

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR12-498

JEFFERY WAYNE RATTERREE
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered December 12, 2012

APPEAL FROM THE LINCOLN
COUNTY CIRCUIT COURT
[CR-2010-49-1]

HONORABLE BERLIN C. JONES,
JUDGE

AFFIRMED

DAVID M. GLOVER, Judge

Jeffery Wayne Ratterree was charged with murder in the first degree in the death of Michael King. A Lincoln County jury convicted Ratterree of manslaughter and sentenced him to nine years' imprisonment. On appeal, he argues that the trial court abused its discretion (1) by excluding King's autopsy report and testimony regarding King's drug use and (2) in refusing to allow a jury instruction on negligent homicide. We affirm.

On October 10, 2010, Ratterree, Winfred Ashcraft, and Ray DeWease spent the day together at Ratterree's farm and deer camp and later stopped by a friend's house. When they left the friend's house, DeWease was driving, Ashcraft was in the front passenger seat, and Ratterree was in the back seat behind Ashcraft. As their vehicle passed a house where two men were in the yard working on a vehicle, one of the men (King) yelled something; Ratterree asked DeWease to stop and back up, which he did. Ratterree then got out of the



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vehicle and walked toward the two men. Ashcraft and DeWease stayed in the vehicle and heard a gunshot. They got out of the vehicle and found King lying on the ground with a gunshot wound to the face. Ratterree stated that he had “f***ed up” now. Ashcraft testified that he took a gun out of Ratterree’s pocket, laid it on the ground, and drew a circle around it.

Evie Nobles, who resided at the house where King was shot, and Larry Pierce (the other man in the yard with King at the time he was shot) both testified that Ratterree got out of the truck and walked to the driver’s window of the vehicle in which King was sitting; asked King if he was talking to him; and when King said no, Ratterree grabbed King by the throat. They said that when King pushed the door open to get out of the vehicle, Ratterree shot him. Evie Nobles’s daughter, Courtney, also testified that she saw Ratterree shoving the door against King and that when King got out of the truck, Ratterree shot him. She testified that she did not see either of the men with their hands on the other.

Kenneth Davis, an investigator with the Lincoln County Sheriff’s Department, testified that as he was walking Ratterree from the jail to the interview room, Ratterree told him that he “got him in the face, it was a good shot” and that he was “just tired of the riffraff in the neighborhood.” Ratterree gave two statements to the police. In his first statement, Ratterree said as they passed the house he heard someone yell, “slow the f**k down”; that he had DeWease back up; that he exited the vehicle and noticed two men in the yard, one in front of the vehicle and one in the vehicle (King), and King told him to “tote his ass.” Ratterree said that when King started to exit the vehicle, Ratterree noticed him grab something from



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the seat, so he grabbed his gun from his pocket and slammed King's arm in the door of his vehicle. Ratterree said that he and King had contact with their hands and arms and that his gun discharged and King fell to the ground. Because Davis could smell alcohol on Ratterree at the time Ratterree gave his first statement, Davis took a second statement the next morning; the second statement was virtually the same as the first statement.

At trial, Ratterree gave testimony similar to his two custodial statements. He testified that he carried a Glock .45-caliber firearm in his pocket for protection. Ratterree said that as they passed the house, he heard someone say, "slow the f**k down." He stated that he walked up to King, who was sitting in the driver's seat of the vehicle, and asked who he was talking to, and King told him that he needed to "tote his ass" and got "fired up." Ratterree said that when King told him that, he leaned against the vehicle door, pointed his finger at him, and said that the things that had been happening around that house had to stop, but he denied that he touched King. Ratterree testified as follows: that King got angry and told him that he was going to leave; that King grabbed something from the center console; that he did not want King to come out of the vehicle so he held the door and King started kicking it; that he did not know what King had grabbed so he pulled his weapon; that King was "swatting" at him; that he did not remember pulling the trigger; and that it surprised him when the gun went off. However, neither the investigating officers nor the coroner found any weapons in or under King's vehicle or on or under King's body except Ratterree's gun that Ashcraft had placed on the ground nearby.



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Exclusion of Autopsy Report and Testimony of King's Drug Use

Ratterree's first point on appeal is directed toward the trial court's grant of the State's motion in limine to exclude any evidence (specifically, the autopsy report) or testimony regarding the fact that toxicological analysis of King's blood indicated that he had methamphetamine, amphetamine, phentermine, and cyclobenzaprine in his system at the time of death, as well as the presence of cannabinoids in his urine. The trial court granted the State's motion on the basis that the probative value of the evidence of drugs found in King's system was substantially outweighed by the danger of unfair prejudice, that it would not explain to the jury why King reacted the way he did, and that the evidence would only serve to inflame the jury. On appeal, Ratterree argues that the trial court's ruling excluding that evidence was an abuse of discretion.

Trial courts have broad discretion concerning evidentiary issues, including the determination of the admissibility of evidence; such decisions will not be reversed absent an abuse of that discretion. *Arnett v. State*, 2010 Ark. App. 702, at 2. In *Jones v. State*, 340 Ark. 390, 396, 10 S.W.3d 449, 452 (2000) (citations omitted), our supreme court held, "Although all relevant evidence is admissible, even relevant evidence can be excluded if its probative value is substantially outweighed by the danger of unfair prejudice or confusion of the issues."

In *Arnett, supra*, the appellant argued that the trial court erred in excluding a toxicology report showing that the shooting victim had cocaine in his system because it made the appellant's claim that the shooting was accidental more probable. In rejecting that claim, this court held:



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In *Jones v. State*, 340 Ark. 390, 10 S.W.3d 449 (2000), our supreme court considered a similar issue. As in this case, the defense was attempting to introduce the victim's positive toxicology report into evidence. The defense claimed that the document was relevant to show that the victim was likely to have provoked the argument and started the confrontation. The trial court ruled that it was proper to exclude the toxicology report first because drug-use evidence is highly prejudicial and second because there was no cause-and-effect relevance of such evidence. *Jones*, 340 Ark. at 396, 10 S.W.3d at 453. The trial court specifically stated that there was nothing to show that the cocaine had anything to do with the confrontation. *Id.* at 396, 10 S.W.3d at 453. The trial court's decision was affirmed on appeal. *Id.* at 397, 10 S.W.3d at 453.

Arnett, 2010 Ark. App. 702 at 3. Based upon the reasoning set forth in *Jones*, this court affirmed the conviction in *Arnett*, holding that the victim's drug use prior to the shooting in no way assisted in the determination of whether the appellant accidentally killed the victim.

This case is similar to both *Jones* and *Arnett*. In his second point on appeal, as well as at trial, Ratterree contends that King's shooting was accidental. The progression of events is simple. Ratterree had DeWease circle back to where King was located; he got out of the vehicle and approached King; when King got angry, he held the vehicle door shut; and when King got out, Ratterree shot him. There is nothing in those events to show that the drugs in King's system had anything to do with the confrontation. We hold that the trial court did not abuse its discretion in refusing to admit the results of King's toxicology report or any testimony of King's drug use.

Jury Instruction - Negligent Homicide

Ratterree's second point on appeal is that the trial court erred in refusing to give a jury instruction for negligent homicide. An instruction on a lesser-included offense is appropriate when it is supported by even the slightest evidence; however, a trial court's decision not to



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give an instruction on a lesser-included offense will be affirmed if there is no rational basis for doing so, and a trial court's decision on this matter will not be reversed absent an abuse of discretion. *Jones v. State*, 2012 Ark. 38, at 6–7, 388 S.W.3d 411, 415. A person commits negligent homicide if he negligently causes the death of another person. Ark. Code Ann. § 5-10-105 (b)(1) (Supp. 2011). Arkansas Code Annotated section 5-2-202(4) provides:

(A) A person acts negligently with respect to attendant circumstances or a result of his or her conduct when the person should be aware of a substantial and unjustifiable risk that the attendant circumstances exist or the result will occur.

(B) The risk must be of such a nature and degree that the actor's failure to perceive the risk involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation considering the nature and purpose of the actor's conduct and the circumstances known to the actor.

Ratterree argues that there was evidence to support the giving of a negligent-homicide instruction because although he drew his weapon when King became aggressive, he did not intend to shoot King—the gun accidentally discharged in the scuffle. Here, there was no negligent behavior on the part of Ratterree. All his actions were purposeful. He had DeWease turn around and return to where King was located; he got out of the vehicle and approached King; the two of them had words; and, according to witnesses, Ratterree grabbed King by the throat and prevented King from exiting the vehicle by leaning on the door. According to Ratterree's testimony, King grabbed something from the console, and Ratterree pulled his gun from his pocket. Further, according to Ratterree, when King got out of the vehicle, Ratterree said that King was “swatting” at him, and the gun went off accidentally. However, James Looney, a firearm and toolmark examiner with the Arkansas State Crime Lab, testified that for the gun to be fired, the trigger had to be pulled, which usually required



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five to five and a half pounds of pressure. This type of testimony rebuts the notion that Ratterree acted negligently. Therefore, the trial court did not abuse its discretion in refusing to give the jury an instruction on negligent homicide because there was no evidence presented to the jury that rationally supported the giving of such an instruction.

Affirmed.

VAUGHT, C.J., and GLADWIN, J., agree.

Travis A. Gray, for appellant.

Dustin McDaniel, Att'y Gen., by: *Laura Shue*, Ass't Att'y Gen., for appellee.