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ARKANSAS COURT OF APPEALS

DIVISIONS I
No. CR-23-489

MATTHEW GONZALES

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered March 27, 2024

APPEAL FROM THE FAULKNER
COUNTY CIRCUIT COURT
[NO. 23CR-20-1033]

HONORABLE CHARLES E. CLAWSON
III, JUDGE

AFFIRMED

N. MARK KLAPPENBACH, Judge

Appellant, Matthew Gonzales, appeals his conviction for the negligent homicide of Tim White, for which he was sentenced to eighteen years in prison. He argues that there is insufficient evidence that he caused Tim's death and that the circuit court abused its discretion in allowing his blood-alcohol test results into evidence. We affirm.

At around 10:30 p.m. on August 6, 2020, Tim and a friend were driving their motorcycles on Highway 64, which is a five-lane highway, toward Conway when Tim turned on his blinker and pulled into the center turn lane in preparation to turn into a convenience-store parking lot. At the same time, Matthew was driving a Dodge Ram truck in the opposite direction toward Vilonia and veered into the center turn lane, striking Tim's motorcycle head-on. Tim's friend was knocked to the ground by part of Tim's motorcycle, motorcycle parts flew everywhere, and part of Tim's motorcycle was lodged under the truck, which

sustained major front-end damage. Tim's body was moved about two hundred feet from the initial impact and remained in the roadway. Matthew exited his truck to check on Tim, and then a small white sedan struck Tim and Matthew. Matthew sustained a broken leg.

Law enforcement arrived to find Tim's friend's motorcycle lying in the center turn lane, motorcycle parts scattered across the five-lane highway, half of Tim's motorcycle in the outer eastbound lane, Matthew's truck further along the eastbound lane, and Tim's body and part of his motorcycle lying in the middle of the eastbound lane. The white sedan, which had stopped, had a crack in the bumper and was missing the passenger-side mirror. Tim was dead at the scene.

A state trooper encountered Matthew, who had bloodshot, watery eyes, and a strong odor of alcohol emanating from him. Matthew told the officer that he had been to a Conway bar and grill where he had been drinking with some friends. He admitted mistakenly swerving into the turn lane and hitting the motorcycle. Matthew was taken to a Conway hospital, and an officer presented Matthew's nurse with a warrant for a blood draw and a blood-draw kit. The officer presented two empty vials from the kit to the nurse, who used Matthew's IV to fill the vials with his blood. The nurse handed the vials to the officer, the officer sealed them, and initials were placed on the vials, which were put back into the original box and returned to headquarters, where they eventually were tested.

The test results proved that Matthew had 0.124 percent ethanol in his system. Matthew objected to the admission of the test results, asserting that the State failed to demonstrate that the blood was collected in strict compliance with Arkansas Department of

Health regulations and that there was a break in the chain of custody. The circuit court overruled the objection and admitted the evidence.

The deputy coroner (a former EMT with decades of experience) testified that based on his observations of Tim's catastrophic injuries, the cause of Tim's death was the impact with the truck. The coroner described Tim's motorcycle as "torn in half," and the truck "had extreme damage to the front left driver's side." The coroner described Tim's injuries to include "a gross open head trauma. His head was basically popped open. He had facial fractures, a right shoulder with an open fracture. He had bilateral femur fracture; one side was open. He had extensive chest trauma, internal[.]" The coroner said the small sedan "had very minimal damage." Multiple photographs of Tim's body, the condition of the truck, and the condition of the sedan were entered into evidence.

The jury found Matthew guilty, and this appeal followed. Matthew challenges the sufficiency of the evidence to convict him, specifically arguing that the State failed to prove that it was his truck that caused Tim's death and that it was equally plausible that the sedan that subsequently hit both him and Tim could have caused Tim's death.

The charge of negligent homicide, Ark. Code Ann. § 5-10-105 (Repl. 2013), required the State to prove beyond a reasonable doubt that Matthew negligently caused Tim's death as a result of operating a vehicle while intoxicated or having an alcohol concentration of 0.08 or more in appellant's breath or blood. Causation may be found when the result would not have occurred but for the conduct of the defendant operating either alone or concurrently with another cause unless: (1) The concurrent cause was clearly sufficient to produce the

result; and (2) The conduct of the defendant was clearly insufficient to produce the result. Ark. Code Ann. § 5-2-205 (Repl. 2013). When there are concurrent causes of death, conduct that hastens or contributes to a person's death is a cause of death. *Roberts v. State*, 2023 Ark. App. 115, 662 S.W.3d 668.

The test for determining sufficiency of the evidence is whether there is substantial evidence, direct or circumstantial, to support the verdict. *Sizemore v. State*, 2015 Ark. App. 295, 462 S.W.3d 364. On appeal, we consider only the evidence that supports the verdict, viewing the evidence in the light most favorable to the State. *Id.* Evidence is substantial if it is forceful enough to compel reasonable minds to reach a conclusion and pass beyond suspicion and conjecture. *Id.* We do not weigh the evidence presented at trial because that is a matter for the fact-finder. *Id.* Witness credibility is an issue for the fact-finder, which is free to believe all or a portion of any witness's testimony and whose duty it is to resolve questions of conflicting testimony and inconsistent evidence. *Id.* The jury is entitled to draw on common sense and experience in reaching its verdict. *Velasco v. State*, 2016 Ark. App. 454, 504 S.W.3d 650.

Viewing the evidence in the light most favorable to the verdict, we hold that the State produced sufficient evidence for the jury to conclude that the impact of Matthew's truck was a contributing cause, if not the primary cause, of Tim's death.

Matthew's second argument on appeal is that the circuit court abused its discretion in allowing the blood-alcohol-test results into evidence. A chemical test made to determine the presence and amount of alcohol in a person's blood, to be considered valid under the

criminal code, must be performed according to a method approved by the Department of Health and the State Board of Health or by an individual possessing a valid certificate issued by the department for this purpose. *See* Ark. Code Ann. § 5-65-204(b)(1)(A) (Supp. 2023). Substantial compliance with these regulations is sufficient, but such tests must be monitored carefully to assure reliability. *Caffey v. State*, 43 Ark. App. 160, 862 S.W.2d 293 (1993).

The appellate court reviews the admission of evidence by the circuit court using an abuse-of-discretion standard. *Ventry v. State*, 2021 Ark. 96, 622 S.W.3d 630. The decision to admit or exclude evidence is within the sound discretion of the circuit court, and we will not reverse a court's decision regarding the admission of evidence absent a manifest abuse of discretion. *Id.* Abuse of discretion is a high threshold that does not simply require error in the circuit court's decision, but also requires that the circuit court act improvidently, thoughtlessly, or without due consideration. *Id.*

In this case, the hospital floor RN (registered nurse) who drew the blood used the IV in Matthew's arm that had already been placed there, probably in the emergency room. She said that the method to start an intravenous line would first require disinfecting his skin with an isopropyl alcohol pad, waiting for the area to dry, and then inserting the IV needle. Matthew argued that Arkansas Department of Health Regulations prohibit the use of alcohol for disinfection purposes before a blood draw. The State's forensic toxicologist testified that the method the lab used to test Matthew's blood for ethanol alcohol also would detect the presence of isopropyl alcohol (none was detected), so the use of an isopropyl alcohol pad on

Matthew's arm would not invalidate the State's test of Matthew's blood drawn from the IV line.

Considering these facts, we hold that the circuit court did not abuse its discretion in allowing the State to introduce the results of the blood-alcohol test into evidence. The purpose of the rules are to assure reliability of the blood-test results, and the toxicologist verified that there was no trace of isopropyl alcohol in the blood sample taken from Matthew's IV line, but there was 0.124 percent ethanol alcohol in Matthew's blood.

Affirmed.

VIRDEN and WOOD, JJ., agree.

Shaw & Elenbaus, by: *Eric Nicholas Wilson*, for appellant.

Tim Griffin, Att'y Gen., by: *Rebecca Kane*, Ass't Att'y Gen., for appellee.