

Cite as 2010 Ark. App. 702

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR09-1231

MICHAEL B. ARNETT

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered October 27, 2010

APPEAL FROM THE CLARK COUNTY
CIRCUIT COURT
[No. CR 2006-200]

HONORABLE ROBERT E.
McCALLUM, JUDGE

AFFIRMED

LARRY D. VAUGHT, Chief Judge

A Clark County jury convicted appellant Michael Arnett of second-degree murder and abuse of a corpse and sentenced him to thirty-six years' imprisonment in the Arkansas Department of Correction. On appeal, Arnett challenges only the trial court's grant of the State's motion in limine to exclude the victim's positive toxicology report (showing the presence of cocaine). We affirm the conviction.

Arnett gave a statement to the Arkansas State Police that detailed the events of October 16, 2006. Arnett was working as an electrician at a site in Alpine, Arkansas, when he placed a call to Reginald Witherspoon (an alleged drug dealer) and requested that he deliver a quantum of crack cocaine. According to Arnett, he and Witherspoon had been smoking crack cocaine and shooting Witherspoon's gun in the woods. Arnett stated that, while loading supplies to leave the site, he tripped, and his gun accidentally fired, striking Witherspoon in the back of the head.

Arnett claimed that he panicked and hid Witherspoon's body in the woods.

Dr. Frank Peretti conducted an autopsy on the victim. His toxicology report revealed that Witherspoon had cocaine in his system at the time of his death. Peretti testified that the cocaine was in the victim's urine, which would indicate that he had been using cocaine within twenty-four to thirty-six hours prior to the shooting. The State filed a motion in limine asking that the toxicology report be excluded because the information was irrelevant in determining Arnett's guilt. Alternatively, the State argued that if the evidence were to be classified as relevant, its probative value was outweighed by the risk of prejudice. Arnett responded that the evidence was relevant because it supported his version of events—that he and the victim were on good terms and smoked crack cocaine together. The trial court granted the State's motion stating:

Based on the fact that there's no way to determine when the victim ingested the substance or to determine if he was under the influence at the time of this incident, I'll grant the State's motion to exclude the toxicology report of the victim.

It is from this decision that Arnett appeals.

At the outset, we note that trial courts have broad discretion in deciding evidentiary issues, including the admissibility of evidence, and those decisions will not be reversed absent an abuse of discretion. Arkansas Rule of Evidence 401 defines "relevant evidence" as evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. Ark. R. Evid. 401. However, evidence that is not relevant is not admissible. Ark. R. Evid. 402. *Williams v. State*, 338 Ark. 97, 991 S.W.2d 565 (1999).

Further, the test of admissibility of evidence over an objection for irrelevancy is whether

the fact offered into proof affords a basis for rational inference of the fact to be proved; it is sufficient if the fact may become relevant in connection with other facts, or if it forms a link in the chain of evidence necessary to support a party's contention. *Simmons v. State*, 95 Ark. App. 114, 234 S.W.3d 321 (2006). To be relevant, it is not required that evidence prove the entire case or even all of single issue; rather, relevance requires only proof that has any tendency to make any fact that is of consequence to the determination of an action more or less probable. *Ford Motor Co. v. Nuckolls*, 320 Ark. 15, 894 S.W.2d 897 (1995).

Here, Arnett claims that the toxicology report showing cocaine in the victim's system is relevant because it tends to make Arnett's "accidental shooting" version of events more probable. The State responds that Arnett's desire to introduce the victim's positive drug screen was primarily for the purpose of informing the jury of the victim's drug use.

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 452. 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. Our supreme court went on to state that even if the trial court had erred the error was harmless

given the overwhelming evidence of guilt. *Id.* at 397, 10 S.W.3d at 453.

Based on the spot-on *Jones* precedent and the trial court's broad discretion in evidentiary matters, we are satisfied that under the circumstances of this case the victim's toxicology report was not relevant. The fact that the victim had ingested cocaine¹ prior to the murder in no way assists in determining whether it was more or less probable that Arnett accidentally killed the victim. In fact, the two men could have gathered in good spirits just as Arnett claimed. They could have enjoyed the comradery, shot guns, and smoked crack cocaine; yet still Arnett could have shot him accidentally or intentionally. The question of whether the events unfolded in a "knowing" way rests entirely on Arnett's credibility. Whether the jury believed his version of events is in no way bolstered by the fact that the victim had ingested drugs twenty-four to thirty-six hours prior to his death. As such, the trial court did not abuse its discretion by finding that the evidence was not relevant and granting the State's motion in limine.

Affirmed.

GLOVER and BAKER, JJ., agree.

¹There was also methamphetamine found in the victim's system, yet there was no testimony that the two men engaged in such use.