamblin, 676 P.2d 376, 377-79 (Utah 1983) (holding drag-racing defendant criminally liable for foreseeable accident resulting when he ran a stop sign and collided with motorist in intersection); State v. Hallett, 619 P.2d 335, 337-39 (Utah 1980) (holding motorist's death in intersection collision to be foreseeable result of vandal's bending down a stop sign); Bansasine v. Bodell, 927 P.2d 675, 676 (Utah Ct. App. 1996) (affirming summary judgment in favor of a defendant whose rude driving unforeseeably prompted a second motorist to fatally shoot the defendant's passenger). Even assuming that these cases would preclude Hooper's direct liability for the secondary collision, we do not find them to be controlling of the issue before us because the district court has greater discretion to consider evidence at sentencing than it does at trial. See Howell, 707 P.2d at 117 ("[T]he requirements of due process in relation to evidence received during a sentencing proceeding do not correspond to the requirements of due process at the trial stage." Evidence that is inadmissible at the guilt stage may be admissible for the purpose of sentencing." (citations omitted)).

Rather, we look to the plain language of the sentencing statute and determine that the district court properly considered the secondary collision as part of the "circumstances" of Hooper's crimes. See Utah Code Ann. § 76-3-401(2). "Circumstances" is a broad term that has been defined as "[a]ttendant or accompanying facts, events or conditions." Black's Law Dictionary 243 (6th ed. 1990). There is no question in our minds that the secondary collision constitutes such an event in relation to Hooper's crimes. The primary collision created an entirely foreseeable backup of traffic on a busy, high-speed interstate highway. Hooper's criminal acts created,

in essence, a road hazard that existed until the scene of the primary collision was cleared and traffic returned to its normal flow. The harms caused when another motorist failed to safely negotiate the road hazard are clearly facts or events attendant to or accompanying Hooper's creation of that hazard. Accordingly, the district court could properly consider the secondary collision as a circumstance of Hooper's crimes.

For similar reasons, we also reject Hooper's argument that information pertaining to the secondary collision should have been excluded from Hooper's PSI report as inaccurate and irrelevant to Hooper's sentencing. See Utah Code Ann. § 77-18-1(6)(a) (Supp. 2007) (allowing a defendant to challenge alleged inaccuracies in PSI report and requiring the sentencing court to make a record determination of "relevance and accuracy" as to unresolved factual disputes). Here, the information was relevant to Hooper's sentencing as part of the circumstances of Hooper's crimes.

Hooper alleges only one inaccuracy in the PSI report: a statement that the secondary collision "result[ed] from the defendant's actions." We see no inaccuracy here. Although the secondary collision resulted primarily from a third party's criminal negligence, it also resulted, at least indirectly, from Hooper's creation of the traffic stoppage. As the district court explained at sentencing, the primary and secondary collisions were "linked" and the secondary collision would not have occurred "but for" Hooper's criminal causation of the primary collision. The district court's comments effectively address both the relevancy and accuracy of the PSI report, and we see no violation of section 77-18-1(6)(a).

For these reasons, we affirm the district court's sentencing order.

William A. Thorne Jr.,
Associate Presiding Judge

WE CONCUR:

Russell W. Bench, Judge

Judith M. Billings, Judge