

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

FILED
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STATE OF OKLAHOMA

APR 22 2014

MICHAEL S. RICHIE
CLERK

STATE OF OKLAHOMA,)

Appellant,)

v.)

DAVID VAUGHAN,)

Appellee.)

NOT FOR PUBLICATION

No. S-2013-687

OPINION

A. JOHNSON, JUDGE:

On October 11, 2012, Appellee Vaughan was charged with Count 1, First Degree Manslaughter in the commission of a misdemeanor, to wit, Driving While Under the Influence of Alcohol (21 O.S.2011, § 711)(hereinafter DUI Manslaughter) in Delaware County Case No. CF-2012-361. Vaughan's preliminary hearing was held December 28, 2012. At the conclusion of the hearing, Vaughan demurred to the evidence, arguing that the State failed to show that Vaughan's actions were the proximate cause of the victim's death. On June 17, 2013, the District Court of Delaware County, the Honorable Alicia Littlefield, Special Judge, granted Vaughan's demurrer. The State appealed and on July 11, 2013, the District Court of Delaware County, the Honorable Gary Maxey, Associate District Judge affirmed the ruling. From this ruling, the State appeals.

This case raises the single issue of whether the District Court abused its discretion in ruling that as a matter of law that the State's evidence was insufficient to establish the proximate causation necessary to support charging Vaughan with DUI misdemeanor manslaughter. We **AFFIRM** the District Court's ruling.

On July 25, 2012, Vaughan was driving his pickup truck in Delaware County on his way home. He had a blood alcohol content of .14. Vaughan's wife, Linda Vaughan, was seated in the front passenger seat of the vehicle and family friend Christopher Alverson was riding in the truck bed. According to Vaughan, he and Linda were arguing over Alverson. Linda threatened to jump out of the truck if Vaughan did not stop the vehicle and make Alverson get out. Vaughan did not take Linda seriously, and turned away from her to look out of the window in an attempt to ignore her. The truck was traveling at a low rate of speed, somewhere between 15 and 17 miles per hour. When Vaughan turned back to face Linda, she was gone, the passenger's door was open, and he felt the truck run over something. Vaughan immediately stopped the vehicle and upon exiting the truck discovered that he had run over Linda. She died at the scene. The cause of death was determined to be multiple blunt force injuries to the head, neck, torso and extremities. Vaughan was ultimately arrested and charged with DUI manslaughter.

Vaughan did not testify at the preliminary hearing and the State presented only two witnesses: Leroy Weems, the paramedic who responded to the accident and took blood from Vaughan, and Highway Patrolman Ruben Hernandez who worked the accident. Hernandez testified as to what transpired prior to the accident as told to him by Vaughan. Linda was dead when Hernandez arrived, and Vaughan appeared to be intoxicated. Vaughan admitted that he was the vehicle's driver and he had been drinking. His blood alcohol level, confirmed by a blood test, was over the legal limit. Hernandez testified that he had no reason to doubt Vaughan's version of the events leading up to Linda's death. While conceding that

Vaughan might have been more aware of what was going on around him had he not been intoxicated, Hernandez testified that the result in this case would have been no different if Vaughan had not been intoxicated. The evidence presented at preliminary hearing established that Linda Vaughan was accidentally run over after exiting the vehicle of her own volition, and that she would have been killed regardless of Vaughan's intoxication.

Vaughan demurred to the evidence, arguing that the State failed to show that his driving while intoxicated was the proximate cause of Linda's death. At the conclusion of the preliminary hearing, Judge Littlefield granted Vaughan's request to brief the issue of whether the misdemeanor manslaughter charge was proper where the State's evidence failed to show that Vaughan's driving was the cause of the victim's death. Judge Littlefield found the State had not met its burden, and granted Vaughan's demurrer. The decision was affirmed by Judge Maxey. We find no error here warranting reversal of the District Court's decision.

This Court has repeatedly found that at preliminary hearing the State is required to present sufficient evidence to establish probable cause that a crime has been committed and probable cause to believe that the defendant committed the crime. *See, e.g., State v. Juarez*, 2013 OK CR 6, ¶ 11, 299 P.3d 870, 873; *Heath*, 2011 OK CR 5, ¶ 7, 246 P.3d at 725; *Berry*, 1990 OK CR 73, ¶ 2, 799 P.2d at 1132; *see also* 22 O.S.2011, §§ 258, 264. While it is not required to prove the defendant's guilt with certainty, the State must establish that it is reasonable to believe that the defendant committed the offense(s) at issue. *Juarez, id.*; *Heath*, 2011 OK CR 5, ¶ 7, 246 P.3d at 725; *Berry*, 1990 OK CR 73, ¶ 10, 799 P.2d at 1133. The State is

entitled to the presumption that it will strengthen its evidence at trial. *Id.* Nevertheless, "the evidence at preliminary hearing must coincide with guilt and be inconsistent with innocence." *See State v. Davis*, 1991 OK CR 123, ¶ 7, 823 P.2d 367, 369.

Misdemeanor manslaughter is codified at 21 O.S.2001, §711.1. A homicide is misdemeanor manslaughter when it is perpetrated without a design to effect death by a person engaged in the commission of a misdemeanor. *State v. Ceasar*, 2010 OK CR 15, ¶ 7, 237 P.3d 792, 794; *Bell v. State*, 2007 OK CR 43, ¶ 3, 172 P.3d 622, 623-624. A single test of causal relation, often referred to as "proximate cause," is applied to all types of criminal homicide, including misdemeanor manslaughter. The inquiry is whether the defendant's conduct was a substantial factor in bringing about the victim's death. OUJI-CR 2nd No. 4-60; *see also Chandler v. State*, 79 Okl.Cr. 323, 333, 146 P.2d 598, 603; *Logan v. State*, 42 Okl.Cr. 294, 298, 275 P. 657, 658 (1929).

Unfortunately, while the offense charged here meets the definitional criteria of misdemeanor manslaughter, the State's burden in prosecuting a defendant for this crime requires more. The elements of misdemeanor manslaughter are listed in OUJI-CR 2nd No. 4-94. To support a charge of misdemeanor manslaughter the State is required prove the following beyond a reasonable doubt:

First, the death of a human;

Second, occurring as a direct result of an act or event which happened in the commission of a misdemeanor;

Third, caused by **[the defendant(s)]/[a person engaged with the defendant(s)]** while in the commission of the misdemeanor;

Fourth, the elements of the **[Specify Underlying Misdemeanor] defendant(s) is/are** alleged to have been in the commission of are as follows:

[Give Elements of Underlying Misdemeanor].

At the appeal of this matter, the State conceded that it had presented all of the evidence it had supporting the charge against Vaughan. It had no other evidence or witnesses to prove Vaughan committed the offense as charged in the Information. If Trooper Hernandez is to be believed, and there is no reason to doubt his veracity, the State's evidence unequivocally establishes Vaughan's intoxication was not the proximate cause of Linda's death, meaning the State presented insufficient evidence to support a charge of misdemeanor manslaughter. Ms. Vaughan death was tragic, and we do not minimize its impact on her family and friends. However, speculation as to existence of facts that might support finding Vaughan guilty of DUI manslaughter is not evidence. Hypothetical scenarios notwithstanding, the State's evidence simply does not support a finding that Vaughan's actions constituted a substantial factor in the victim's death. We find no abuse of discretion and affirm the District Court's ruling.

DECISION

The order of the District Court of Delaware County in Case No. CF-2012-361 is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal*

Appeals, Title 22, Ch.18, App. (2014), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF DELAWARE COUNTY
THE HONORABLE GARY MAXEY, ASSOCIATE DISTRICT JUDGE

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OPINION BY: A. JOHNSON, J.

LEWIS, P.J.: Dissent
SMITH, V.P.J.: Concur
LUMPKIN, J.: Dissent
C. JOHNSON, J.: Concur

RA/F

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